

BENEFICIAL OWNERSHIP PILOT EVALUATION REPORT



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Table of contents

Table of contents.....	Error! Bookmark not defined.
1 Executive Summary	2
2 Background.....	3
3 Beneficial ownership – global efforts	5
4 Challenges and good practices with EITI reporting on beneficial ownership	5
4.1 Beneficial ownership definitions	5
4.2 Disclosure of politically exposed persons.....	11
4.3 Timeliness, comprehensiveness and reliability of the beneficial ownership data.....	12
4.4 Reporting entities, data collection and adequacy of the model beneficial ownership declaration form	20
4.5 Establishing beneficial ownership registers	22
5 Conclusion	23
Annex A – Summary of lessons learnt	24

1 Executive Summary

Transparency about company and government payments is important for accountability, but tells citizens little about who owns extractive companies and ultimately benefits from the companies' activities. In many cases, the identity of the real owners – the 'beneficial owners' – of the companies that have acquired rights to extract oil, gas and minerals is unknown, often hidden behind a chain of corporate entities. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector.

In adopting the EITI Standard in May 2013, the EITI Board agreed to recommend disclosure of beneficial ownership information and that the EITI will in the future require disclosure of the beneficial owners of oil, gas and mining companies operating in implementing countries. Subject to successful piloting, the Board agreed to develop detailed provisions with a view to make this a requirement from 1 January 2016. While the Board noted the importance of transparency of beneficial ownership to the effective governance of the extractive industries and as a check against corruption, the Board also recognised that there was limited experience in addressing these issues in the context of the EITI, and that additional piloting and experimentation was needed.

The pilot took place in the period October 2013 – September 2015, with the participation of eleven implementing countries. This report presents the lessons learnt from the pilot, drawing on scoping work, disclosure reports and evaluation reports from the pilot countries. The overall key findings are that:

1. **The pilot has been successful in firmly placing beneficial ownership on many national EITI agendas and contributed to the global momentum in tackling hidden ownership.** Prior to the launch of the pilot, beneficial ownership did not really feature in MSG discussions. The pilot has firmly contributed to increase the awareness around the importance of transparency in beneficial ownership, and led to discussions about legal and regulatory changes aimed at mandating filing and disclosure of beneficial ownership information. It has also contributed to identifying gaps in government's regulatory and monitoring capacities and recommended establishment or integration of beneficial ownership data in public registers. Despite some of the challenges encountered, many pilot countries appear to have decided to continue to pursue beneficial ownership even if the pilot phase is coming to a close, and have included such disclosures in their terms of reference for upcoming reports. A number of non-pilot countries have also taken steps towards beneficial ownership reporting, which points to the importance that many countries are now giving to the topic and suggests that this is an area where countries will continue to do work.
2. **Obtaining reliable and comprehensive beneficial ownership information is challenging.** Despite the significant interest from all stakeholders, information about the identity of the beneficial owners of extractive companies and level of ownership, has been difficult to obtain. The pilot has helped shed light on these challenges. While some of the difficulty seem to be due to a confusion around the concept of beneficial ownership vs legal ownership and insufficient outreach, guidance and time to complete declaration forms, it is also clear that many countries lack an enabling legal framework for beneficial ownership disclosures and that there are challenges when company ownership is structured across multiple jurisdictions. For these reasons, pilot countries such as Liberia, Nigeria, Tajikistan and Zambia have all commented on that further time will be needed before countries can be expected to fully comply with a requirement for beneficial ownership disclosure.
3. **The pilot has nevertheless yielded valuable lessons learnt, equipping implementing countries with a good foundation for improving disclosures in the future.** The EITI had no experience with disclosure of this type of information when the pilot commenced two years ago, nor were there any other global

beneficial ownership reporting frameworks to learn from. Since then, the pilot has identified considerable good practice related to putting beneficial ownership disclosure into practice, including defining beneficial ownership, establishing disclosure thresholds, considerations around disclosures related to Politically Exposed Persons (PEPs), tracking changes in ownership over time, the level of detail related to beneficial ownership identity etc. It has also confirmed that using EITI reporting as a means of obtaining beneficial ownership data is viable at least whilst longer-term work on establishing public registers are ongoing, and even if there still seems to be considerable way to go before countries are able to provide comprehensive disclosures.

2 Background

The objective of the pilot has been to assess the feasibility of requiring beneficial ownership disclosure through the EITI, including reviewing existing disclosure practices in implementing countries participating in the pilot and identifying suitable approaches for disclosure. Expected outputs from the pilot included (i) a report on lessons learned; (ii) a guidance note on approaches for beneficial ownership disclosure through the EITI; and (iii) a widely-applicable agreed procedure for reporting on beneficial ownership.

Requirement 3.11 of the EITI Standard sets out the provisions related to beneficial ownership. The Terms of Reference (TOR) for the pilot and guidance to MSGs are available from <http://eiti.org/pilot-project-beneficial-ownership>. The TOR for the pilot have emphasised the need for giving MSGs flexibility in how they collect the data on beneficial ownership taking into account local circumstances. The TORs have also put emphasis on the desire to use the EITI as a tool for improving existing systems. Thus, the TORs encouraged pilot countries to review existing disclosure practices related to beneficial ownership, corporate registers etc. with a view to identifying potential weaknesses and possibilities for strengthening such systems. A model beneficial ownership declaration form has also been developed and pilot countries have been encouraged to use this declaration form for collecting information on beneficial ownership.

Subsequent to the adoption of the EITI Standard, all implementing countries were invited to participate in the pilot in October 2013. Twelve countries - Burkina Faso, the Democratic Republic of Congo, Honduras, Iraq, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Trinidad & Tobago and Zambia - agreed to participate. Iraq and Trinidad and Tobago subsequently decided to put the pilot on hold, and Togo came on board. Other countries, including Cameroon, Ghana, Mongolia, Mozambique, Myanmar, the Philippines, Sierra Leone and the United Kingdom have expressed an interest in addressing beneficial ownership and have undertaken some work to this effect. Although these efforts take place outside the scope of the pilot, lessons learnt from some of these countries are document in Annex A.

While the pilot has been overseen by the Implementation Committee, an advisory group was established to provide technical support to the pilot as and when needed. The role of the advisory group was to provide ad hoc guidance to the International Secretariat and the Implementation Committee on the execution of the pilot, bringing the necessary technical expertise and practical experience from work on beneficial ownership. The advisory group mainly provided input in the start-up of the pilot, including contributing to the Terms of Reference and associated guidance for pilot countries, and the development of the model beneficial ownership declaration form. Members of the advisory group also participated in a seminar with representatives from pilot countries in March 2015, offering input and support on how to overcome some of the challenges identified in the early phases of the pilot.

At the meeting of the EITI Board in Brazzaville in April 2015, it was decided that the Implementation Committee should develop the terms for the evaluation of the pilot, and present a report to the Board in

Berne including any recommendations related to Requirement 3.11. If the Board decided to hold a third meeting in December 2015, progress in the countries that were delayed with its beneficial ownership reporting could be taken into account in the evaluation of the pilot.

The Implementation Committee discussed the terms for the evaluation at its meeting in Abuja in June 2015. In accordance with the Terms of Reference for the pilot, pilot countries were expected to “produce a report on the outcomes of the pilot, including evaluating the timeliness, comprehensiveness and reliability of the information disclosed, the appropriateness of the agreed beneficial ownership information, the methodology for data collection, and any obstacles encountered during the pilot”. Countries were also encouraged to assess the usefulness of the disclosed information and make recommendations on how beneficial ownership disclosures could become more useful and relevant. The Committee agreed to set a deadline of 1 September 2015 for countries to submit their evaluation reports. Based on the evaluation reports, the Committee agreed to prepare an evaluation report to the Board for consideration in Berne that:

- Takes stock of global efforts and trends on beneficial ownership disclosure;
- Outlines and evaluates challenges and good practices with EITI reporting on beneficial ownership, including:
 - Beneficial ownership definitions
 - Disclosure of politically exposed persons
 - Timeliness, comprehensiveness and reliability of the data
 - Data collection methods
 - The adequacy of the model beneficial ownership declaration form
 - Practice with establishment of beneficial ownership registers
 - Stakeholder views, including MSG members, EITI BO advisory group members and Independent Administrators involved in BO work.
- Proposes a recommendation to the EITI Board on the feasibility of requiring beneficial ownership disclosure in the future, including any suggested amendments to Requirement 3.11 in the EITI Standard and the rationale for such amendments. This should also include a suggestion for the entry into force of any revised provision related to beneficial ownership disclosure. While the EITI Standard notes that “Subject to successful piloting, the EITI Board will develop detailed provisions with a view to make this a requirement from 1 January 2016” (p.24), the Board might wish to consider this in light of the broader discussions about refinements to the EITI Standard.

As of 7 September 2015, seven countries - Burkina Faso, DRC, Honduras, Niger, Nigeria, Togo and Zambia – have completed their work on beneficial ownership¹. Beneficial ownership reporting is underway in Kyrgyzstan, Liberia, Tajikistan and Tanzania and is expected to be completed by the end of the year. Nine countries - Burkina Faso, DRC, Honduras, Kyrgyzstan, Liberia, Nigeria, Tajikistan, Tanzania and Zambia – have submitted draft or final evaluation reports. Moore Stephens, who has worked on beneficial ownership disclosure in a number of the pilot countries, has also provided feedback.

¹ Burkina Faso is seeking to improve its BO disclosures in a second report due by December 2015.

3 Beneficial ownership – global efforts

Over the last year, the EITI's work on beneficial ownership has both built on and supported an increased global momentum over the last year to increase transparency in company ownership:

- At the Lough Erne summit in May 2013, all [G8 countries agreed to take steps to tackle the problem of hidden ownership](#), including by “publishing national Action Plans to make information on who really owns and profits from companies and trusts available to tax collection and law enforcement agencies, for example through central registries of company beneficial ownership” (G8 communique). This commitment was reiterated at the [G7 Summit in Germany in June 2015](#).
- As part of its G8 Action Plan, the [United States announced in June 2013](#) that it “will continue to forcefully advocate for comprehensive legislation to require the disclosure of beneficial ownership information, including a requirement to identify and verify beneficial ownership information at the time a company is formed.”
- In October 2013, the [United Kingdom](#) became the first country in the world to commit to creating fully public beneficial ownership registers of companies incorporated in the UK. The register is due to come online in January 2016, after more than two years of preparatory work which included passing legislation in March 2015. [Denmark](#), [Norway](#) and [Ukraine](#) have also announced that public registers will be established.
- At the Brisbane Summit in November 2014, the **G20** agreed the [High Level Principles on Beneficial Ownership](#), which recognizes the importance of collecting, but not necessarily publishing, beneficial ownership information.
- In December 2014, the **European Union** agreed to an [updated Anti-Money Laundering Directive that requires member countries to create national-level registers of beneficial ownership information](#). However, it is only required that these registers be fully available to government authorities. Members of the public must pass a “legitimate interest” test to gain access to the information.

Apart from these emerging efforts at national level, there are currently no other organisations globally that provide a reporting framework for beneficial ownership disclosure. Many organisations across the world are working to address this issue, including in particular the [Financial Action Task Force \(FATF\)](#) which launched [new guidelines on beneficial ownership](#) in 2014, [Global Financial Integrity](#), [Global Witness](#), [Open Oil](#), the [Tax Justice Network](#) and others.

4 Challenges and good practices with EITI reporting on beneficial ownership

This section outlines the key challenges and good practices that have emerged during the pilot as documented in scoping studies, beneficial ownership reports and evaluation reports from the pilot countries. It describes key issues, documents practice in pilot countries and lists the main lessons learnt for future consideration.

4.1 Beneficial ownership definitions

EITI Requirement 3.11(d)(i) defines beneficial ownership as follows: “A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”. It further states that “The MSG should agree an appropriate definition of the term beneficial owner. The definition should be aligned with 3.11(d)(i) above and take international norms and relevant national laws into account”.

Several pilot countries have highlighted that agreeing on an appropriate definition of beneficial ownership was challenging. However, most pilot countries agreed a definition of beneficial ownership prior to data collection. Table 1 provides an overview of the definitions used in each pilot country. In some countries, including in Kyrgyzstan, Tajikistan and Zambia, **these definitions were elaborated taking into account national laws**. In Kyrgyzstan for example, articles 27 and 30 of the Law on Subsoil no 77, amended 24 May 2014, contains clear references to beneficial ownership disclosure. This includes requiring that any company that is applying for a mineral resource license have to attach “information and documents disclosing the natural persons who are the ultimate owners and beneficiaries of the legal entity applying for the license” (Art.30 (6)(10)) to their license application. Article 27 (3)(6) also notes that “evidence that when obtaining a license to use mineral resources a subsoil user submitted unreliable information about the ultimate owners of the company, or about financial means” constitute legal grounds for terminating the license.

However, the pilot also revealed that **no country had an existing beneficial ownership declaration that was considered appropriate for the purpose of the pilot**. The pilot evaluation report prepared by Zambia notes that “various pieces of legislation in Zambia require some form of disclosure which attempts to unveil the beneficial owners of the companies operating in Zambia...However, it would have been helpful for the pilot in Zambia to have done a scoping study on the various pieces of legislation that attempt to unveil the Beneficial Owners of business owners operating in Zambia. This would have helped the MSG to adopt an appropriate definition for the BO pilot right from inception”(p.3).

In many countries, the pilot confirmed that the concept of beneficial ownership was not recognised in any legal texts at all. This has led to recommendations for legal reform in countries such as the DRC, where the 2012 EITI Report includes a recommendation from the Independent Administrator stating that “We recommend that the Government accelerates the implementation of an act of law which would make the disclosure of Beneficial Ownership mandatory. In the event that these companies fail to comply with this disclosure requirement, sanctions should be imposed upon them” (DRC 2012 EITI Report, p. 133).

Table 1 – Overview of beneficial ownership definitions used in pilot countries

Country	Beneficial ownership definition used	Threshold
Burkina Faso	<p><i>The beneficial owner can be defined as “any individual who ultimately owns or controls the customer and/or the individual for whom a transaction is executed or an activity is performed. This refers to any individual who holds, in whole or in part, rights related to mining assets located in Burkina Faso, mining permits and stakes, shares or any other rights in entities, whatever their legal form, the assets of which consist mainly of rights linked to extractive licences located in Burkina Faso, either directly or indirectly through one or several intermediate entities in Burkina Faso or in foreign countries.. ”</i></p> <p><i>The beneficial owner can also be defined as follows: “whoever presents coupons in order to receive interest payments or dividends is, failing proof to the contrary, deemed to be the owner of the coupons. In cases where coupons are presented on behalf of third parties, the presenter has the ability to provide the paying institution with a list indicating, in addition to his own name, first name(s) and genuine domicile, the name, first name(s) and genuine domicile of the beneficial owners and the value of the coupons belonging to each of them.”</i></p>	No
DRC	<p>Congolese laws do not define beneficial ownership. Thus the MSG agreed on the following definition for the purpose of the pilot:</p> <p><i>For the purpose of transparency in the extractive industry, the term" beneficial owner "of a</i></p>	Yes : >25%

	<p><i>mining, oil or gas company, means any actual beneficiary of:</i></p> <ul style="list-style-type: none"> a) <i>income generated or accrued from sales, transfer or disposal of marketable products by holders of licenses, permits or authorisations as a treatment and processing entities;</i> b) <i>income generated or accrued from sales, transfer or disposal of shares in liquid hydrocarbons by contractors or of ownership interests of a contractor under oil and gas agreements; and</i> c) <i>income of all kinds, other than oil costs, accrued or generated by an operating company in oil and gas blocks in application of the terms of agreements, laws or regulations relevant to oil and gas works carried out by the same operating company.</i> <p><i>Beneficial owner refers to any individual person who, directly or indirectly, by any means, including through artificial means which are legally accepted:</i></p> <ul style="list-style-type: none"> a) <i>performs the ultimate effective control over a company, or</i> b) <i>holds an interest in or derives a substantial financial benefit from the company at the expense of other shareholders or partners.</i> <p><i>Effective control means:</i></p> <ul style="list-style-type: none"> a) <i>the individual person who ultimately owns or controls directly or indirectly a sufficient percentage of shares or voting rights in the legal entity', including through bearer shares, other than those of a company listed on a regulated market that is subject to disclosure requirements in line with equivalent international standards. A percentage of 25% plus one share is a proof of ownership or controlling interest, which applies to any level of direct or indirect shareholding;</i> b) <i>the individual person or persons who ultimately, without having at their possession a sufficient percentage of shares or voting rights in that legal entity, have direct or indirect control of the company through ownership of priority shares, preference shares and / or shares with dual or multiple voting rights;</i> c) <i>if it cannot be ascertained that the persons referred to above are the beneficial owners, then the natural person(s) who exercise control over management of the legal entity through other means or processes, would be considered as beneficial owners.</i> <p>This definition was used in both the 2012 and the 2012 EITI Reports from DRC.</p>	
Honduras	<p>There is no legal definition or mentioning of beneficial ownership in any laws in Honduras. For the purpose of the pilot, the MSG agreed on the following definition:</p> <ul style="list-style-type: none"> a) A beneficial owner is a natural person who ultimately directly or indirectly owns 5% or more of the shares of a company operating in the Honduran extractive sector. This parameter ensures that all beneficial owners with a substantial interest in the company are identified. b) Natural persons who hold a public office are disqualified from holding concessions (Article 75 General Mining Law), or owning or controlling any percentage of shares of an extractive company. 	Yes: ≥ 5%
Kyrgyz Republic	<p>Beneficial ownership is mentioned in several legal texts, including in anti-money laundering laws and regulations as well as in the Law on subsoil use no 77(2014). Drawing on existing definitions of beneficial owners, the MSG agreed the following definition for the purpose of the pilot: "A beneficial owners is a natural person who has the title to property, influences transactions, obtains a certain benefit from transactions, and who has an ownership stake of at least 5%. If the beneficial owner is a politically exposed person their stake must be disclosed irrespective of the size of the stake."</p>	Yes: ≥5%

Liberia	<p>A beneficial owner:</p> <ul style="list-style-type: none"> (i) is always a natural person and is never a company; (ii) is the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity. <p>A beneficial owner is never:</p> <ul style="list-style-type: none"> a) a minor child (under 18); b) a person acting as a nominee, intermediary, custodian or agent on behalf of another person; c) a person acting solely as an employee of a corporation or limited liability company and whose control over or economic benefits from the corporation or limited liability company derives solely from the employment status of that person. <p>Information will be requested on all owners (shareholders) with not less than 5 % ownership of shares (aggregate or otherwise) issued by companies in the oil, mining (Mineral Development Agreement (MDA) holders) and agriculture; and 10% ownership of shares in the forestry sector and for companies holding mining rights that are not MDAs. In the instance where a single individual does not own at least five (5)/ten (10) % in a mining, oil, forestry or agriculture company, the top five shareholders with the greatest percentage of ownership (shares) rights will be requested to disclose their beneficial ownership.</p>	Yes: ≥ 5% and ≥ 10 %
Niger	The MSG began work on reviewing relevant legal texts in order to ensure consistency between a definition of beneficial ownership and national laws. However, it does not seem like this work was concluded, nor does it seem like the MSG agreed a definition of beneficial ownership for the purpose of the pilot.	No
Nigeria	The NEITI 2012 oil and gas audit states that “the Beneficial Owners of Companies operating in the Nigerian Oil and Gas Industry as defined within the scope of the EITI requirement 3 are the natural person(s) who directly or indirectly (through another company) ultimately controls the corporate entity except for publicly listed companies and wholly owned subsidiaries” (p.37). No definition is provided in the mining report. However, NEITI’s evaluation report states that the MSG agreed that “since BO disclosure is a novelty, the expressed definition in the EITI Standard was best suited for present purposes so as to give its implementation global outlook that would be acceptable to Nigerians. However the NSWG also agreed that it would visit the definition as the implementation of the BO progresses, if need be... the definition should be of a general application in the extractive industry i.e. for both Oil & Gas and Solid Minerals BO disclosure in Nigeria” (p.4).	Zero
Tajikistan	Beneficial ownership is mentioned in several legal texts, including in the Law on Banking Activity (2009) and anti-money laundering laws. Drawing on existing definitions of beneficial owners, the MSG agreed the following definition for the purpose of the pilot: “A beneficial owner is one or more natural persons who ultimately have the rights of ownership and also have de facto control of the client and/or person in whose interests the transaction is being carried out, with an ownership share of 5% or more. If the beneficial owner is a politically exposed person, his share is subject to compulsory disclosure irrespective of the shareholding.”	Yes: ≥ 5%
Tanzania	The MSG has not yet agreed a definition of beneficial ownership. The MSG is procuring a consultant to undertake a BO study, and this will include proposing a definition of beneficial ownership. There has been some discussion around a potential ownership threshold, with many stakeholders agreeing that 5% appears appropriate.	TBC
Togo	It seem like the MSG did not agree a definition of beneficial ownership for the purpose of the pilot.	No

<p>Zambia</p>	<p>The MSG's definition of beneficial ownership was based on the Mines and Minerals Development Act (2008) and the Zambian Income Tax Act (1996). Based on a recommendation from the firm hired to produce the BO report, the MSG agreed the following definition for the purpose of the pilot:</p> <p><i>"In accordance with EITI Requirement 3.11.d.i, a beneficial owner in respect of an extractive company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. To satisfy the need for transparency in extractive industries, "ultimate beneficial ownership" of an extractive company is defined as any individual (or single individual) who:</i></p> <ul style="list-style-type: none"> - has control over the extractive company, either directly or indirectly; or - has a substantial interest in or receives substantial economic benefits from the assets of the extractive company. <p><i>The "ultimate beneficial ownership" shall mean a natural person, and not another company or a trust. For companies with complicated ownership structures, involving many different corporate vehicles or private agreements over ownership and/or control, the ultimate beneficial owners are the individuals who are right at the very top of the chain.</i></p> <p><i>"Control" means the power of a person to secure that the affairs of the extractive company are conducted in accordance with the wishes of that person. Such power would be derived from:</i></p> <ul style="list-style-type: none"> (i) <i>a sufficient percentage of shareholding or voting rights in the extractive company, including through bearer share holdings, other than a company. A percentage of 20% plus one share shall be evidence of ownership or control through shareholding and applies to every level of direct and indirect ownership; or</i> (ii) <i>control over the management of the extractive company through other means such as :</i> <ul style="list-style-type: none"> a) <i>having the power to appoint or remove over half of members of the governing body of the extractive company; or</i> b) <i>holding rights in relation to the extractive company that, if exercised, would result in the conditions in subparagraphs (i) and (b) being satisfied; or</i> c) <i>whose consent is needed for the appointment of a person to be a member of the governing body of the extractive company.</i> <p><i>Publicly listed companies, including wholly-owned subsidiaries, are not required to disclose information on their beneficial owner(s). They have to provide only guidance on how to access this information. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary as per above. Each entity is responsible for the accuracy of the information provided."</i></p>	<p>Yes: >20%</p>
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About half of the pilot countries included a **threshold** in their definitions whereby a natural person who directly or indirectly holds a minimum percentage of ownership or control of the company was considered a beneficial owner. This approach was also applied to cases of indirect control, i.e. where ownership was held through a chain of companies or legal entities. Thresholds ranged from 5-25% in the pilot and there were some **challenges with identifying the appropriate threshold level**. In the DRC for example, the threshold was set at >25%. In the 2012 EITI Report, there were only two extractive companies – Kamoto Copper Company and Sicominex - that when applying the definition did not have a beneficial owner (see figure 1). In other words, these two companies did not have a single shareholder (legal or natural person) holding more than 25 % of ownership rights, and therefore efforts to reveal the beneficial owners of these

companies were not pursued. The fact that this applied to only two of the 118 companies covered in the DRC report could indicate that the threshold was set at an appropriate level. However, the report also revealed that some extractive companies had one legal owner controlling slightly more than 25% + one share (for which beneficial ownership data was thus requested) and many legal owners holding equal to or below 25%, for which beneficial ownership data was not requested given that they fell below the threshold established in the definition. This provides an opportunity to hide ownership. An example of this is provided in figure 2, where only one of seven shareholders – High Wind Properties - met the threshold established by the MSG, and where beneficial ownership information was pursued but not communicated by the company.

Figure 1 – Illustration of threshold challenges in the DRC

KAMOTO COPPER COMPANY	KCC	GECAMINES	20.00%	N/A
		Société Immobilière du Congo	5.00%	Owned 99% by Gecamines and 1% by Kisenge Manganese
		KFL Ltd	14.11%	These companies are subsidiaries (100%) of Katanga Mining Limited, which is listed on the Toronto Stock Exchange. Katanga Mining Limited is owned at 75% by Glencore / Xstrata, which is also listed on the Toronto Stock Exchange.
		Global Enterprise Corporate Ltd	20.00%	N/A
		Katanga Mining Holdings Ltd	20.00%	N/A
		Katanga Mining Finance Ltd	20.00%	N/A
		KML (BVI) Holdco Ltd	0.89%	N/A

LA SINO CONGOLAISE DES MINES	SICOMINES	GECAMINES	20.00%	N/A
		Simco	12.00%	N/A
		CHINA RAILWAY GROUP (HONG KONG) LIMITED	20.00%	N/A
		CHINA RAILWAY RESOURCES DEVELOPMENT LIMITED	13.00%	N/A
		SINOHYDRO CORPORATION LIMITED	16.00%	N/A
		SINOHYDRO HARBOUR CO.,LTD	4.00%	N/A
		BEIJING ENJIJIA INVESTMENT MANAGEMENT CO., LTD	10.00%	N/A
		ZHEJIANG HUAYOU COBALT CO.,LTD	5.00%	N/A

Figure 2– Illustration of threshold challenges in the DRC

SOCIETE D'EXPLOITATION DES REJETS DE KINGAMYAMBO	METALKOL	ETAT CONGOLAIS	5.00%	N/A
		GECAMINES	20.00%	N/A
		SIMCO	5.00%	Gecamines (99%) et Kisenge Manganese (1%)
		HIGH WIND PROPERTIES LTD	55.00%	N/C
		PAREAS LIMITED	5.00%	N/A
		INTERIM HOLDING LIMITED	5.00%	N/A
		BLUE NARCISSUS LIMITED	5.00%	N/A

Practice with use of thresholds in the pilot indicates that in considering an appropriate threshold, there is a need to also take into account the corporate structure of companies operating in the country, including an individual's full aggregated interest. It is also important that thresholds apply regardless of how ownership or control is exerted. A seemingly **good practice related to thresholds** was Liberia's attempt to agree a definition that would capture cases where no single individual holds enough ownership to be captured by the threshold. The MSG set at threshold at 5% /10% (different thresholds for different sectors), but also agreed that in cases where a single individual does not own at least 5% /10%, beneficial ownership information will be requested from the top five shareholders with the greatest percentage of ownership rights.

Beneficial ownership definitions - lessons learnt:

1. As at present, it seems appropriate that the EITI Standard should continue to mandate the MSG to agree a definition of beneficial ownership that suits local circumstances.
2. In order to operationalise reporting of beneficial ownership, MSGs should consider including a threshold in their beneficial ownership definitions. However, it is important that such thresholds are established taking into account the corporate structure of the companies operating in the country, an individual's full aggregated interest as well as different means of exercising ownership and control.
3. Beneficial ownership reports should clearly state the definitions and thresholds used. Many of the beneficial ownership reports published as part of the pilot provide limited information about the definition of beneficial ownership that was used when collecting beneficial ownership data, making it impossible to ascertain whether all companies complied with the beneficial ownership disclosure requirements.

4.2 Disclosure of politically exposed persons

EITI Requirement 3.11 on beneficial ownership does not mention politically exposed persons (PEPs). However, the model beneficial ownership declaration form developed by the EITI includes fields for disclosing whether any of the beneficial owners are PEPs, including information about the public office position and role, or other reason for PEP designation, and the dates of holding office. The definition of PEPs used in the model declaration form is consistent with the definition of the Financial Action Task Force (FATF)². Where countries have their own definitions and policy regarding PEPs, the MSG has been encouraged to provide details of the definition and a reference to the legal basis for the definition.

The legal reviews undertaken by some of the pilot countries shows that **there are often legal requirements for PEPs to disclose assets, but that such disclosures are not always enforced or publicly available**. In Honduras for example, the Mining Law prevents public office holders from obtaining extractive licenses due to potential conflicts of interest. However, the concept of beneficial ownership is not recognised and there is thus no law that explicitly prevents PEPs from holding ownership interests in extractive companies, nor are there any declaration systems in place that would reveal such practice. Burkina Faso's scoping study notes that there are reporting obligations for PEPs and concludes that "It may therefore be envisaged that the authority receiving the declaration of assets held by politicians, as mandated by law, may eventually provide the declaration of any form of property that politicians hold in the extractive companies" (p. 35). In DRC, there are legal requirements for government officials to disclose assets before taking up and leaving office, including any shares in mining operations (DRC evaluation report, p.11). Zambia's beneficial ownership report provides an overview of disclosure requirements for government officials, noting that "the Zambian legal framework stipulates that senior officials must disclose their income and assets in some form. However, in most cases the disclosure is made to an anti-corruption body or other government entity and is not made publicly available to the general public" (p. 11). NEITI's evaluation report confirms that the Nigeria Code of Conduct and Tribunal Act 1990 require that senior government officials including Political Exposed Persons (PEP) involved mainly in the three arms of government (executive, legislative and judiciary) disclose their assets and interests in companies.

No pilot country seems to have adopted a different definition of PEPs than the one suggested by FATF. One good practice related to PEPs is the **incorporation of a specific reference to PEPs in the beneficial**

² <http://www.fatf-gafi.org/pages/glossary/n-r/>.

ownership definitions used in Honduras, Kyrgyzstan and Tajikistan. In the latter two, the definition specifically states that if PEPs should disclose any ownership in extractive companies regardless of the level of ownership. In practice, the 2012 EITI Report from DRC is the only report that specifically identifies a PEP as a beneficial owner of a company. The report discloses that the mining company Bolfast is 100% owned by Bokonda Balela Faustin and notes that Mr Faustin has been a Member of Parliament since 2011. It does not however provide any information on when Mr Faustin acquired ownership of Bolfast.

Politically exposed persons (PEPs) - lessons learnt:

1. Implementing countries could be encouraged to disclose any existing national definitions of PEPs, as well as a reference to national laws or other requirements mandating disclosure of assets by PEPs. Where such disclosures are mandatory, the EITI Report could provide details on actual disclosure practice, including whether the information is publicly accessible. Where there are legal requirements but no disclosure framework in place, the EITI could contribute to disclosures related to extractive assets.
2. For the purpose of EITI reporting on beneficial ownership, the MSG could be encouraged to include a reference to PEPs in their beneficial ownership definitions.
3. Disclosure of PEPs as beneficial owners should ideally include some contextual information around the position and role of the PEP as well as information about *when* the PEP acquired ownership/control of the extractive asset to be disclosed.
4. Implementing countries could be encouraged to ask companies to disclose the names of Board members. While not necessarily beneficial owners, such disclosures could help shed light on cases where proxies are used to conceal that e.g. a PEP is a beneficial owner.

4.3 Timeliness, comprehensiveness and reliability of the beneficial ownership data

4.3.1 Data timeliness

EITI Requirement 2 related to data timeliness states that “EITI Reports must cover data no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2014 must be based on data no later than calendar/financial year 2012”. The EITI Standard does not differentiate between the timeliness of financial data and timeliness of other data disclosed. Most often, the contextual information provided in EITI reports refer to the same calendar year as the financial data.

When it comes to timeliness of beneficial ownership data, one of the challenges revealed in the pilot is the **lack of clarity on what point in time the beneficial ownership data refers to**, i.e. whether the names listed are the beneficial owners as per the date of publication of the EITI Report, or whether the information dates further back, e.g. as per the time of data collection for the EITI Report, or per the end of the financial year covered by the EITI Report. The model beneficial ownership declaration form tasks reporting entities with confirming owners as per a specific date to be determined by the MSG. This only appears to have been done by two countries: Zambia’s report clearly indicated that the validity of the beneficial ownership information disclosed, e.g. that the names listed are the beneficial owners as of 31 December 2014. DRC explains in its evaluation report that the data is per the 31 December of the financial year covered in the EITI Report, e.g. 31 December 2012 and 31 December 2013. Also, the model beneficial ownership declaration form requests that each company disclose the date that the beneficial interest of its owners

was acquired. DRC is the only country that seems to have been able to collect this information for several of the beneficial owners of the companies covered in the 2013 EITI Report.

The pilot has also revealed a **need to establish disclosure systems that reflect changes in ownership and corporate structures over time**. In Liberia, there was strong interest in understanding how ownership had changed hands over the past years, and to establish a baseline for establishing a beneficial ownership register and tracking changes going forward. LEITI's beneficial ownership inception report contained observations indicating that regulatory authorities with monitoring and compliance obligations over the companies hardly track ownership changes in these companies as per their responsibilities. The MSG therefore decided that companies should disclose their beneficial owners as of 30 June 2014, and also any changes in ownership in the time period 13 July 2009 – 30 June 2014. Companies were therefore asked to report on transactions involving the sale of ownership interest. LEITI's evaluation report also recommends that for better coverage and meaningful impact, beneficial ownership disclosures should reflect at least three years of historical changes.

DRC is the only country that has completed two beneficial ownership reporting cycles during the time period covered by the pilot, which enables a comparison of disclosures in 2012 and 2013. This comparison reveals changes in reported ownership over time as illustrated in figure 3. However, due to the reporting format this change is not easily detectable. Rather than recapturing the disclosures that have not changed from one year to another, the report could have used 2012 information as a baseline, and then simply reported on (i) any changes in ownership from 31 Dec 2012 to 31 Dec 2013; and (ii) the beneficial ownership of any extractive companies not covered in the scope of the 2012 EITI Report. As beneficial ownership reporting is a new exercise, there might of course be some benefit in sending the reporting templates to all companies annually in order to familiarise companies with this type of disclosure and obtain further details about beneficial owners, where missing. However, in the longer term and once a reliable baseline has been obtained, a simpler disclosure system focused on changes in ownership could be considered.

Figure 3 – Changes in ownership of Mutanda mining from Dec 2012 to Dec 2013

MUTANDA MINING	MUMI	SAMREF SA	80.00%	Mumi est détenue à raison de 60% par Glencore, qui est société cotée en Bourse.
		ROWNY ASSETS SA	20.00%	N/A

Source: DRC 2012 EITI Report

MUTANDA MINING	MUMI	SAMREF OVERSEAS	69%	SAMREF OVERSEAS est détenue à 100% par Glencore qui est une société cotée sur la place boursière de Londres.
		FLEURETTE MUMI HOLDINGS	31%	Au 31 décembre 2013, la propriété totale du Groupe Fleurette dans MuMi est de 31%. Le Groupe Fleurette est détenu par un trust au bénéfice de la famille de Dan Gertler. Moyen de contact: N° 158 Bld 30 Juin, Cabinet PALANKOY 1er étage Immeuble Résidence BATETELA KIN GOMBE, tel: +243 990 901 751

Informations manquantes sur les personnes physiques.

Source: DRC 2013 EITI Report

Data timeliness - lessons learnt:

1. The beneficial ownership declaration form and the EITI report should clearly indicate the MSG's decision regarding the time period or date for which beneficial ownership is collected in order to ascertain for what point in time the ownership data is valid.
2. There is a need to improve disclosures of when the beneficial interest was acquired.

3. Implementing countries could be encouraged to explore disclosure mechanisms that reflect changes in ownership over time. A practical approach might be to require companies to disclose beneficial ownership once. Further disclosures would only be provided as beneficial ownership changes, rather than at regular fixed intervals. Where legal and regulatory reforms are taking place to enable beneficial ownership disclosure, this could include require companies to disclose any changes to beneficial ownership and identify-related information within a certain number of days.

4.3.2 Data comprehensiveness

EITI Requirement 3.11.a states that **the identity of the beneficial owner** and **the level of ownership** should be disclosed. The EITI Standard does not specify what information is needed for the identity to be considered disclosed. However, based on existing international practice, the EITI model beneficial ownership declaration form asks for information such as full name of the beneficial owner, nationality, national identification number or date of birth, residential address or service address, and means of contact. The model beneficial ownership declaration form also allows companies to indicate in what way ownership and control is exercised, whether by shares, voting rights or other means.

In all pilot countries, it has been a key challenge to obtain any information about beneficial ownership at all. As table 2 indicates, only DRC has had success in obtaining data about the beneficial owners of several of the extractive companies operating in the country. Beneficial ownership reports and evaluation reports provide a variety of reasons for this, including:

- **Difficulty in obtaining the information due to company incorporation in foreign jurisdictions.** Honduras' evaluation report explains that it was difficult to obtain beneficial ownership information for parent companies registered outside of Honduras. DRC encountered challenges related to Joint Ventures, in particular where some of the JV partners do not have any physical presence or office in the country. Independent Administrators have also recommended that beneficial ownership disclosure needs the involvement of the extractive company parent companies (and potentially the ultimate beneficial owners themselves) who are sometimes based outside of the respective implementing country, as this would contribute significantly to address some of the difficulties of obtaining the beneficial ownership information.
- **No legal requirements for requesting disclosure of beneficial ownership information.** For example, the evaluation report from DRC notes that the major challenge in obtaining beneficial ownership disclosures was the lack of legal requirements for extractive companies to report their beneficial owners. According to the report, "the absence of a law on the beneficial ownership contributed to suspicion amongst the companies, who questioned the concept of beneficial ownership and the relevance of beneficial ownership disclosures. Despite the tremendous efforts undertaken by the MSG and the secretariat to improve the perception of the concept of beneficial ownership, some companies preferring to limit their disclosures to the legal owners, which, according to them, is what they are required to disclose in accordance with Congolese law and company Statutes" (DRC evaluation report, p.24).
- **Lack of awareness, experience and time for completing declarations, causing confusion of beneficial ownership and legal ownership.** Burkina Faso's evaluation report notes that the incompleteness of the declarations was the major challenge, both declarations submitted through the EITI reporting process as well as incompleteness of declarations filed and of reporting obligations upon company registration

in the country. LEITI's evaluation report states that despite considerable outreach, training and guidance to reporting entities, some companies were still slow in providing their declarations. Zambia's evaluation report notes that "in some cases, in country management claimed that the information on beneficial ownership was not domiciled within the country. This led to disclosure of partial information mainly related to shareholding. In other cases, companies ignored requests from Consultants to provide the Beneficial Ownership information. This proved to be a challenge for the consultant because of the limited time that was available for follow up on companies that did not comply" (p.3). Zambia's Independent Administrator further states that "some participants expressed concerns about BO reporting costs (time consuming) and their inability identify the Beneficial Owner, especially when there is a chain of companies between the beneficial owner and the extractive company in Zambia" (p.4). People within the extractive companies responsible for completing the EITI reporting templates (tax/financial managers) are not always well positioned to collect or access beneficial ownership data. They sometimes do not understand the difference between the concept of beneficial ownership and legal ownership.

- **Limited understanding of the usefulness of beneficial ownership disclosure.** Honduras' evaluation report notes that some companies questioned the usefulness of these disclosures. NEITI's evaluation report states that some companies outrightly refused to fill in the templates and that beneficial ownership was seen by some as witchhunting of political opponents. Zambia's Independent Administrator noted that "There is a complete lack of understanding on behalf of some companies of the importance of beneficial ownership disclosure and its correlation within the EITI process" (p.4-5).

Despite limited success in disclosing beneficial ownership, most countries were able to obtain information about legal owners and their share of ownership. The results show that these are often either SOEs, intermediate companies, natural persons (lawyers, nominees, etc.), or a mix. Although the EITI Standard is silent on disclosure of legal ownership, pilot countries have indicated that more transparency in legal ownership has been useful for increased understanding of corporate structures.

Table 2 – Disclosure of legal ownership and beneficial ownership in pilot countries

Country ³	Total reporting companies	Of which SOEs	Of which publicly listed ⁴	Of which exempted for other reasons	Total reporting companies eligible for BO disclosure	Legal ownership disclosed ⁵	Beneficial ownership disclosed ⁶	No information about legal or beneficial ownership disclosed
Burkina Faso 2012 EITI Report	26	0	18	0	8	7	0	1
DRC 2012 EITI Report	Oil and gas: 25 Mining: 93	Oil and gas: 1 Mining: 10	Oil and gas: 1 Mining: 18	Oil and gas: 0 Mining: 4 ⁷	Oil and gas: 23 Mining: 61	Oil and gas: 16 Mining: 52	Oil and gas: 0 Mining: 22	Oil and gas: 7 Mining: 6
DRC 2013 EITI Report	Oil and gas: 16 Mining: 102	Oil and gas: 1 Mining: 11	Oil and gas: 5 Mining: 27	Oil and gas: 0 Mining: 3 ⁸	Oil and gas: 10 Mining: 60	Oil and gas: 7 Mining: 45	Oil and gas: 1 Mining: 30	Oil and gas: 3 Mining: 14
Honduras 2014 BO Report	Oil and gas: 1 Mining: 4	Oil and gas: 0 Mining: 0	Oil and gas: 1 Mining: 2	Oil and gas: 0 Mining: 0	Oil and gas: 0 Mining: 2	Mining: 2	Mining: 0	Mining: 0
Niger 2012 EITI Report ⁹	64	N/C	N/C	N/C	N/C	6	N/C	N/C
Nigeria 2012 EITI Report	Oil and gas: 41 ¹⁰ Mining: 67	Oil and gas: N/C Mining: 1	Oil and gas: 27 Mining: 7	Oil and gas: 0 Mining: 0	Oil and gas: 14 Mining: 59	Oil and gas: 13 Mining: 36	Oil and gas: N/C ¹¹ Mining: 0	Oil and gas: 0 Mining: 23
Togo 2012 EITI Report	37	2	1	0	34	16	1	18
Zambia 2014 BO Report	30	4	14	0	12	3	1	9

³ Kyrgyz Republic, Liberia, Tajikistan and Tanzania have not yet published beneficial ownership information and are therefore not covered in this overview.

⁴ EITI Requirement 3.11.d.iii states that “Publicly listed companies, including wholly-owned subsidiaries, are not required to disclose information on their beneficial owner(s)”. Some reports have indicated extractive companies that are majority owned by publicly listed companies and with other owner(s) being state-owned companies. For the purpose of this overview, such companies have been included in the category ‘publicly listed’.

⁵ This does not include companies for which beneficial ownership is disclosed but not legal ownership, nor does it include companies where legal ownership is only partially disclosed.

⁶ Number of companies for which the beneficial owner(s) are partially or fully disclosed.

⁷ This includes two companies in liquidation and two companies that did not have BO above the threshold established by the MSG.

⁸ This includes one company that is no longer registered in the country, and two companies that did not have a BO above the threshold established by the MSG.

⁹ Niger’s 2012 EITI Report includes a statement that all companies in Niger are either state-owned or publicly listed and therefore no further information about the legal or beneficial ownership of these companies has been communicated in the report. Page 21 of the report provides legal ownership information for six companies.

¹⁰ The NEITI 2012 oil and gas report states that “44 companies were covered and 42 of these entities completed and returned the beneficial ownership templates” (p.37). However, Annex 3.9 on beneficial ownership only lists 41 companies.

¹¹ Annex 3.9 of the NEITI oil and gas audit does not clearly distinguish between shareholders and beneficial owners, but lists both in the same column. Natural persons are listed as shareholders/beneficial owners for eight companies, but it is not possible to know whether these natural persons are legal persons or actual beneficial owners.

With regards to disclosure of identity in the three countries – DRC, Togo and Zambia - that did manage to disclose one or more beneficial owners, **the information about identity typically included the name and nationality of the beneficial owner** (see table 3). DRC is an interesting example in that while the 2012 EITI Report provided limited detail about the beneficial owner, the 2013 EITI Report disclosed a lot more information including date of birth and contact addresses for a number of the beneficial owners. In one instance this reveals for example that the beneficial owner of the company International Business Oil Society seems to not yet be born at the time that s/he was supposed to hold the ownership¹². The 2013 EITI Report from DRC also in a number of cases discloses further contextual information about the beneficial owner, such as indicating whether the beneficial owner has a position in the company. This improvement in beneficial ownership reporting over time, as illustrated by figure 4, may be due to increased awareness about beneficial ownership reporting both amongst companies, as well the MSG and the Independent Administrator.

LEITI attempted to cover **contractual relationships** in their BO reporting, e.g. the beneficial owners of the companies that the extractive companies have contracts with. Companies were asked to “give details of every entity / person with which the entity is engaged in extractive activities in Liberia”, which was defined to mean contractual arrangements. The draft report indicates that most companies did not disclose this information on the grounds that it was not considered relevant to the project.

Some **privacy and security concerns** were expressed by companies in Honduras and in Kyrgyz Republic in relation to discussions about disclosing details such as residential address. The evaluation report from Honduras notes that “Among the main obstacles identified by the pilot is the concern expressed by companies regarding the publication of its beneficial owners taking into account the climate of insecurity in Honduras. Publishing personal data on beneficial owners of extractive companies was considered high risk because of criminal organizations”.

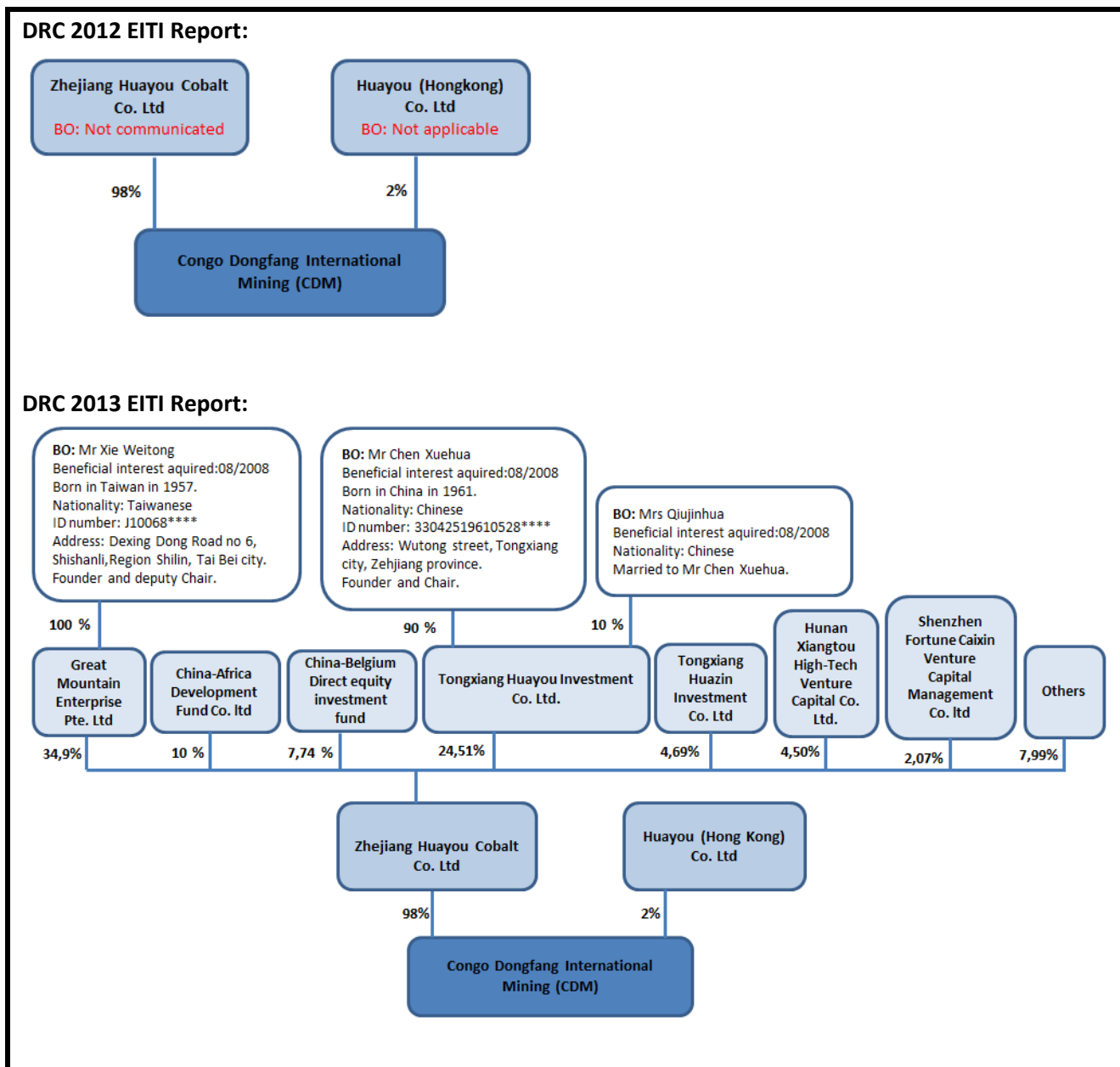
Table 3 – Disclosure of legal ownership and beneficial ownership in pilot countries

Further disclosures of identity and level of ownership	Burkina Faso	DRC (2012)	DRC (2013)	Honduras	Niger	Nigeria (oil&gas)	Nigeria (mining)	Togo	Zambia
Legal owner									
Country of incorporation	√						√	√	√
% participation	√	√	√	√	√	√	√	√	√
Name of stock exchange (for listed companies)	√	√	√	√			√	√	√
Beneficial owner									
Name		√	√					√	√
Nationality			√					√	√
DoB / ID number			√						
Residential address or service address			√						√
How ownership is exercised			√					√	√

¹² The report shows that the BO of International Business Oil Society as of 31 Dec 2013 was born on 2 June 2015. The name of the BO is not disclosed.

Where beneficial ownership was disclosed, this often included some **detail on how ownership was exercised**. In some cases, this detail was limited to expressing ownership as 'percent of participation' without making it clear whether ownership control was exercised through shares, voting rights, or through other means. Zambia's beneficial ownership report provides useful detail by specifying both the number of shares and the percentage of voting rights. DRC's 2013 EITI Report also in a number of cases identified the percentage of both indirect and direct voting rights that the beneficial owners exercise (see for example the company Rubamin SPRL).

Figure 4 – Improvements in beneficial ownership disclosures over time: Details provided on Congo Dongfang International Mining in DRC's 2012 and 2013 EITI Report



Data comprehensiveness - lessons learnt:

1. Details related to the identity of the beneficial owner beyond the name of the beneficial owner, i.e. date of birth or national id number, nationality, country of residence, and addresses are necessary for the information to be useful.
2. There is a need for increased outreach and improved guidance to reporting companies in order to ensure that there is adequate understanding of how to complete beneficial ownership declaration forms. Companies also need to be given reasonable time to complete the declarations.
3. MSGs should be encouraged to ensure that the format in which the beneficial ownership information is presented is easily understandable to the public. This could ensure clearly indicating the companies that are state-owned and publicly listed, as well as clearly distinguishing between legal and beneficial ownership. Where complex structures emerge, visual presentation such as those shown in figure 4 or figure 5 could be considered.
4. Transparency in legal ownership is useful to understand corporate structures.

4.3.3 Data reliability

There are no requirements in the EITI Standard related to the reliability of contextual information such as beneficial ownership. However, it is important for the credibility of the EITI's work on beneficial ownership that there is some mechanism for assuring the accuracy of the information disclosed otherwise it will not be possible to have confidence that the beneficial owners that have been disclosed are the true beneficial owners and not a substitute, nominee or proxy. As noted in the TOR for the pilot, the mechanism for ensuring data reliability need not necessarily require comprehensive enforcement since with the provision of publicly available information, other stakeholders such as law enforcement agencies, civil society and other companies may be in a position to challenge suspect information. The model beneficial ownership declaration form includes a suggested standard attestation whereby a senior company official is asked to confirm that the information submitted is correct. The form also gives companies an opportunity to enclose further documentation, such as articles of association, powers of attorney etc.

The pilot shows mixed results when it comes to data reliability. **It seems that in most countries there was either a lack of clarity on the approach agreed by the MSG for assuring the beneficial ownership data, or lack of information on compliance with the agreed approach.** In Zambia, the companies were asked to have the declarations signed off by Board level or senior level manager of the extractive company, but it is unclear which and how many companies complied with this requirement. The Independent Administrator acknowledges the limitations of the data "we cannot reasonably conclude that this report duly covers the ultimate beneficial ownership of extractive companies as at Decemebr 2014". The EITI Reports from Burkina Faso, DRC and Togo provide no information on what assurances the MSG have requested from the companies with regards to beneficial ownership data, i.e. whether companies were simply asked to provide an attestation, or whether additional assurances have been requested, such as copies of articles of association, powers of attorney etc. However, the evaluation report from DRC confirms that an attestation by a senior company representative was requested and notes that the majority of the companies complied with this procedure.

Nigeria used a slightly different approach for the oil and gas audit in that the reporting templates submitted by the companies were also validated by three institutions: (1) the Corporate Affairs Commission, which is the entity in charge of maintaining information about company ownership in Nigeria. According to the evauation report, "NEITI was very mindful of the fact that the data obtained from the CAC tended to show

corporate ownership more than BO. Nonetheless there were instances where verification at the CAC aligned with the BO disclosed by the companies” (p.9); (2) the Department of Petroleum Resources (DPR), which processes applications for oil licenses. The evaluation report notes that “whilst DPR is not a depository or an agency that deals with of BO disclosure, nonetheless efforts were made to check for BO at the stage the application for a lease, licence or permit was made. This does not necessarily show BO but can be regarded as a stepping stone to ascertaining BO” (p.7); and (3) Nigerian Mining Cadastre Office. In the NEITI oil and gas report, **the name, position and contact details of the person submitting the beneficial ownership declaration was also disclosed.** In their evaluation report, Burkina Faso has also provided some suggestions for supporting documents that could be requested to help verify the identity of the beneficial owners, such as birth certificates, proof of residence, etc. (Burkina Faso evaluation report, p.8).

Data reliability - lessons learnt:

1. It is important that MSGs discuss and agree on an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection, in particular in countries where beneficial ownership disclosure is not required by law. A standard declaration that a senior company official is asked to sign to confirm that the information submitted is correct appears to be a practical mechanism. Disclosing the name and position of the person providing the attestation could be considered.
2. Where deemed necessary, companies could also be asked to submit supporting documentation (articles of association, powers of attorney, etc.). Beneficial ownership declarations could also be cross-checked against the information provided in local corporate filings or information filed under disclosure requirements for government officials, where available.
3. EITI reports or other beneficial ownership reports should outline the approach agreed by the MSG as well as compliance, including indicating which companies provided what types of assurances.

4.4 Reporting entities, data collection and adequacy of the model beneficial ownership declaration form

The EITI Standard make references to reporting entities in Requirement 3.11(a): “...publicly available register of beneficial owners of the *corporate entity(ies) that bid for, operate or invest in extractive assets...*” as well as in Requirement 3.11(b): “Where such registers do not exist or are incomplete, it is recommended that implementing countries request *companies participating in the EITI process* to provide this information for inclusion in the EITI Report”. (Emphasis added).

Scoping work undertaken by some of the countries confirm that beneficial ownership information is not readily available from government agencies. Only NEITI states in its 2012 oil and gas report that “information on beneficial owners of Oil and Gas Entities is publicly available in Nigeria and can be obtained from the CAC on application by a registered Legal Practitioner of Chartered Accountant” (p.37). However, despite this statement, NEITI does not appear to have been successful in providing information about beneficial ownership in the 2012 report. While it was not anticipated that beneficial ownership information would be available from government sources, the research undertaken has been **useful in terms of increasing the MSGs’ understanding of the existing legal framework related to companies and beneficial ownership**, as well as **identifying which government agencies should or could potentially house beneficial ownership information** in the future. It has for example identified a lack of legal requirements for

beneficial ownership publication in Burkina Faso, and resulted in recommendations to (i) require lawyers to register beneficial ownership information on behalf of their clients when registering companies in the country; and (ii) require that companies that apply for extractive licenses provide information about their beneficial owners.

Most pilot countries have opted for sending reporting templates to the companies that are part of the EITI Reporting process. In the majority of the pilot countries, the companies that are part of the EITI Reporting process are those that made material payments in financial years 2012 or 2013, and as such companies that bid for, are awarded licenses, or are engaged in exploration activities are typically excluded from beneficial ownership reporting. However, from a practical perspective it seems that sending out beneficial ownership declaration forms alongside other EITI reporting templates ensures a better response rate than when beneficial ownership information is requested separately.

Liberia took a slightly different approach, requesting that all companies that are included in the EITI Reports as well as any company granted operational rights in the time period July 2009 - June 2014 be covered. They also made some amendments to the beneficial ownership declaration form, and requested that companies not only disclose their beneficial owners, but also the details of entities and persons with which they are engaged in extractive activities, e.g. sub-contractors etc. According to the LEITI evaluation report, “the purpose of this information is to show constructive ownership which could determine likely beneficial owners who may not necessarily be shareholders.”(p.10). The evaluation report notes that there was resistance from oil and gas companies to provide these details.

In Honduras, the legal review revealed that it is illegal to require publication of personal information without the consent of the person concerned. Thus, the MSG decided to ask companies to volunteer to disclose the information. The need to respect privacy laws was also noted in Burkina Faso, whilst in Liberia, the inception report confirmed that there are no legal impediments to disclosure of the beneficial ownership information. Independent Administrators have also confirmed that disclosing the beneficial owner’s identity can also raise problems of safeguarding of personal data for some extractive companies in certain jurisdictions.

Most countries appear to have used the model beneficial ownership declaration form provided by the International Secretariat, and adapted it to local circumstances before asking companies to fill it in. There have been no comments suggesting that major revisions to the declaration form are necessary. However, some minor changes aimed at more clearly distinguishing between legal and beneficial ownership could be useful. As noted above, it seems clear that **MSGs and Independent Administrator need to provide better guidance to reporting companies on filling out the beneficial ownership declaration form in order to ensure comprehensive and useful disclosures.** Templates could be test-run with industry members of the MSG and written guidelines to reporting entities could be developed. Where possible, workshops with reporting entities are recommended.

Reporting entities, data collection and adequacy of the model beneficial ownership declaration form – lessons learnt:

1. While beneficial ownership information is typically not collected by government agencies, understanding of the legal requirements and information contained in existing company registers is a useful starting point for MSGs that are interested in establishing public beneficial ownership registers and mainstreaming such disclosures.

2. In the absence of legal requirements for submission of beneficial ownership information as well as enforcement and maintenance of this data, collecting beneficial ownership data through the EITI reporting process has proven to be a practical approach. MSGs should however be encouraged to ensure that data collection is not necessarily limited to companies that are financially material, as there may be good reasons for also asking companies that apply for extractive licenses to disclose their owners.
3. The model beneficial ownership declaration form is largely adequate but should be updated to better distinguish between legal and beneficial ownership. Guidance on how to fill in the templates could assist companies in determining whether an individual is the ultimate beneficial owner of the company.
4. Several countries have indicated the need for legal reforms to ensure that beneficial ownership data is disclosed. Independent Administrators have also suggested that where the concept of beneficial ownership is not foreseen by the regulation, the MSG should be encouraged to launch a consultation with government and extractive companies to agree a standard format for companies to display, substantiate and update ultimate beneficial ownership information. This could potentially be done by the MSG setting up a sub-committee in which CSO, regulators, companies, experts and other stakeholders are represented. This committee will allow for an exchange of information on the effectiveness and future developments of disclosure rules and regulation.

4.5 Establishing beneficial ownership registers

EITI Requirement 3.11.a states that “It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership”. As mentioned above, none of the pilot countries has such registers in place. **Nevertheless, the pilot has resulted in clear recommendations for establishing public beneficial ownership registers in several countries.** It has contributed to identifying which government agencies holds different types of company registers, including identified potential “homes” for beneficial ownership information and provided recommendations on how to strengthen existing registers by including beneficial ownership data. In Burkina Faso, DRC, Togo and Zambia, the experience with beneficial ownership reporting has resulted in recommendations for the government to establish public registers. Zambia’s report provides several suggestions for next steps including regulatory reform and reform of the company register in order to establish a public register of beneficial ownership (p.6-7). The evaluation report from Tanzania notes that “MEM in collaboration with TEITI are working to establish an open registry for disclosing names of individuals who own mineral rights for non-public traded companies” (p.3). The scoping report for Kyrgyzstan also recommends that information on beneficial ownership is included in the license register held by the State Agency for Geology, given that companies are required by law to submit beneficial ownership data when applying for an extractive license.

Establishing beneficial ownership registers – lessons learnt:

1. As noted above, MSGs are encouraged to consider which government agency could potentially be the appropriate agency to maintain a beneficial ownership register; whether there are possibilities for integrating beneficial ownership data in existing corporate registers or license registers; whether there are any potential synergies between relevant ongoing reforms and the EITI’s work on beneficial ownership in

the country; and next steps for establishing a register, including ensuring that the information is publicly available and in an open data format.

5 Conclusion

This report has documented the lessons learnt from the beneficial ownership pilot, identifying challenges and good practices. In terms of next steps, the EITI Board is due to consider any implications for EITI Requirement 3.11 on beneficial ownership. It is also necessary to make sure that the lessons learnt identified in this report are turned into guidance and support to MSGs, reporting entities, and Independent Administrators that are doing work on beneficial ownership. There is considerable demand for technical assistance to legal and regulatory reform, including establishment of beneficial ownership registers, that EITI supporters are encouraged to act on. Finally, the pilot has provided an important network for those countries that have been working on beneficial ownership and the EITI should continue to facilitate peer learning and sharing of experiences.

Annex A – Summary of lessons learnt

Beneficial ownership definitions:

1. As at present, it seems appropriate that the EITI Standard should continue to mandate the MSG to agree a definition of beneficial ownership that suits local circumstances.
2. In order to operationalise reporting of beneficial ownership, MSGs should consider including a threshold in their beneficial ownership definitions. However, it is important that such thresholds are established taking into account the corporate structure of the companies operating in the country, an individual's full aggregated interest as well as different means of exercising ownership and control.
3. Beneficial ownership reports should clearly state the definitions and thresholds used. Many of the beneficial ownership reports published as part of the pilot provide limited information about the definition of beneficial ownership that was used when collecting beneficial ownership data, making it impossible to ascertain whether all companies complied with the beneficial ownership disclosure requirements.

Politically exposed persons (PEPs):

4. Implementing countries could be encouraged to disclose any existing national definitions of PEPs, as well as a reference to national laws or other requirements mandating disclosure of assets by PEPs. Where such disclosures are mandatory, the EITI Report could provide details on actual disclosure practice, including whether the information is publicly accessible. Where there are legal requirements but no disclosure framework in place, the EITI could contribute to disclosures related to extractive assets.
5. For the purpose of EITI reporting on beneficial ownership, the MSG could be encouraged to include a reference to PEPs in their beneficial ownership definitions.
6. Disclosure of PEPs as beneficial owners should ideally include some contextual information around the position and role of the PEP as well as information about *when* the PEP acquired ownership/control of the extractive asset be disclosed.
7. Implementing countries could be encouraged to ask companies to disclose the names of Board members. While not necessarily beneficial owners, such disclosures could help shed light on cases where proxies are used to conceal that e.g. a PEP is a beneficial owner.

Data timeliness:

8. The beneficial ownership declaration form and the EITI report should clearly indicate the MSG's decision regarding the time period or date for which beneficial ownership is collected in order to ascertain for what point in time the ownership data is valid.
9. There is a need to improve disclosures of when the beneficial interest was acquired.
10. Implementing countries could be encouraged to explore disclosure mechanisms that reflect changes in ownership over time. A practical approach might be to require companies to disclose beneficial

ownership once. Further disclosures would only be provided as beneficial ownership changes, rather than at regular fixed intervals. Where legal and regulatory reforms are taking place to enable beneficial ownership disclosure, this could include require companies to disclose any changes to beneficial ownership and identify-related information within a certain number of days.

Data comprehensiveness:

11. Details related to the identity of the beneficial owner beyond the name of the beneficial owner, i.e. date of birth or national id number, nationality, country of residence, and addresses are necessary for the information to be useful.
12. There is a need for increased outreach and improved guidance to reporting companies in order to ensure that there is adequate understanding of how to complete beneficial ownership declaration forms. Companies also need to be given reasonable time to complete the declarations.
13. MSGs should be encouraged to ensure that the format in which the beneficial ownership information is presented is easily understandable to the public. This could ensure clearly indicating the companies that are state-owned and publicly listed, as well as clearly distinguishing between legal and beneficial ownership. Where complex structures emerge, visual presentation such as those shown in figure 4 or figure 5 could be considered.
14. Transparency in legal ownership is useful to understand corporate structures.

Data reliability:

15. It is important that MSGs discuss and agree on an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection, in particular in countries where beneficial ownership disclosure is not required by law. A standard declaration that a senior company official is asked to sign to confirm that the information submitted is correct appears to be a practical mechanism. Disclosing the name and position of the person providing the attestation could be considered.
16. Where deemed necessary, companies could also be asked to submit supporting documentation (articles of association, powers of attorney, etc.). Beneficial ownership declarations could also be cross-checked against the information provided in local corporate filings or information filed under disclosure requirements for government officials, where available.
17. EITI reports or other beneficial ownership reports should outline the approach agreed by the MSG as well as compliance, including indicating which companies provided what types of assurances.

Reporting entities, data collection and adequacy of the model beneficial ownership declaration form:

18. While beneficial ownership information is typically not collected by government agencies, understanding of the legal requirements and information contained in existing company registers is a useful starting point for MSGs that are interested in establishing public beneficial ownership registers and mainstreaming such disclosures.
19. In the absence of legal requirements for submission of beneficial ownership information as well as enforcement and maintenance of this data, collecting beneficial ownership data through the EITI

reporting process has proven to be a practical approach. MSGs should however be encouraged to ensure that data collection is not necessarily limited to companies that are financially material, as there may be good reasons for also asking companies that apply for extractive licenses to disclose their owners.

20. The model beneficial ownership declaration form is largely adequate but should be updated to better distinguish between legal and beneficial ownership. Guidance on how to fill in the templates could assist companies in determining whether an individual is the ultimate beneficial owner of the company.
21. Several countries have indicated the need for legal reforms to ensure that beneficial ownership data is disclosed. Independent Administrators have also suggested that where the concept of beneficial ownership is not foreseen by the regulation, the MSG should be encouraged to launch a consultation with government and extractive companies to agree a standard format for companies to display, substantiate and update ultimate beneficial ownership information. This could potentially be done by the MSG setting up a sub-committee in which CSO, regulators, companies, experts and other stakeholders are represented. This committee will allow for an exchange of information on the effectiveness and future developments of disclosure rules and regulation

Establishing beneficial ownership registers:

22. As noted above, MSGs are encouraged to consider which government agency could potentially be the appropriate agency to maintain a beneficial ownership register; whether there are possibilities for integrating beneficial ownership data in existing corporate registers or license registers; whether there are any potential synergies between relevant ongoing reforms and the EITI's work on beneficial ownership in the country; and next steps for establishing a register, including ensuring that the information is publicly available and in an open data format.