

For decision

For discussion

For information

# Clarifying the application of the beneficial ownership requirements

## Summary

This paper contains a recommendation from the Implementation Committee to the EITI Board for clarifying the interpretation of requirement 2.5.c. According to Requirement 2.5.c, the requirement for disclosing beneficial ownership applies to “corporate entity(ies) that bid for, operate or invest in extractive assets”. Implementation support and capacity building activities in 2016 has raised some questions with regards to the scope of companies affected by the beneficial ownership requirements and how to interpret provision 2.5.c. Clarifying the scope of application of requirement 2.5 is particularly important considering that several countries are currently drafting or amending legislation with a view to legally mandate beneficial ownership disclosure. Furthermore, it is important to provide implementing countries with a clear indication of how the requirements will be assessed at Validation.

## Supporting documentation

None

## Has the EITI competence for any proposed actions been considered?

Requirement 2.5 of the EITI Standard.

## Financial implications of any actions

None. The amendments are unlikely to significantly change the scope of work required to implement the requirement.

**Document history**

Submitted to the Implementation Committee	30 March 2017
Discussed by the Implementation Committee	6 April 2017
Revised and re-submitted to the Implementation Committee	25 April 2017
Approved by the Implementation Committee	2 May 2017
Submitted to the EITI Board	9 May 2017

# CLARIFYING THE APPLICATION OF THE BENEFICIAL OWNERSHIP REQUIREMENTS

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## 1 Recommendation

The Implementation Committee makes the following recommendation to the EITI Board for amending requirement 2.5.c to clarify the current ambiguity:

*As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI report. This applies to corporate entity(ies) that ~~bid apply for, operate or invest in extractive assets~~ or hold a participating interest in an exploration or production oil, gas or mining license or contract. ~~operate or invest in extractive assets~~; and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.*

The terms ‘license’ and ‘contract’ are defined in requirement 2.4.

Clarifying the scope of the requirement is particularly important considering that several countries are currently drafting or amending legislation with a view to legally mandate beneficial ownership disclosure. Furthermore, it is important to provide implementing countries with a clear indication of how the requirements will be assessed at Validation.

## 2 Background

At the Global Conference in Lima in February 2016, the EITI Board agreed new requirements on beneficial ownership. According to Requirement 2.5.c, the requirement for disclosing beneficial ownership applies to “corporate entity(ies) that bid for, operate or invest in extractive assets”. Implementation support and

capacity building activities in 2016 has raised some questions with regards to the scope of companies affected by the beneficial ownership requirements and how to interpret provision 2.5.c. Board paper 36-4-A considered by the EITI Board in Bogota included some recommendations for addressing ambiguities related to the beneficial ownership requirements. However, given that the Implementation Committee had not agreed a recommendation on this issue, the EITI Board requested that a recommendation be developed. This paper presents the ambiguities with the current language and suggests a way forward. Subject to the Committee's discussion, a recommendation to the EITI Board would be developed for discussion at the EITI Board meeting in May 2017.

### 3 Scope of the beneficial ownership requirements

In accordance with Requirement 2.5.c of the EITI Standard, the requirement for beneficial ownership disclosure extends beyond the companies that are typically included in the scope of the EITI Report by including companies that “bid for, operate or invest in extractive assets”. To date, only companies that have obtained production licenses and sometimes also exploration licenses have been included in the report given that they are engaged in activities giving rise to revenue.

The current language in Requirement 2.5.c raises the following questions:

- (i) **Corporate entity(ies) that “bid for” extractive assets.** It is not clear whether the term ‘bid’ should be interpreted to include companies that apply for the rights to explore and/or exploit oil, gas and minerals regardless of the application process (e.g. direct negotiation, auction, tender), or whether it should be limited to only apply to companies that apply for such rights through bidding rounds. Clarifying this ambiguity is important as it would affect which companies are required to disclose beneficial ownership data. While some countries conduct all their license awards through bidding, several countries still award the majority or all of their licenses through direct negotiations. If the requirement to disclose beneficial ownership information is limited to bidding processes, companies that are applying for licenses through other means would not be covered.

The International Secretariat's understanding is that most stakeholders seem to interpret this requirement to apply to any legal entity applying for exploration and/or production licenses, regardless of the procedure for application. This would also support the overall objective of beneficial ownership transparency contributing to address conflict of interest issues in the licensing process. It is therefore proposed that the EITI Standard is amended to replace the word “bid for” with “apply for”.

- (ii) **Corporate entity(ies) that “operate” extractive assets.** It is not clear whether this term should be interpreted to include any company that hold active rights to explore or produce oil, gas and minerals, or whether it is limited only to producing companies. It is also not clear whether the requirement encompass e.g. artisanal or small scale mining.

The International Secretariat's understanding is that most stakeholders interpret this requirement to apply to any legal entity that is party to an active exploration and/or production license or contract. It would seem excessive to apply the requirement to small scale mining, adding unnecessary burden on a sector where regulation is often challenging. It is therefore proposed that the EITI Standard is amended to clarify that the requirements apply to

companies that hold a participating interest in an exploration or production license.

- (iii) **Corporate entity(ies) that “invest in” extractive assets.** It is not clear whether the term ‘invest in’ should this be interpreted to include companies that hold a direct stake in an extractive project, such as e.g. non-operating partners of consortiums and joint ventures, or whether it also includes organisations that provide financing to the companies that hold the extractive license, be it through equity, loans or other means.

The International Secretariat’s view is that as is the case with certain revenue data it should be feasible to obtain beneficial ownership data from any companies that hold a direct stake in an extractive project, even the company is not the operator. However, the International Secretariat’s understanding is that the requirement was never intended to cover the investors that finance the extractive companies that hold the extractive assets. As illustrated in figure 1 below, this would imply not only identifying the beneficial owner(s) of Congo Dongfang, but also the beneficial owners of all of Congo Dongfang’s 10+ investors. It is therefore proposed that the EITI Standard is amended to clarify that the requirements apply to companies that hold a participating interest in an exploration or production license.

Figure 1 – Congo Dongfang’s investors, EITI DRC Report

