



Terms of Reference
**Technical consultant for extractives beneficial ownership transparency
in the Philippines**

1. Background

1.1 The EITI

The [Extractive Industries Transparency Initiative](#) (EITI) is an international multi-stakeholder initiative that promotes a global standard for the open, accountable, and good governance of oil, gas, and mineral resources. Each member country works to implement the [EITI Standard](#), which requires a multi-stakeholder group (MSG) to oversee the EITI process and publish timely, relevant, and comprehensive data and information on the extractives either in an annual country report, or through systematic disclosure in publicly accessible platforms or portals. Required EITI disclosures include beneficial ownership, exploration, production, export, revenue, employment, and social and environmental data, among other useful information. The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations, and in business.

1.2. EITI implementation in the Philippines

The Philippines committed to implement the EITI through [Executive Order No. 79](#) (EO 79), series of 2012, and operationalized this commitment through [Executive Order No. 147](#), series of 2013 (EO 147). EO 147 formally created the [Philippine EITI](#), its Multi-stakeholder Group (MSG), and the National Secretariat. Early stakeholder consultations helped the MSG formulate the following implementation goals that are linked to EITI principles and reflective of national priorities for the extractive industries:

- a. Show the direct and indirect contribution of extractives to national development
- b. Improve public understanding of the management of natural resources and public availability of data
- c. Strengthen government systems for natural resource management
- d. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders
- e. Pursue and strengthen the extractive sector's contribution to sustainable development

Mining contractors are required to participate in the EITI process by virtue of [DENR Department Administrative Order No. 2017-07](#). Non-compliant contractors risk having their

Environmental Compliance Certificate, and Mineral Ore Export Permit canceled or suspended.

[The MSG](#) is composed of representatives from the government, namely the Department of Finance--where the National Secretariat is lodged--Department of Environment and Natural Resources, Department of Energy, Department of the Interior and Local Government, and Union of Local Authorities of the Philippines. The extractive industries are represented by members of the Chamber of Mines of the Philippines, and the Petroleum Association of the Philippines. The civil society is mainly represented by *Bantay Kita* – Publish What You Pay Philippines, a broad coalition of civil society organizations advocating transparency and accountability in the extractives.

The activities to implement the initiative in the country are undertaken under several programs agreed by the MSG for a particular year. Information on the programs, specific activities, and MSG priorities are contained in the approved [PH-EITI work plan](#).

Since its implementation, the Philippine EITI has published and submitted to the EITI International [seven country reports](#), covering fiscal years 2012 to 2019. The production of an eight report has already commenced.

1.3. Beneficial ownership transparency

The identity of the real owners – the ‘beneficial owners’ – of the companies that have obtained rights to extract oil, gas and minerals is often unknown, hidden by a chain of unaccountable corporate entities. This problem also affects other sectors and often helps to feed corruption and tax evasion. People who live in resource-rich countries are at particular risk of losing out as extractive assets are too often misallocated for corrupt reasons. Hidden ownership also poses problems for honest companies because they don’t know who they are doing business with. Publishing the real owners will help ensure that there is a level playing field for all companies and allow them to know who they are doing business with.

To address the foregoing, the EITI, under its [Requirement 2.5](#), requires EITI implementing countries to request, and corporate entities that apply for or hold a participating interest in a license or contract for the exploration or production of oil, gas, or mineral resources to publicly disclose beneficial ownership information. Disclosure should include the name of beneficial owners, their nationality, country of residence, level of ownership and details about how ownership or control is exerted, and if applicable, the identification of beneficial owners who are also politically exposed persons (PEPs). The EITI Standard defines a beneficial owner as a natural person who directly or indirectly ultimately owns or controls a corporate entity.

In addition, the EITI Standard recommends the disclosure of a beneficial owner’s national identity number, date of birth, residential or service address, and means of contact. It is further recommended to maintain a register of beneficial owners of the aforementioned corporate entities. The EITI Standard also requires the disclosure of legal owners and their share of ownership.

Once published, law enforcers, civil society and others have a responsibility to scrutinize the information, and take action to hold to account those who misuse anonymous companies.

1.4. Progress of extractives BO disclosure in the Philippines

- a. The PH-EITI MSG has approved a [BO disclosure roadmap](#) in December 2016.
- b. In 2017, the PH-EITI MSG has agreed on a definition of beneficial ownership and an institutional framework for BO disclosure.
- c. The PH-EITI MSG has published in 2017 a [scoping study](#) on BO disclosure in the Philippine context.
- d. On 31 December 2018, the PH-EITI published its [5th Report](#) [FY 2017] with a pilot report on beneficial ownership involving one volunteer large-scale metallic mining company.
- e. On 29 November 2018, the Securities and Exchange Commission (SEC) issued Memorandum Circular 17, series of 2018 (MC 17) that revised the General Information Sheet of companies to include beneficial ownership information.
- f. On 26 July 2019, the SEC issued [Memorandum Circular 15](#) (MC 15) to amend MC 17.
- g. On 18 October 2019, the PH-EITI, in partnership with the Chamber of Mines of the Philippines, held a BO workshop for PH-EITI reporting companies to orient them about the requirement and assist them in their compliance with MC 15.
- h. On 19 December 2019, the Philippine Open Government Partnership launched its [5th National Action Plan](#) (2019-2022). The Department of Finance is a commitment holder under this plan with its commitment being the *institutionalization of transparency and accountability in the extractives by mainstreaming EITI implementation in the Philippines*. One of the three milestones under this commitment is the development of a public register of the Philippine extractives sector's BO information.
- i. Bills have been filed in Congress seeking to institutionalize EITI implementation in the Philippines, including the disclosure of extractive companies' beneficial ownership information through a public register.
- j. In January 2020, the EITI International deemed the Philippines unable to meet Requirement 2.5 of the EITI Standard as there was no actual public disclosure of extractive companies' beneficial ownership information by 1 January 2020.
- k. On 6 February 2020, the SEC, in a PH-EITI TWG meeting, gave updates on the implementation of MC 15 and indicated openness to accept company waiver and consent to the public disclosure of their BO information.

- l. On 16 April 2020, the MSG approved a company waiver template, which was then sent to SEC for comments.
- m. On 15 May 2020, the PH-EITI received SEC's comments saying that it cannot publish the extractives sector's BO information as the MC 15 excludes publication and does not provide exceptions. The SEC may only share to PH-EITI the BO information of extractive companies, provided that the data subjects give their consent, and the PH-EITI executes a data sharing agreement with the SEC under NPC Circular No. 16-02 in compliance with Republic Act No. 10173 or the [Data Privacy Act of 2012](#).
- n. On 29 May 2020, the PH-EITI MSG agreed to pursue the disclosure of the extractives sector's BO information by directly engaging PH-EITI participating companies and asking them for a copy of the BO declaration forms that they submitted to the SEC pursuant to MC 15, and for their consent to the publication of their BO information in the 6th Report.
- o. The first compliance period of MC 15 ended in August 2020.
- p. PH-EITI reporting companies were requested to disclose their beneficial ownership information and allow its publication in the Sixth PH-EITI Report.
- q. On 13 October 2020, the SEC issued [Memorandum Circular 30](#) (MC 30) that required SEC-registered foreign corporations to disclose their beneficial ownership information to the SEC.
- r. On 29 December 2020, the PH-EITI published and submitted to EITI International its [6th Report](#) that contained, among others, information on the beneficial owners of PH-EITI participating companies that consented to the public disclosure of their beneficial ownership information.
- s. In March 2021, the PH-EITI published an extractives [beneficial ownership register](#) on its website containing in open format the beneficial ownership information of companies that consented to public disclosure.
- t. On 29 June 2021, the Philippines confirmed its interest to participate in the Opening Extractives programme that is being implemented by EITI and Open Ownership.
- u. On 29 July 2021, the PH-EITI launched its 7th Report that contains, among others, updates on beneficial ownership disclosures of PH-EITI reporting companies. To date, 35 or about half of target companies consented to the public disclosure of their beneficial ownership information.
- v. On 8 September 2021, the EITI and Open Ownership launched the Opening Extractives programme, which named the Philippines as one of the beneficiaries of technical assistance in implementing beneficial ownership transparency.

- w. On 24 September 2021, the PH-EITI, EITI, and Open Ownership co-facilitated a workshop to develop the Opening Extractives engagement plan for the Philippines.
- x. On 26 November 2021, the Opening Extractives programme, including the [Opening Extractives engagement plan for the Philippines](#), was launched during the PH-EITI Extractives Transparency Week.

1.4. Challenges in implementing EITI's requirement on BO transparency

While company BO disclosure to the government is mandatory by virtue of MC 15 and MC 30, publication by the SEC remains prohibited. Of major concern is ensuring that the MCs are compliant with the [Data Privacy Act of 2012](#). This poses a challenge for the Philippines as the EITI Standard requires implementing countries and companies to publicly disclose specific BO information. For now, BO information may only be shared with competent authorities for law enforcement purposes.

Aside from data privacy concerns, there is a need to demonstrate the necessity and benefits of public disclosure of companies' BO information, and in so doing get the companies' buy-in and cooperation. This is especially a must since public disclosure remains nonmandatory.

In terms of utilization, stakeholders need to build capacity to verify and analyze BO data that can be useful for research, advocacy, demanding accountability, and deterring corruption, among other purposes.

1.5. The Opening Extractives programme

The [Opening Extractives programme](#) is aimed at addressing the foregoing challenges, including corruption and illicit financial activities perpetrated through anonymous ownership. It will provide sustained support for over five years to a dozen countries seeking to bring data on company ownership into the public domain. The programme is being implemented by EITI and Open Ownership with support from the BHP Foundation. It was launched on 8 September 2021 in London, where the implementers announced the list of participating countries that include the Philippines.

2. Objectives of the assignment

The PH-EITI MSG, through the EITI International Secretariat, seeks an individual, technical consultant based in the Philippines, free from any conflict of interest, to render project management, stakeholder engagement, and research and writing services to achieve the following objectives:

- a. Build public awareness on the relevance and practical use of the beneficial ownership information of extractive companies;

- b. Support to systematic disclosure of companies' beneficial ownership information either through interim measures or through long-term legal or regulatory reforms;
- c. Fulfill the country's commitments to EITI and Open Government Partnership through the implementation and completion of requirements, plans, and programs on beneficial ownership transparency including enabling public access to data; and
- d. Build stakeholder capacity to verify and utilize beneficial ownership data for research, advocacy, policy reform, and other purposes.
- e. Support in the development of the OE beneficial ownership implementation scoping assessment report, and provide bespoke technical assistance based on stakeholder requirements.

3. Scope of services, tasks, and deliverables

The technical consultant shall perform the following tasks:

- a. Lead all necessary coordination with local stakeholders, as well as with the Opening Extractives team and other partners for all BO related activities, especially those identified in the [Opening Extractives engagement plan for the Philippines](#);
- b. Support the MSG in ensuring the Philippines' compliance with [Requirement 2.5](#) of the EITI Standard by working with government, industry, and civil society stakeholders in publicly disclosing extractive companies' beneficial ownership information either through long-term legal, regulatory, or institutional reforms, or through interim measures such as securing copies of companies' SEC-mandated BO declaration forms and companies' consent to public disclosure of information required by EITI;
- c. Within the first three weeks of engagement, submit an inception report that will demonstrate the review and understanding of the assignment, including current progress in BO transparency, and contain a detailed timetable, and outline strategies for executing the Opening Extractives engagement plan;
- d. **Within the first three months of the engagement**, support the Opening Extractives technical lead (Open Ownership) in the completion of a scoping assessment questionnaire, which will include, collating and analyzing relevant laws and policies based on the Open Ownership Principles for Effective BO Disclosure. Support may also include setting up meetings with stakeholders relevant for the completion of the report.
- e. Working with the Opening Extractives team, consistently engage companies and government agencies to publicly disclose and use beneficial ownership information for their internal procedures, and ensure aligned and coordinated efforts on beneficial ownership transparency;

- f. Providing coordination support to the Opening Extractives technical lead in engaging with the SEC, and providing logistical support for work related to the review and revision of SEC reporting template based on model declaration form and improvement of company register
- g. Identify and implement actions to mainstream public disclosure of BO information pursuant to DOF's OGP commitment and EITI's requirement on systematic disclosure;
- h. Contribute to the production of the annual EITI country report by writing the contextual information on beneficial ownership transparency in the Philippines;
- i. Lead advocacy efforts, including the drafting of bills or policies, to institutionalize extractives beneficial ownership disclosure;
- j. Organize and lead, in coordination with the Opening Extractives team, in designing and facilitating workshops and capacity-building activities to utilize, verify, and analyze beneficial ownership data, including information on politically exposed persons or PEPs;
- k. Monitor, record, and evaluate progress, best practices, and gaps and challenges in beneficial ownership transparency with the view of improving and strengthening implementation;
- l. Starting the second month of engagement, submit to the MSG and the Opening Extractives team monthly progress reports, including documentations of meetings, orientations, and stakeholder engagement activities done within a specific month;
- m. Contribute to the development of the MSG's annual work plan by identifying priority beneficial ownership transparency related activities for implementation;
- n. Produce a policy note on beneficial ownership transparency before the end of the contract;
- o. Towards the end of the contract, turn over or submit to PH-EITI all documents and data related to beneficial ownership transparency, such as reference materials and supporting documents, including contact details of resource persons, if any;
- p. In lieu of a monthly progress report, submit an executive summary recapping the status of BO transparency in the Philippines and outlining any lessons learned and recommendations; and
- q. Perform other tasks related to those outlined in this TOR that are necessary for the implementation of beneficial ownership transparency and Opening Extractives programme in the Philippines.

4. Qualification requirements

The consultant should be credible, trustworthy and technically competent. Candidates will be assessed based on the following criteria/requirements:

- A lawyer with at least 10 years of relevant work experience, preferably with postgraduate degree or education and/or background in corporate law;
- Experience in legislative advocacy work and stakeholder engagement;
- Skills and experience in project management, and research and technical writing;
- Proficiency in oral and written communications; and
- Understanding of corporate ownership in the Philippines, data transparency, and resource governance issues, preferably with knowledge of Extractive Industries Transparency Initiative.

5. Contract duration and deliverables

The consultancy is expected to commence in February 2022 and last for the rest of 2022, for a maximum of 90 days, and will be required to report to the PH-EITI office at least once a month for regular updating and efficient coordination with the PH-EITI Secretariat and the Opening Extractives team. During this period, the consultant is expected to work with PH-EITI, including the Opening Extractives country programme focal person/s, the EITI Country Manager for Asia, the Opening Extractives Programme Manager, and other stakeholders as may be determined in the course of the engagement. The consultant’s professional fees shall be inclusive of applicable taxes, and paid directly by the EITI International Secretariat upon the submission and approval of the following outputs:

Month 1	Inception report as described in Section 3 (c) of this Terms of Reference
Month 2	Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 3	Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 4	Draft bill or executive/administrative policies to institutionalize extractives beneficial ownership disclosure in the Philippines Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 5	Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 6	Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 7	Contextual information on beneficial ownership transparency in the Philippines for inclusion in the annual country report; Monthly progress report , including other documentations, as described in

	Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 8	Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 9	Policy note as described in Section 3 (n) of this Terms of Reference. The policy note should already identify priority beneficial ownership transparency related activities for inclusion in the MSG's annual work plan as described in Section 3 (m) of this Terms of Reference and the OE engagement plan. Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
Month 10	Reference materials and supporting documents , including contact details of resource persons, as described in Section 3 (o) of this Terms of Reference and the OE engagement plan. Monthly progress report , including other documentations, as described in Section 3 (l) of this Terms of Reference and the OE engagement plan.
End of consultancy	Executive summary recapping the status of BO transparency in the Philippines, as described in Section 3 (p) of these Terms of Reference and the OE engagement plan.

The EITI International Secretariat will approve the foregoing outputs, with endorsement from the focal person/s of the Opening Extractives country programme.