



**PAPUA NEW GUINEA EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE (PNGEITI)**

TERMS OF REFERENCE

FOR

**A Scoping Study on the Operations of State-
Owned Entities (SOEs) and Trustees in the
Extractive Sector**

Approved by the PNGEITI MSG

31st January, 2020

1. EXECUTIVE SUMMARY

The PNGEITI National Secretariat through its Multi-stakeholders Group (MSG) will undertake a scoping study on the operations of State-Owned Entities (SOEs) and Trustees involved in the extractive sector (oil, gas and mining) . The study will be conducted in accordance with the definition of SOEs under the 2016 EITI Standard. The study will also include Trustees established by the Government for managing businesses arms run by provincial, local level governments and landowners using revenue flows from oil, gas and mining activities in the country.

The study is intended to ensure that the EITI reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies (EITI Requirement 4.5). Further, the study is to understand the financial and operational relations and transactions between SOEs and trustees with the government and between SOEs (and their subsidiaries). Most importantly, the study is intended to address the corrective actions as recommended from PNG’s first validation of its EITI implementation and to recommend possible policy and legislative reforms to improve the transparency and accountability of SOE and Trustees operations for EITI reporting requirements.

The study is planned to commence from March to July 2020 and is anticipated to take about 5 months to complete.

2. BACKGROUND

The Extractive Industries Transparency Initiative (EITI) is a global standard for promoting transparency and accountability in the oil, gas and mining sectors. One of the key requirements for PNG as an EITI implementing country is to systematically disclose company payments and government receipts of extractive revenues through the existing systems consistent with the 2019 EITI Standard (<https://eiti.org/document/eiti-standard-2019#terminology>).

PNG published six (6) annual EITI Reports covering the fiscal years 2013 to 2018 since it joined this global initiative in 2013.

EITI implementation in PNG was validated against the EITI Standard by an independent validator in 2018. The validation resulted in PNG scoring “Meaningful Progress”. This means that PNG has met some of the key requirements of the EITI Standard in improving governance in the extractive sector, however there remains a number of critical areas the Government needs to address in order to fully meet the requirements of the EITI Standard to achieve satisfactory progress.

The EITI Validation Committee recommended the Government to undertake corrective actions on a number of areas in preparation for a second validation in the first quarter of 2020. One of such recommendations is for PNG to clearly

establish its own definition of SOEs to delineate these entities within the scope of EITI reporting. This is to ensure that a comprehensive list of State participation in the extractive industries, including terms associated with State equity and any changes in the year under review be publicly accessible.

It was recommended that PNG must clarify the rules and practices governing financial relations between all SOEs and Trustees, including their subsidiaries and the State. This also included the existence of any loans or loan guarantees extended by the State, or SOEs to extractive companies or projects.

It was also recommended that PNG should undertake a comprehensive assessment of transactions between extractives SOEs (and their subsidiaries), mining, oil, and gas companies, and government in its scoping for future EITI reports. The study should recommend all SOEs and Trustees collecting material revenues or making material payments to government for future EITI reporting.

Furthermore, it was recommended that PNG should undertake a comprehensive review of all expenditures undertaken by extractive SOEs (and their subsidiaries) that could be considered as quasi-fiscal expenditures. PNG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams. It should include SOE subsidiaries and joint ventures and their financing and equity arrangements in extractive projects.

3. STATE OWNED ENTERPRISES (SOEs) AND TRUSTEES

The EITI Standard defines an SOE as a wholly or majority government owned company engaged in extractive activities on behalf of the government. The State holds the right to acquire a participating interest in any mining or petroleum project in PNG at par value or 'sunk cost'. In return, the State can receive a share of the profits of the project, paid as dividends and taxes in accordance with its rights as a shareholder.

In 2015, all government mining interests except for Ok Tedi Mining Limited (OTML) were consolidated to Kumul Mineral Holdings Ltd (KMHL) and all government petroleum interests were consolidated to Kumul Petroleum Holdings Ltd (KPHL). The study will also involve two (2) organizations as trustees that were treated as SOEs in previous EITI reports. There will be 5 SOEs and Trustees to be included in the study and these are:

- Kumul Mineral Holdings Ltd (KMHL);
- Kumul Petroleum Holdings Ltd (KPHL);
- Ok Tedi Mining Limited (OTML);
- Mineral Resources Development Company Ltd (MRDC); and
- Ok Tedi Development Foundation.

The consultant is expected to undertake a desktop review and undertake consultation visits to each of the SOE and Trustee, including their subsidiaries and joint venture partners.

4. OBJECTIVES AND SCOPE OF THE PROJECT

The specific objectives of the project are threefold and the consultant is expected to:

I Provide a comprehensive explanation of how EITI Requirements apply to the PNG context:

- Requirement 2.1: Legal framework and fiscal regime

a) Implementing countries must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, a description of the different types of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals, and information on the roles and responsibilities of the relevant government agencies.

b) Where the government is undertaking reforms, the MSG is encouraged to ensure that these are documented.

- Requirement 2.6: State participation

a) Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose:

i) An explanation of the role of state-owned enterprises (SOEs) in the sector and prevailing rules and practices regarding the financial relationship between the government and SOEs. That is the rules and practices governing transfers of funds between the SOE(s) and the State, retained earnings, reinvestment and third-party financing. This should include disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries.

For the purpose of EITI implementation, an SOE is defined as a wholly or majority government-owned company that is engaged in extractive activities on behalf of the government. Based on this, the consultant is to ensure that the MSG discusses and documents its definition of SOE, considering national laws and government structures.

ii) Disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country's oil, gas and mining sector. This includes those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the EITI reporting period.

The consultant should ensure that the information obtained included details regarding the terms attached to their equity stake, their level of responsibility for covering expenses at various phases of the project cycle. For example, full-paid equity, free equity or carried interest. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating in the country, details on these transactions should be disclosed, including loan tenure and the terms (i.e. repayment schedule and interest rate). The MSG may wish to consider comparing such loan terms with commercial lending terms.

b) SOEs are expected to publicly disclose their audited financial statements, or the main financial items (i.e. balance sheet, profit/loss statement, cash flows) where financial statements are not available.

c) Implementing countries are encouraged to describe the rules and practices related to SOEs' operation and capital expenditures, procurement, subcontracting and corporate governance. For example, the composition and appointment of Board of Directors, Board's mandate and code of conduct.

4.1 Sale of State's share of production or other in-kind revenues collected

a) Where the sale of the state's share of production of oil, gas and/or mineral resources or other revenues collected in-kind is material, the government, including SOEs, are required to disclose the volumes received and sold by the State (or third parties appointed by the State to sell on their behalf), the revenues received from the sale, and the revenues transferred to the State from the proceeds of oil, gas and minerals sold. Where applicable, this should include payments (in cash or in kind) related to swap agreements and resource-backed loans.

The published data must be disaggregated by individual buying company and to levels commensurate with the reporting of other payments and revenue streams (EITI Requirement 4.7). The MSG, in consultation with buying companies, are expected to consider whether disclosures should be broken down by individual sale, type

of product and price. The disclosures could include ownership of the product sold and the nature of the contract (e.g. spot or term).

b) Implementing countries including SOEs are encouraged to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements.

c) Companies buying oil, gas and/or mineral resources from the state, including SOEs (or third parties appointed by the state to sell on their behalf), are encouraged to disclose volumes received from the State or SOEs and payments made for the purchase of oil, gas and/or mineral resources. This could include payments (in cash or in kind) related to swap agreements and resource-backed loans.

The published data could be disaggregated by individual seller, contract or sale. The disclosures for each sale could include information on the nature of the contract (e.g. spot or term) and the loading port.

d) Where there are concerns related to data reliability and where practically feasible, the multi-stakeholder group should consider further efforts to address any gaps, inconsistencies and irregularities in the information disclosed.

4.2 Transactions related to state-owned enterprises.

The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of SOEs, including comprehensive and reliable disclosures of material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs.

4.3 Quasi-fiscal expenditures.

Where State participation in the extractive industries gives rise to material revenue payments, implementing countries must include disclosures from SOEs on their quasi-fiscal expenditures. The MSG is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.

Quasi-fiscal expenditures include arrangements whereby SOEs undertake public social expenditure such as payments for social services, public infrastructure, fuel subsidies and national debt servicing and so forth outside of the national budgetary process.

Implementing countries and multi-stakeholder groups may wish to take the IMF's definition of quasi-fiscal expenditures in the IMF Fiscal Transparency Manual (<https://www.imf.org/external/np/fad/trans/manual/sec02a.htm>) into account when considering whether expenditures are considered quasi-fiscal.

The consultant is required to:

- Develop a reporting template for SOE reporting in line with the EITI Requirements. The template will require details such as level of government ownership or participation, legal entity holding the stake (SOE or its subsidiary), the terms (fully paid, free equity or carried interest), changes in level of ownership or participation, terms of transaction (valuation and revenues), terms of transactions, loans and loan guarantees to oil, gas and mining companies, financial relationship between the SOEs and government, quasi-fiscal expenditure or transactions. Refer to **annex 1** as an example of template that may be used.
- Develop diagrams to demonstrate the corporate ownership structures of the SOEs and Trustees in PNG. This information will be useful in clarifying their relations with the government, with all of their subsidiaries and joint ventures. This is intended to assist in assessing the materiality of payment flows from the various SOEs and Trustees and their subsidiaries and joint ventures. **Annex 2** provides an example of the structure used by EITI Kazakhstan.

II- To address the bellow corrective actions from the first Validation

The consultant is required to:

- undertake a comprehensive assessment of transactions between extractives SOEs, their subsidiaries and mining, oil and gas companies, as well as between the extractives SOEs (including their subsidiaries) and government in scoping for future EITI Reports. All SOEs (including Trustees) collecting material revenues or making material payments to government should be included in the EITI scoping study report.
- identify and clarify the rules and practices governing financial relations between all SOEs, their subsidiaries and the State, including the existence of any loans or loan guarantees extended by the State, or SOEs to extractive companies or projects.
- establish a definition of SOEs to delineate the SOEs within the scope of EITI reporting and ensure that a comprehensive list of State participation in the extractive industries, including terms associated with State equity.

- undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal.
- identify SOE quasi-fiscal expenditures (QFEs), if any and document these for the EITI reports for transparency purpose.
- develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams and this information should include SOE subsidiaries and joint ventures, consistent with the EITI Standard (Requirement 4.7),.

III. To recommend to the MSG on ways to improve the transparency of SOEs in PNG.

The consultant is required to:

- Identify existing gaps in information, e.g. which data are not available, whether there are barriers to disclosing SOE information, whether legal amendments are needed, whether there are practical barriers to timely disclosure of SOEs and Trustees data as required by the EITI Standard.
- collate all the necessary information related to the management of the extractive sector consistent with the MSGs objectives and work plan, and the EITI's requirements (EITI Requirements 2, 3, 4,5, and 6). More focus will be on EITI Requirement 2.6 (State participation), Requirement 4.5 (SOEs transactions), and Requirement 6.2 (SOEs Quasi-fiscal expenditure).
- examine the audit procedures adopted by SOEs and Trustees in the extractive sector and provide an evaluation of the reliability and timeliness of SOEs and Trustees data. Make recommendations to improve data quality, if needed.
- assess the extent to which the information on SOEs and Trustees required by the EITI Standard is already made publicly available through governmental and corporate disclosure systems. Such an assessment may investigate the completeness and level of disaggregation of data, source and links, timeliness of data publication, accessibility of data to public and the audit and assurance procedures that the data has been subjected to.
- outline any barriers or gaps in timely, comprehensive and reliable disclosures, and propose recommendations to address these. This may include actions, responsible parties, timelines, resource and technical assistance needs.

5. CALL FOR CONSULTANCY

The PNG EITI National Secretariat through its Multi-stakeholder Group (MSG) seeks a competent and credible consulting firm or individual, free from conflicts of interest to undertake a scoping study into the operations of SOEs and Trustees involved in the extractive sector in accordance with this Terms of Reference (ToR). The project is expected to take approximately five (5) months from March to July 2020.

6. QUALIFICATIONS AND EXPERIENCE

The Consultant must be able to meet all relevant criteria and due diligence requirements and should demonstrate extensive experience in the mining, oil and gas business in PNG. The consultant should have a clear understanding on the operations and functions of SOEs and Trustees and adequate experience working with SOEs and Trustees in the extractive sector. The Consultant is expected to be familiar with loans and loan guarantees, state equities investments, investments and trustee arrangements in managing landowner companies and businesses arms.

The consultant is specifically expected to demonstrate the following:

- documenting government policy specific to oil, gas and minerals, or similar experience documenting the laws, regulations and policies that govern SOE and Trustee operations in PNG.
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- managing and interpreting policies with respect to leasing, production and revenue reporting for use of the natural resource attributes of the national government's assets, as well as taxation of the extractive industries
- documenting the government's policy on contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This would include identifying relevant laws, regulations, fiscal and taxation and other financial arrangements that govern the extractive sector activities.
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- familiar with the operations and functions of SOEs and Trustees operating in the extractive sector in PNG;
- general knowledge of EITI and extractive sector governance;
- previous experience working with SOEs, and Trustees operating in the oil, gas and mining sector in PNG.

7. EVALUATION CRITERIA

7.1 Technical Approach – Bidders must demonstrate a thorough understanding of the tasks required and effort required to produce the scoping study report within the required project

period. Bidders shall provide a detailed project plan outlining the schedule, project-management style, quality assurance procedures, and assurances for on time completion

7.2 Qualifications/Experience – Bidders should address the qualifications of the firm. In addition, bidders should provide a one-page containing resumes displaying the qualifications, experience, operational knowledge, and skills of key personnel who will work on the project.

7.3 Past Performance – Bidders shall provide past performance information for similar work including a list of clients with contact information for current projects and any projects or similar assignments completed within the past two years.

7.4 Financial Proposal – Bidders should provide a detailed breakdown of all labor hours to be worked, including any anticipated travel expenses within the proposal for delivering this report.

8. TIMELINE FOR COMPLETING THE STUDY

The consultant will provide a completion report within fourteen (14) working days after the delivery of the final Scoping Study Report. The Report will summarize project objectives achieved, significant issues and challenges encountered and make concrete recommendations to address these challenges including; any legal, administrative and policy reforms that may be required for transparent and accountable operations of the SOEs and trustees. The consultant is required to present to the MSG the Inception report in March and the Draft Scoping Study Report in May 2020, in two (2) separate special MSG meetings.

The consultant is expected to commence the study from March 2020 and deliver the final report by July 2020. Refer to annex three (3) for the detailed schedule and milestones to be delivered.

9. CLOSING DATE FOR SUBMISSIONS

Expression of interest (EOI) with detailed financial costings must be received no later than 4:30 pm on February 28,2020.

Submissions can be emailed to Francis_Diakon@pngeiti.org.pg or Francis_Diakon@treasury.gov.pg or hand delivered to the PNGEITI National Secretariat office located on Level 8 of the Treasury Building, Waigani. For further queries, please contact Francis Diakon on telephone 3133651 or on the above email addresses.

Financial relationship between the SOE and the government					
	Retained earnings	Reinvestment	Dividends paid to the government	Other transfers to the government	Funds received from the government
<i>NBI Indicate currency</i>					
Summary of statutory rules and link or reference to relevant law(s) or polic(ies)					
Value in FY 16/17					
Value in FY 17/18					

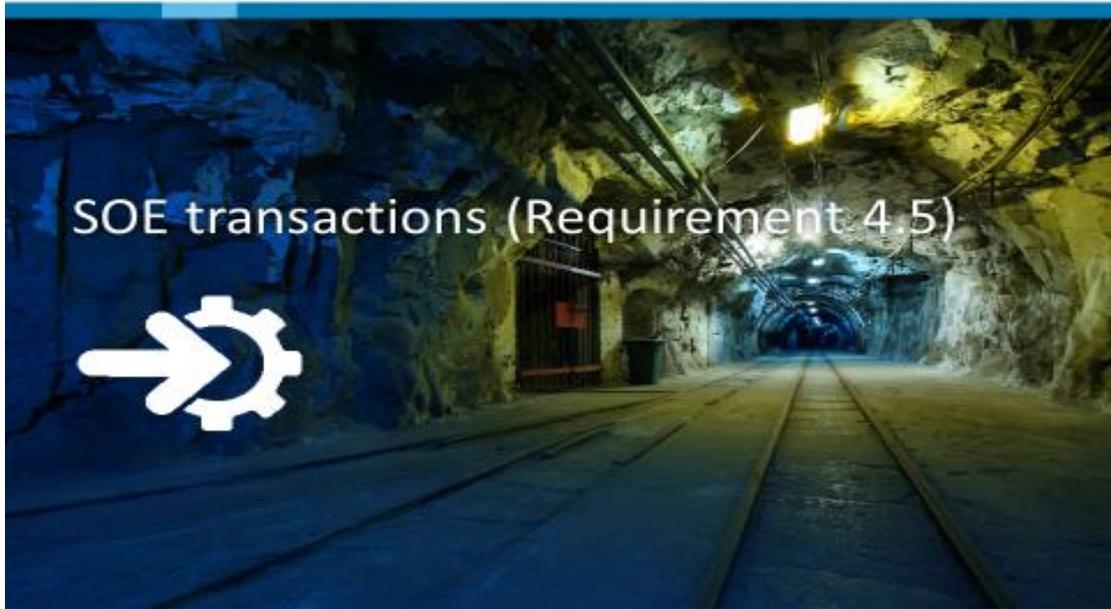
NBI If the SOE's subsidiaries or joint ventures received funds from the government or the SOE, or remitted funds to the government or the SOE, please fill out the table separately for each subsidiary and JV.

Loans and guarantees from SOEs to oil, gas and mining companies											
Statutory rules governing SOE's right to grant loans or guarantees to extractive companies, incl. link or reference to relevant law or policy	Indicate each loan or loan guarantee from the SOE to extractive companies active in FY 16/17 or FY 17/18	Date of granting loan or guarantee	Date of full repayment or expiry, if applicable	Name of the legal entity providing loan or guarantee (e.g. SOE, its subsidiary or JV)	Name of the entity loan or guarantee provided to	Total value of loan or guarantee (indicate currency)	Outstanding value at the end of FY 16/17	Outstanding value at the end of FY 17/18	Interest rate	Loan tenor and repayment schedule	Links or references to supporting documentation

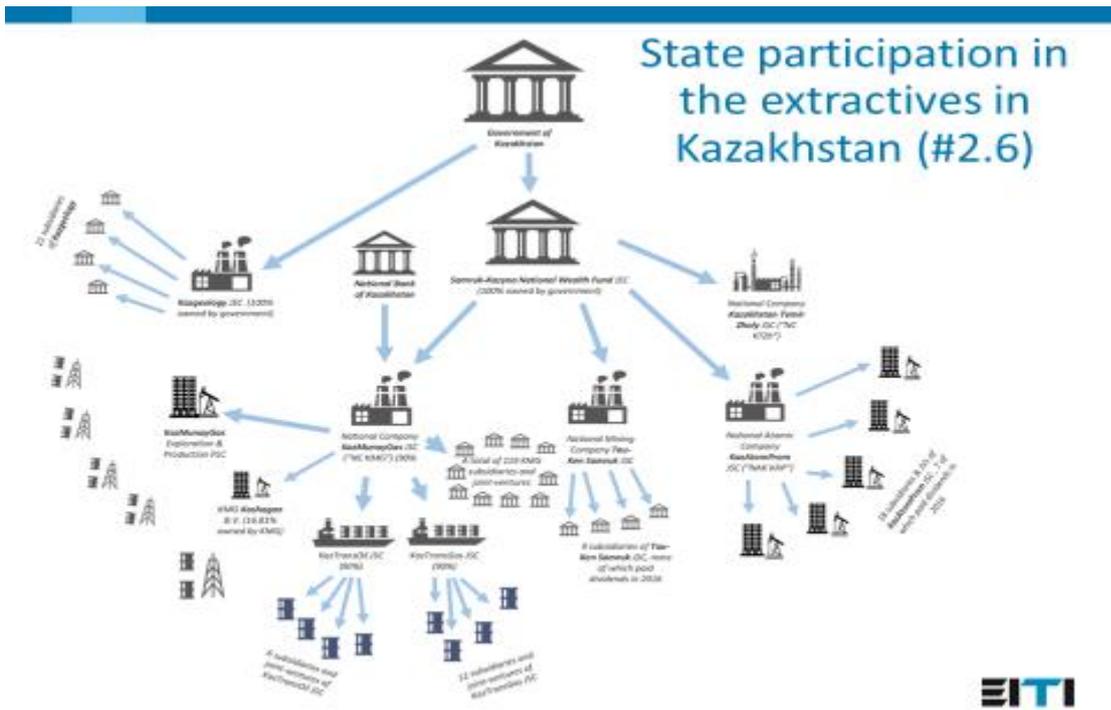
Loans and guarantees from the state to extractive companies, including the SOE											
Statutory rules governing the government's right to grant loans or guarantees to extractive companies including the SOE, incl. link or reference to relevant law or policy	Indicate each loan or loan guarantee from the state to the SOE active in FY 16/17 or FY 17/18	Date of granting loan or guarantee	Date of repayment or expiry, if applicable	Name of the legal entity receiving loan or guarantee (e.g. SOE, its subsidiary or JV)	Government entity granting loan or guarantee	Total value of loan or guarantee (indicate currency)	Outstanding value at the end of FY 16/17	Outstanding value at the end of FY 17/18	Interest rate	Loan tenor and repayment schedule	Links or references to supporting documentation

Third-party financing						
	Statutory rules governing SOE's right to seek third-party financing (debt and equity)	Total value of equity issued to third parties in the year under review	Value of outstanding loans from extractive companies (e.g. third-party financing of cash calls)	Value of outstanding loans from other third-party entities (e.g. banks)	Total value of outstanding third-party loans	Links or references to supporting documentation
<i>NBI Indicate currency</i>						
FY 16/17						
FY 17/18						

Quasi-fiscal expenditures on behalf of the government, e.g. subsidies, national debt servicing, public infrastructure, social services, other government expenditures						
	QFE type	Client	QFE expenditure amount	Related law / agreement	Explanation	Comment
FY 17/18						
FY 18/19						



SOE transactions (Requirement 4.5)



Quasi-fiscal expenditures (Requirement 6.2)



SOEs' quasi-fiscal expenditures

Box 19. Types of Quasi-Fiscal Activity

Operations related to the financial system

- Subsidized lending
- Under-remunerated reserve requirements
- Credit ceilings
- Rescue operations

Operations related to the exchange and trade systems

- Multiple exchange rates
- Import deposits
- Deposits on foreign asset purchases
- Exchange rate guarantees
- Subsidized exchange risk insurance
- Nontariff barriers

Operations related to the commercial enterprise sector

- Charging less than commercial prices
- Provision of noncommercial services (e.g., social services)
- Pricing for budget revenue purposes
- Paying above commercial prices to suppliers

Source: IMF Fiscal Transparency Manual - <https://www.imf.org/external/np/fad/trans/manual/sec02a.htm>

Annex 3: Project Timeline and Deliverables

Milestones	Deliverables	Timeline
Phase 0. Engagement of a consulting firm/individual	<ul style="list-style-type: none"> ➤ Contract signing and start of the project 	week 1 of March, 2020
Phase 1. Inception Report	<ul style="list-style-type: none"> ➤ To be presented to the MSG for comments one week from the signing of the contract. ➤ Base on the initial document reviews, the inception report should confirm the methodology, the scope of work and proposed a project management plan. ➤ The MSG shall present any comments of the inception report in writing to the consultant within one week. 	<p>week 2 of March 2020 (1 week)</p> <p>Week 3 of March 2020 (1 week)</p>
Phase 2. Draft Scoping Study Report	<ul style="list-style-type: none"> ➤ To be presented to the MSG for comments six weeks after the delivery of the final Inception Report. ➤ The draft report to include task 1-6 of this term of reference and other related information that is outside of the TOR but considered critical for the MSG's deliberations. The consultant will complete the draft report in six weeks. ➤ The PNGEITI MSG and the International Secretariat shall present any comments in writing to the consultant within two weeks after the delivery of the draft scoping study report. 	<p>Week 2 of May 2020 (6 weeks)</p> <p>Week 4 of May 2020 (2 weeks)</p>
Phase 3. Final Scoping Study Report	<ul style="list-style-type: none"> ➤ To be presented to the MSG for comments and approval two weeks after the written comments from the MSG and International Secretariat to the consultant. ➤ Prepare and presents a final report that includes the remaining tasks and the comments from the MSG and the International Secretariat. ➤ The MSG shall approve the report according to contractual clauses one week after finalization and publish the scoping study report in the PNG EITI website. 	<p>Week 2 of June 2020 (2 weeks)</p> <p>Week 4 of June 2020 (2 weeks)</p> <p>Week 1 of July 2020</p>
Phase 4. Project Completion Report	<ul style="list-style-type: none"> ➤ This report will be submitted to the MSG through the National Secretariat one week after the delivery of the final scoping report. The report will compile the achievements and challenges experience in compiling the scoping study report. 	Week 2 of July 2020 (1 week)