



# TERMS OF REFERENCE (TOR) FOR

## PREPARATION OF BENEFICIAL OWNERSHIP REPORT 2020

Approved by PNGEITI MSG on 15<sup>th</sup> April, 2020

## TABLE OF CONTENTS

	PAGE
1. Background .....	2
2. Objectives and expectations of the assignment .....	4
3. Scope of services, tasks and expected deliverables .....	8
4. Meeting requirement 2.5 of beneficial ownership disclosure for validation .....	14
5. Qualification requirements for consultant and delivery schedule .....	16
6. Client input and counterpart personnel .....	17
7. Evaluation Criteria .....	17

## 1. Background

Transparency about company payments and government revenues from the extractive sector is important for accountability, but tells citizens little about who actually 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. In many countries, corporate regulators collect details about the ownership of the companies that are incorporated in the country (incorporation registers) but these registries often hold information on 'shareholders' and not 'beneficial owners.' Most countries also maintain a separate registry of extractive licence holders, but such registries often include only the name of the company holding the licenses, and not its ultimate beneficial owners. In other countries, less information on extractive company owners is available, particularly if foreign ownership is involved. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector.

The EITI aims to strengthen government systems for managing the extractive sector. Examining the information available from an implementing country's corporate registry may be a useful starting point in checking what information on ownership exists. Reviewing existing systems will help identify weaknesses and what steps can be taken to facilitate greater transparency in the longer term. For example, through working towards implementing publicly available registers that contain timely and comprehensive information about company ownership. However, in cases where such registers do not exist or are incomplete, it is recommended that the MSG ask companies that bid for or hold extractive licenses and contracts to declare their ultimate beneficial owners as part of their EITI reporting process.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting. It also encourages public understanding of revenues and demands high standards of transparency and accountability in public life, government operations and in business. The requirements for implementing countries are set out in the EITI Standard. Additional information is available via [www.eiti.org](http://www.eiti.org).

### 1.1 EITI Requirement 2.5

With the adoption of the 2016 EITI Standard (Requirement 2.5), the EITI Board agreed that by 1 January 2020, all implementing countries must request, and extractive companies must publicly disclose beneficial ownership information. This would apply to corporate entity(ies) that apply for or hold a participating interest in the exploration or production of oil, gas or mining licenses and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control

is exerted. Any significant gaps or weaknesses in reporting on beneficial ownership information must be disclosed, including naming any entity(ies) that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with the EITI Board Procedures.

Requirement 2.5 demands all implementing countries to ensure that corporate entities disclose the identities of their beneficial owners. This should include the identity of the owner, that is the name, nationality and country of residence, as well as identifying any politically exposed persons (PEPs) holding ownership rights. It was recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed. It was also recommended that beneficial ownership information must be made available through public registers and this information must be included in the country's EITI Report.

The MSG is also required to assess any existing mechanisms for assuring the reliability of beneficial ownership information and agree on an approach for corporate entities within the scope of Requirement 2.5 (c) to assure the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.

Further, Requirement 2.5 requires implementing countries to document the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.

## **2.2 PNGs progress on BO implementation**

In preparation for this requirement, the PNGEITI MSG undertook a beneficial ownership scoping study and developed a roadmap based on the scoping study. The roadmap was aimed at ensuring those extractive companies' beneficial owners and related information is disclosed through the EITI reporting process by 2020 as required by the EITI Standard.

A Beneficial Ownership pilot report was undertaken in 2019 among current reporting companies. The outcome of the pilot report was included in the PNGEITI FY2018 Report as an annex and this can be accessed on <http://www.pngeiti.org.pg/beneficial-ownership/>

The Consultant to be encouraged to refer to the BO scoping study report, the BO roadmap and the BO pilot report as part of this work. The BO pilot report outlines the key challenges in collecting the data and the Consultant is encouraged to consider these in the BO Report. The Consultant is also expected to refer to the existing BO information as approved by the MSG from the activities/milestones undertaken as part of the Roadmap implementation and these include; the agreed definitions on BO and Politically Exposed Persons (PEPs), BO threshold, and the BO reporting template agreed by the MSG and was designed in the PNG context. These are available on [www.pngeiti.org.pg](http://www.pngeiti.org.pg).

Further, the Consultant is encouraged to refer to the EITI Standards 2013, 2016 and 2019 and other BO information (e.g., Pilot BO Reports by EITI countries, BO Guidelines and any other information from the International Secretariat at [www.eiti.org](http://www.eiti.org)). The Consultant must work closely with the International Secretariat, the PNGEITI MSG and the National Secretariat in the preparation of the first BO Report for PNG.

## **2. Objectives of the assignment and expected outputs**

The broad objectives of the assignment are for the Consultant to:

- (i) prepare and execute beneficial ownership disclosure (collect data and information) in PNG using the BO declaration form that was developed and approved by the MSG. Where necessary, the Consultant should provide additional recommendations to improve the form based on his or her own findings as the work is undertaken consistent with the deliverables outlined in the TOR (e.g., conducting trainings for companies and government entities);
- (ii) ensure that the initial criteria for assessing Requirement 1.5 are met, and provide recommendations to the MSG on how to address the gaps, if any.
- (iii) produce and deliver a comprehensive PNGEITI Beneficial Ownership Report 2020 as required by the 2019 EITI Standard;
- (iv) highlight the challenges, issues and barriers to comprehensive BO data and information disclosure and recommend necessary actions (e.g. policy and legislative reforms) to improve future beneficial ownership reporting; and
- (v) creation of BO database at the PNGEITI National Secretariat office from the data and information collected. In doing so, the Consultant is required to provide a clear recommendation on the approach and steps required to transition to institutionalize disclosures through the IPA company database and registration platform for future reporting.

Expected outputs from the assignment include; a scoping report, an inception report, execution of workshops and information/training session in filling out the BO templates and a seminar or a workshop for all reporting entities, a draft Report, the final Report and establishment of an interim BO database/register at the PNGEITI National Secretariat office.

### **2.1 Specific guidance and support to be provided to the MSG by the Consultant**

The Consultant is required to understand the globally accepted EITI terminologies and definition on the BO by International Secretariat and also in the PNG context as agreed by the PNGEITI MSG in preparing the Report. These are outlined in sections 3.2 to 3.8 below.

### **2.2 Definition of Beneficial Ownership**

A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. Natural person(s) refers to a human being who owns or controls the company (never a company/other legal

entity, or a nominee/proxy). Ownership or control refers to the means of owning or controlling a company (e.g., shares, voting rights, other decision/veto rights, right to profit, contractual associations, joint ownership arrangements, etc.). Ownership thresholds refers to a percentage threshold that defines what can be considered control or ownership.

The MSG should agree on an appropriate definition of the term beneficial owner. The definition should, take-into account international norms and relevant national laws, and should include ownership threshold(s). For PNG's case, the MSG had agreed for the threshold to be at 5% ownership for all reporting companies.

Publicly listed companies, including wholly owned subsidiaries are required to disclose the name of stock exchange and include a link to the stock exchange filings where they are listed. 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 of a publicly listed company. Each entity is responsible for the accuracy of the information provided.

In this report, the Consultant is expected to address disclosure of legal owners and share of ownership.

The consultant is to ensure that the BO report should clearly state the definitions and thresholds used so that the data collected should make it easy to ascertain whether all companies complied with the BO disclosure. Therefore, it is important that the BO threshold of 5% or more ownership established by the PNGEITI MSG adequately considered the corporate structure of the companies operating in PNG, an individual's full aggregated interest as well as the different means of exercising ownership and control.

### **2.3 Politically exposed persons (PEPS)**

Politically exposed persons (PEPs) refers to an individual who is or has been entrusted with a prominent public function. The definition should also specify reporting obligations for politically exposed persons.

The Consultant will be required to work with the MSG to specifically define who should be considered as Politically Exposed Persons for BO disclosure purpose. The PNGEITI MSG had initially defined PEPs as political leaders and officials who hold public offices. However, this definition could be broadened to also include others given the corruption risk in the country. The Consultant is required to recommend if more PEPs should be added to this definition. For example, the MSG should consider whether evaluators of license applicants for mining and petroleum projects be included as PEPs. Further, the Consultant and the MSG should consider whether politicians, ministers and senior government officials who negotiate and sign mining and petroleum development project agreements be included in the definition.

The Consultant is required to document PNG's existing national definitions of PEPS such as the PNG Leadership Code that governs the actions of political leaders, departmental heads and heads of statutory authorities to disclose personal assets and interests. The Consultant is to determine whether such disclosures are mandatory or not and the report should attempt to 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 BO report could contribute to disclosures related to extractive assets.

The Consultant should ensure that the disclosure of beneficial ownership should include some contextual information around the position and the role of the PEP in general, and to extractive operations in particular. It should also provide information about when the PEP acquired ownership/control of the extractive asset being disclosed.

The Consultant is also required to ensure companies disclose the names of the board members, where board members are not necessarily the beneficial owners, such disclosures could assist to shed light on cases where proxies are used to conceal the real beneficial owners. In this case, the MSG requires the Consultant to also include the definition of PEPs, their family members and close associates who are sometimes used as dummies.

## **2.4 Data Timeliness**

The Consultant must work with the MSG to ensure that the BO declaration form and the BO report clearly indicates the MSG's decision regarding the time period or the date for which beneficial ownership information and data are collected. This is important as it will ascertain for what point in time the ownership data is valid. There is also a need to disclose when the beneficial ownership was acquired. The BO reporting template/form agreed by the MSG should request companies to disclose beneficial ownership data and information only once in the report. Further disclosures would only be provided as beneficial ownership changes. The Consultant should provide clear recommendations for when the BO data should be updated. It could be within 30 days (a month) or 90 days (3 months) as soon as ownership changes for example. The Consultant should also recommend who should be responsible for updating the data. This reporting approach would be better than disclosing beneficial ownership details at regular fixed intervals like every 6 months or 12 months.

## **2.5 Data Comprehensiveness**

The Consultant is required to ensure that details related to the identity of beneficial owner are disclosed. These details should include; the name of the beneficial owner, date and place of birth, national ID number, nationality, country of residence, and postal and residential or service addresses and means of contact. These details are necessary for the information to be useful.

As indicated in this TOR, the Consultant is expected to conduct outreach and provide guidance to reporting companies in order to ensure that there is adequate understanding of how to complete beneficial ownership declaration forms. Also, the Consultant in its work program should allow reasonable time to complete the declaration forms.

The Consultant is expected to work with the MSG to ensure that the format in which the beneficial ownership information is presented is easily understandable by the public. This include clearly stating which companies are state owned and publicly listed, as well as clearly distinguishing between legal and beneficial ownership. Where

complex company structures emerge, the Consultant should present this in a visual form for easy understanding in the report. It is important for the Consultant to ensure transparency in legal ownership by better disclosing the corporate structure of companies.

## **2.6 Data Reliability**

The Consultant will be required to discuss with the MSG to agree on an appropriate mechanism for companies to assure the data in the beneficial ownership declaration prior to data collection. This is particularly important in PNG where beneficial ownership disclosure is not required by law. The declaration form should be signed off by a senior company official to confirm that the information submitted is correct would be sufficient. The name and position of senior official providing the attestation should be included.

The Consultant should also encourage companies to submit supporting documentations (articles of association, powers of attorney, etc.). Beneficial ownership declarations could also be cross-checked against the information provided to the PNG Investment Promotion Authority (PNGIPA) where corporate filings (company registers) are kept. The Consultant should also recommend other databases that should be linked with the register, e.g., immigration database, civil registry (NID) database, tax identification number (TIN) database at the Internal Revenue Commission (IRC).

In the BO report, the Consultant should outline the approach agreed by the MSG as well as compliance, including indicating which companies provided what types of assurances.

## **2.7 Reporting entities, data collection and adequacy of beneficial ownership information form**

Apart from the current reporting companies that have been participating in the annual EITI reporting process, the Consultant should as much as possible ensure that data collection is not necessarily limited to companies that are financially material but also requesting all corporate entities that apply for or hold participating interest in exploration and production contracts or licenses in oil, gas and mining to disclose their owners, consistent with the 2019 EITI Standard.

The Consultant is expected to work with the PNGEITI National Secretariat and the MSG or its Technical Working Group (TWG) or its sub-committee to ensure that the agreed BO declaration form adequately distinguishes between legal and beneficial ownership. The Consultant is required to provide guidance on how to fill out the templates and assist companies in determining whether an individual is the ultimate beneficial owner of the company. This should be done through a workshop initially and then individual entity (one on one) consultations and meetings where necessary.

## **2.8 Establishing beneficial ownership registers**

The PNGEITI MSG had agreed that the PNG Investment Promotion Authority (PNGIPA) would be the appropriate government agency to maintain a beneficial ownership register or a license register. There is on-going work at the IPA, supported



through the ADB technical assistance project for review of all legislations administered by the IPA as part of the government’s legislative reforms to create a conducive environment for further investment. The Consultant is required to recommend practical approaches to working with the PNGIPA through these legislative reforms to include the EITI’s work on beneficial ownership, especially to amend the Companies Act and other laws for BO reporting in future.

For this report, the Consultant is required to recommend the next steps in establishing a register at the IPA, and in ensuring that the information is publicly available and in an open data format. The BO information collected in this first report will be established at the PNGEITI National Secretariat office.

### 3. Scope of services, tasks and expected deliverables (Beneficial Ownership Disclosure)

Consistent with the EITI Requirement and MSG Guidance and Oversight, the Consultant is required to take the following steps in undertaking the tasks required for preparing the beneficial ownership report:

#### 3.1 Prepare Scoping and Inception Report

**Step 1:** The first step in the report preparation is that the Consultant will work with the MSG to agree on the scope of work to be carried out. The Consultant is required to adhere to the beneficial ownership definition as agreed and approved by the MSG for the purpose of this Report, using the beneficial ownership declaration form that was developed in the PNG context and approved by the MSG. The Consultant will be required to facilitate capacity building (conduct trainings/workshops) for current EITI reporting companies including the IPA because it will ultimately be the custodian of the BO data.

#### Specific beneficial ownership reporting instructions for the Consultant.

<p>Any information requested by the MSG on beneficial ownership (BO) in accordance with EITI Requirement 2.5.</p>	<p>For the purpose of this report, the Consultant should:</p> <ul style="list-style-type: none"> <li>• Use the agreed BO definition or propose an applicable definition for adoption by the MSG.</li> <li>• Propose the details to be disclosed about the identity of the beneficial owners. This should include whether the beneficial owners are politically exposed persons (PEPs), drawing on existing definition of PEPs as agreed by the MSG and asset declarations, if available.</li> <li>• Propose an approach for assuring the BO data assurance for adoption by the MSG.</li> <li>• Reflect the MSG’s decisions on the definition of BO, the details to be disclosed about the identity of the beneficial owners, and the data assurance process in PNGEITI MSG’s approved BO template.</li> </ul>	<p>For the purpose of this report, the MSG will:</p> <ul style="list-style-type: none"> <li>• Consider and agree on the recommendations made by the Consultant with regards to the definition of BO, the details to be disclosed about the identity of the BO, and the approach for BO data assurance.</li> <li>• Provide information on PNG Government’s policy (if any) and multi-</li> </ul>
---	---	---

	<ul style="list-style-type: none"> <li>• Develop guidelines for reporting companies on how to identify their beneficial owners and complete the reporting template.</li> <li>• Distribute the approved BO template to the companies included in the scope of the BO Report, collect data and follow up on any missing or incomplete submissions.</li> <li>• Compile the data in an open data format (xlsx or CVS).</li> <li>• Present the findings in the BO Report, noting for each of the companies in the scope of the report: the name of the BOs of each company, details about their identity, and information about how ownership is exerted. Where legal owners have been disclosed, this should be clearly distinguished from beneficial ownership.</li> </ul>	<p>stakeholder group's discussion on disclosure of beneficial ownership.</p> <ul style="list-style-type: none"> <li>• Provide comments on the comprehensiveness and reliability of the BO information, and present recommendations for improving beneficial ownership reporting in the future.</li> </ul>
--	---	---

### 3.2 Review of the Scoping and Inception Reports and agreeing on an approach to beneficial ownership disclosure by the MSG

**Step 2:** In this second step, the Consultant is required to clearly propose to the MSG the approach to beneficial ownership data collection as set out in the inception report. The inception report should ensure that there is a mutual understanding between the MSG and the Consultant on the scope of the beneficial ownership work to be carried out. Specifically, the Consultant should carefully address the following areas:

- (i) Ensure that the MSG had agreed to an appropriate definition of the term beneficial owner that is aligned with Requirement 2.5.f.i and considers international norms and relevant PNG laws and practice. The definition should include ownership thresholds and specify reporting obligations for politically exposed persons (e.g., PNG's Leadership Code). The Consultant should work with the MSG to agree on the scope of companies to be requested to submit information on their beneficial owners. The Consultant should consult with the MSG on agreeing to appropriate definitions on beneficial ownership and thresholds.
- (ii) Ensure that the approach to collecting and disclosing beneficial ownership information has been well documented in the Inception Report, and ensure that the MSG had reviewed and approved the approach. Where the MSG has tasked the Consultant with proposing an approach to beneficial ownership disclosure - for example a proposed definition of beneficial ownership for the purpose of the EITI Report, a proposal for the data that should be collected related to the identity of the beneficial owner, or a proposal for the assurances that the company should provide to assure the reliability of the beneficial ownership data should be set out and documented in the inception report. This is to ensure that the MSG can review, propose modifications and eventually take a decision on the approach to be followed.

- (iii) Ensure that the MSG had reviewed and approved the beneficial ownership declaration form. Where the MSG has tasked the Consultant with developing the beneficial ownership declaration form or amend or modify the form that it had approved earlier, this should be reviewed and approved by the MSG at the inception stage. It is important that the MSG's decisions regarding issues like the definition of beneficial ownership, the data to be collected as well as assurance procedures, are reflected in the declaration form. The declaration form should also clearly explain 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 the submission of the template, or whether the information dates further back, e.g. as per the end of a particular financial year. The model beneficial ownership declaration form tasks reporting entities with confirming owners as per specific date to be determined by the MSG. It also requests information on whether the beneficial owners are politically exposed persons.

### **3.3 Guidance and instructions to reporting companies.**

Once the scope of the beneficial ownership work and the templates have been agreed, it is important that the Consultant develops adequate guidance and instructions for reporting companies. The Consultant is expected to develop sufficient guidance for reporting companies on beneficial ownership reporting, with clear timelines for deliverables. Beneficial ownership reporting is a new thing and many companies are unfamiliar and will need detailed instructions for how to understand and apply the beneficial ownership definition so that they can identify their beneficial owners correctly. The instructions could also include guidelines for what actions companies should take in the event that they face difficulties identifying their beneficial owners, including opportunities for support. The instructions should also specify information relating to publicly listed companies including wholly owned subsidiaries that are required to disclose, i.e. the name of the stock exchange and include a link to the stock exchange filings where they are listed (Requirement 2.5.f.iii).

Although instructions needed to be carefully adapted to fit PNG's circumstances as well as the scope of beneficial ownership disclosures and approach agreed by the MSG, some examples of instructions and guidelines used by other EITI implementing countries are available from the International Secretariat upon request and the Consultant is encouraged to explore such options, if necessary. The instructions should also include deadlines and instructions for when and how to submit the beneficial ownership declaration form to the Consultant. It is strongly recommended that the Consultant engaged should ensure there is sufficient advance planning and notifications to avoid a rushed data collection in this reporting process. Prior consultations with companies by the Consultant on the time needed to collect beneficial ownership information is strongly recommended. In this third step, the Consultant is required to ensure that the following areas are adequately addressed:

- (i) The MSG should have considered if the company instructions should include any information on the government's policy for disclosing beneficial

ownership or the rationale for beneficial ownership transparency from a company perspective.

This is important because, if companies are unfamiliar with beneficial ownership reporting and, given that there is no legal requirement mandating such reporting in PNG, it might be useful to attach a letter from the PNGEITI MSG Chairman, emphasizing the government's support for beneficial ownership transparency. The Consultant is strongly encouraged to also attach an information sheet outlining the objectives and benefits of beneficial ownership transparency which may be necessary. A beneficial ownership fact sheet for companies has been developed by the International Secretariat and the Consultant should use this and tailor it to fit PNG's circumstance.

- (ii) The MSG should have considered an appropriate way to identify the company contacts that might need support in completing the templates. The MSG and PNGEITI National Secretariat can provide necessary support to the Consultant by developing and maintaining a list of company contacts (mainly current reporting companies) to whom the beneficial ownership declaration form should be distributed. This might not always be the same company point of contact as for tax disclosures.
- (iii) Finally, the MSG should have considered as to whether capacity building or outreach efforts are needed. Where the MSG has decided that the Consultant should provide capacity building for companies on how to report on beneficial ownership, it is useful to do this once the instructions and guidelines have been developed by the Consultant in consultation with the MSG.

### **3.4 Reviewing beneficial ownership disclosures in the draft Beneficial Ownership Report.**

Step Four: In this fourth step, the MSG will scrutinize and review the beneficial ownership data collected by the Consultant in the draft Report. The Consultant should allow sufficient time set aside for the MSG to assess and comment on the draft report. The Consultant should evaluate the quality of the beneficial ownership data in order to ensure that it will be of use to government, policy makers, companies and citizens. The Consultant should evaluate the credibility of the data and information collected as follows:

- (i) Ensure that the beneficial owner(s) identified in the draft report is a natural and physical person. The earlier BO Pilot Reports have indicated the name of a legal entity as the beneficial owner. However, in accordance with the EITI Standard, a beneficial owner should always be a human being, never a company, legal entity, a proxy, etc.
- (ii) Ensure that the draft BO Report adequately explains why the beneficial owner disclosed is considered the beneficial owner, i.e. how the beneficial ownership is exercised? Most beneficial ownership definitions include several criteria for who can be considered a beneficial owner. Sometimes this includes a certain percentage share of ownership in the form of shares

or voting rights. It can also include means of direct or indirect control, or economic benefit derived from the company's activities. Who is considered a beneficial owner will depend on the beneficial ownership definition agreed by the MSG. It is therefore helpful if the Report explains how the beneficial owner disclosed meets the definition of beneficial ownership as agreed by the MSG.

- (iii) Ensure that all the data about the identity of the beneficial owner disclosed are in accordance with the scope agreed by the MSG. This should include the name of the beneficial owner, the nationality, and the country of residence, and may also include national identity number (NID), date of birth, residential or service address, and means of contact and other data points agreed by the MSG. Where companies have omitted certain details from the beneficial ownership declaration form, the reasons for that should be explained in the Report.
- (iv) Ensure that the draft Report indicates whether any of the beneficial owners disclosed are politically exposed persons or not. The MSG could consider whether reporting obligations for politically exposed persons about their assets held in the extractive sector exist (i.e. asset disclosure systems applying to high-level public officials). If this information is made publicly available, the Consultant could draw from or make links to this information to help identify beneficial owners who are politically exposed.
- (v) Ensure that all companies that have provided the requested supporting documentation or attestations in accordance with the approach agreed by the MSG, providing assurances that the beneficial ownership data in the declaration form is true and reliable. It is helpful if the BO Report indicates the names of any companies that have not complied with the agreed approach as well as the reasons cited for such lack of compliance. The Consultant should also include commentary on any gaps as well as an independent assessment of the reliability of the data.
- (vi) Ensure that all companies have submitted their declaration forms. In the case of non-reporting, it is useful if the Consultant indicates the names of the non-reporting companies as well as the reasons cited for the lack of reporting. Where companies have attempted to identify and report on their beneficial owners, but not been successful in doing so, the Report could outline the steps and efforts undertaken by the company to obtain the beneficial ownership information. Any further efforts by the Consultant and the MSG to follow up with non-reporting companies could also be described in the report.
- (vii) Ensure that data presented in the draft Report is in a format that is comprehensible and accessible. Experience with beneficial ownership reporting in EITI Reports to date shows that the way beneficial ownership data collected is collated and presented in the Reports vary considerably from country to country. In some cases, it has been difficult to comprehend and interpret the data because of inadequate presentation. It is required that the Consultant presents data in open data formats such as excel or CVS,

which can enable further analysis and interrogation of the data. This will allow the MSG to ensure that the beneficial ownership information is disclosed in an open data format on the PNGEITI website or other existing platforms for disclosing extractive sector data.

- (viii) Ensure that the draft BO Report adequately outlines the challenges and barriers preventing comprehensive BO reporting and makes concrete recommendations for improving the reporting procedures as well as wider institutional, legal or administrative reforms related to beneficial ownership transparency. In accordance with the TOR, the BO Report should document lessons learnt from PNGEITI's BO Roadmap, its pilot BO reporting and make recommendations for improvements. This could include recommendations from the Consultant as well as any recommendations discussed and put forward by the MSG, and other stakeholders to improve the quality, comprehensiveness and usefulness of beneficial ownership reporting in the future. Once these issues have been reviewed by the MSG, it is important that the Consultant has adequate time to address the MSG's comments, including any follow up required with companies to improve the quality of the report before it is finalized.

### **3.5 Reviewing Beneficial Ownership disclosures in the final Report**

**Step five:** In this final step, the Consultant should ensure that the MSG's previous comments on the beneficial ownership data have been adequately addressed in the final Report. In accordance with the EITI Standard, the MSG is required to endorse the report prior to its publication. Before approving the report, it is important to verify that the MSG's comments on the draft report have been addressed by the Consultant to the satisfaction of the MSG. Failure to do that may result in the Consultant not being paid the full fees as stipulated in the service contract.

### **3.6 Industry Companies to participate in Beneficial Ownership Reporting**

The Consultant must liaise with the current EITI reporting companies as listed in the table below to collect detailed BO data and information for the report. The consultant must also consult their subsidiaries and JV business partners of these parent companies and other companies involved in the PNG oil, gas and mining sector to collect BO data for a comprehensive report.

Under the 2016 EITI Standard (Requirement 2.5.a), implementing countries must maintain a publicly available register of the beneficial owners of the corporate entities that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where information is already publicly available, the BO report should include guidance on how to access this information.

<b>Petroleum Companies</b>	<b>Mining Companies</b>	<b>State Owned Entities (SOEs) and Trustees</b>
ExxonMobil PNG Ltd (and subsidiaries)	Lihir Gold Limited	Kumul Petroleum Holdings
Oil Search (PNG) Ltd (and subsidiaries)	Ok Tedi Mining Ltd (OTML)	Kumul Consolidated Holdings
JX Nippon Oil and Gas Exploration Corporation (and subsidiaries)	Barrick (Niugini) Ltd	Kumul Mineral Holdings
Santos Ltd (and subsidiaries)	Hidden Valley JV	OkTedi Foundation
	MCC Ramu NiCo Ltd	MRDC
	Ramu Nickel Ltd	
	Niuminco Edie Creek Ltd	
	Simberi Gold Co. Ltd	
	Anomaly Ltd	
	Kainantu Mining Ltd	

#### 4. Meeting requirement 2.5 on beneficial ownership disclosure for validation

It is very important for the Consultant to ensure that the final report delivered to the MSG adequately meets Requirement 2.5 of the EITI Standard. The validation assessment for Requirement 2.5 will consist of two parts as follows:

##### **Part 1: Technical assessment**

The first part will assess as to whether the different elements of the requirement have been fully implemented (2.5.a-g) or not. Until 31 December 2021, the initial validation will be focused on a limited set of questions but the Consultant is required to work closely with the MSG to ensure all elements of Requirement 2.5 (a-g) have been implemented.

##### **Part 2: Assessment of effectiveness**

The second part will assess as to whether the objective of the requirement have been met and complements the technical assessment. The assessment will focus on the reasons behind the gaps identified, the significance of these gaps, data quality and data accessibility.

Based on the MSG's work and stakeholder consultations and assessments, the Consultant is expected to provide relevant recommendations to improve future BO reporting.

As of 1 January 2020, Requirement 2.5 will be assessed for beneficial ownership reporting and will impact on the validation outcome. Until December 2021, meeting the initial criteria will lead to progress on the Requirement 2.5 to be assessed as 'satisfactory'.

#### 4.1 Definition and Policy

The Consultant must ensure that the report adequately addresses the following questions in order for PNG to meet the initial criteria required to achieve a 'satisfactory progress':

- (i) Has the MSG agreed an appropriate, publicly available **definition of the term beneficial owner** that is aligned with Requirement 2.5.f.i, takes international norms and relevant national laws into account, includes ownership threshold(s) and specifies reporting obligations for politically exposed persons (2.5.f)?
- (ii) Is the **government's policy and multi-stakeholder group's discussion** on disclosure of beneficial ownership documented, including details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway (2.5.b)?

#### 4.2 Disclosures

*The Consultant is required to clearly document in the report the following areas in order for PNG to meet the initial criteria to achieve 'satisfactory progress' for BO reporting:*

- (i) **Are there laws, regulations or policies** in place to back establishing and maintaining a public register of beneficial owners, including those of corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production of oil, gas or mining license or contract? (2.5.a, recommended only and should not be considered in assessing compliance with the EITI Standard);
- (ii) **Has the implementing country requested** beneficial ownership information to be publicly disclosed by corporate entity(ies) that apply for, or hold a participating interest in an exploration or production of oil, gas or mining license or contract and whether the legal framework backs the request (2.5.c)?
- (iii) **Does the requested information include** the identity(ies) of their beneficial owner(s), including nationality, country of residence, and identification of politically exposed persons, the level of ownership and details about how ownership or control is exerted (2.5.c-d)?
- (iv) **Have any corporate entity(ies)** that apply for, or hold a participating interest in an exploration or production of oil, gas or mining license or contract **disclosed the information?**

#### 4.3 Data Quality and Comprehensiveness

The Consultant must ensure that the report adequately meets the initial criteria required for PNG to achieve a 'satisfactory progress' by ensuring that the report addresses the following questions:

- (i) **Has the MSG assessed and documented gaps or weaknesses** in disclosure of beneficial ownership information, including an assessment of the materiality of omissions and the reliability of beneficial ownership



information, and whether the government or MSG agreed and documented plans to overcome the identified challenges (2.5.c)?

- (ii) Has the relevant government entity or the MSG established an **approach for participating companies to assure the accuracy** of the beneficial ownership information they provide (2.5.e)?

#### 4.4 Publicly listed companies and legal ownership

For the companies that have disclosed the information, the Consultant must ensure that the report addresses the following to meet the initial criteria required for PNG to achieve a ‘satisfactory progress.’

- (i) For publicly listed companies, including wholly-owned subsidiaries -, has the name of the **stock exchange** been disclosed and a link included to the stock exchange filings where they are listed, either in the public register on in the EITI Report (2.5.f)?
- (ii) Is information about **legal owners** and share of ownership of applicable companies publicly available (2.5.g)?

### 5. Qualification requirements for the consultant and time schedule for deliverables

#### 5.1 Qualification requirements

The consultant must be able to apply international professional standards (Requirement 5.1). It is a requirement that the consulting firm or organization to be engaged is credible, trustworthy and technically competent. Bidder(s) must follow (and show how it will apply) the appropriate professional standards for the project and agreed-upon-procedures in the production of a quality BO Report.

In order to ensure the independence of the project, the Consultant is required, in the proposal, to disclose any actual or potential conflicts of interest, with a commentary on how such conflict can be avoided. If the Consultant discovers that certain data or information is legally protected, the Consultant is expected to sign confidentiality agreements to ensure sensitive commercial information is protected and that any conflicts of interest situations are effectively mitigated.

The Consultant may sub-contract part of the service where specialized skills and experience is required to achieve quality report and to meet deadlines on their own accord.

#### 5.2 Time schedule for deliverables

The consultant is expected to cover the period from April to September, 2020. Below is an indicative timeline for the project.

Milestones/Phases	Timeline
Signing of contract	May 2020

Scoping and Inception work Preliminary Meetings and stakeholder consultations and drafting of the BO Disclosure Inception report	May 2020
Submission of Inception Report	May 2020
MSG to review the Inception Report and agree on the approach to beneficial ownership disclosure	May 2020
Data collection Stakeholder Training/Workshop on Guidelines for filling out BO template. Distribution of BO template. Drafting of BO Disclosure report.	June– July 2020 June - July 2020 July 2020
Delivery of the draft BO Report to the National Secretariat and PNGEITI Technical Working Group. TWG hold a special meeting/workshop to review the draft BO Report.	July 2020 July 2020
Consultant considers TWG’s feedbacks on the BO Draft Report and delivers a revised draft Report.	August 2020 August 2020
Consultant delivers a final draft Report.  PNGEITI TWG undertakes final review of the final draft Report.  Consultant submits final BO Report to the MSG for approval and publication	September 2020 September 2020 October 2020
Consultant establishes a BO database at the PNGEITI National Secretariat office	Two weeks after the delivery of the final report. [week 2 of November]

## 6. Client input and counterpart personnel

The PNGEITI MSG, the Technical Working Group (TWG) and the National Secretariat may be required to support the work of the Consultant and provide oversight and direction where and when required. This may also involve undertaking activities related to facilitating meetings, trainings, roadshows and workshops with key sector participants, organisations, individuals and entities that will be approached or involved over the duration of the project.

## 7. Evaluation criteria

**7.1 Technical Approach** –Consultant(s) must demonstrate a thorough understanding of the project and the nature of tasks required to manage, coordinate or undertake some or all of the activities listed in this TOR. Vendors

should utilize their unique approach to accomplishing each of the work or activity set out in the TOR including solicitation, strategizing and application of innovative methods to complete this assignment. The Consultant shall provide a tentative management plan explaining the schedules, timelines, project-management strategy, quality control plan and assurance procedures, and assurances for on time completion and delivery of output.

**7.2 Qualifications/Experience** – Consultant should outline his or her qualifications and experiences or the experience of the firm or organization applicable to delivering this assignment. In addition, the Consultant should provide a resume displaying the qualifications, experiences, skills and operational and industry knowledge of key personnel who will work on the assignment, if it is a firm or an organization.

**7.3 Past Performance** – Consultant should provide details of past performance or involvement in EITI projects, if any or any similar work, including a list of clients with contact information for current projects and projects completed.

**7.4 Price** – Consultant shall provide a detailed breakdown of all labor hours and any travel expenses, estimated within the price proposal for this project.