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What is Beneficial Ownership? Definition of beneficial ownership in Guyana's legal framework

The definition of “beneficial ownership” should not necessarily be linked to share ownership. Owning more than a certain percentage of shares certainly gives a meaningful indication of beneficial ownership. However, in identifying the real beneficial owner, the focus should also be on contractual and informal arrangements.

The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) (No.2) Act (2015)237 which amends section 2 (1) of the original Act (2009) provides a clear definition of beneficial ownership in Guyana as being: “ownership by a natural person or persons who ultimately exercise individually or jointly voting rights representing at least twenty-five percent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement.”

Section 535 of the Companies Act (1998)238 states that: ‘Beneficial interest or beneficial ownership includes ownership through a trustee,

GYEITI

INSTITUTIONALISING TRANSPARENCY AND ACCOUNTABILITY IN GUYANA'S OIL, GAS, MINING, FORESTRY AND FISHERIES SECTORS THROUGH THE IMPLEMENTATION OF THE EITI

THE GOVERNMENT OF GUYANA COMMITTED TO IMPLEMENT THE EITI

– A GLOBAL STANDARD, FOR GOOD GOVERNANCE OF OIL, GAS, AND MINERAL RESOURCES

GYEITI – A Brief Historical Perspective & Update

- May 2010 - Government announced intention to seek EITI candidacy.
- May 2012 Guyana Government and EITI International Secretariat signed a Memorandum of Understanding
- April 2014 – Government of Guyana commissioned a Scoping Study on the feasibility of implementing EITI in Guyana
- December 2015 – Government of Guyana publicly announced a decision Implement EITI and appointed the Minister of Natural resources as Guyana's EITI Champion
- February 2017 - A Multi-Stakeholder Group (MSG) was launched and National Secretariat established
- April 2017 GYEITI MSG approved workplan for period 2017 – 2019

legal representative, agent or other intermediary.'

Additionally, the AML/CFT Act (2009)239 defines a politically exposed persons as follows: "any individual who is or has been entrusted with prominent public functions on behalf of a state, including a Head of State or of government, senior politician, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials, including family members or close associates of the politically exposed person whether the person is resident in Guyana or not". (Extracted from the *Guyana EITI Report for fiscal year 2017*)

What has Guyana committed to in terms of Beneficial Ownership?

The 2019 EITI Standard recommends that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

On 18 July 2018, the Guyana Multi-Stakeholder Group published a roadmap for disclosing beneficial ownership information. The Multi-Stakeholder Group has established

- August 2017 – Guyana submitted an EITI Candidature Application
- 25th October, 2017 – Guyana’s EITI Candidature Application was accepted by the EITI International Board and Guyana became an EITI Implementing Country
- 25th April 2019 – GYEITI Published 1st Ever EITI Report covering fiscal year 2017 and includes 14 recommendations to improve EITI implementation in Guyana
- July 2020 – Commencement of preparation of 2nd GYEITI Report, FY 2018
- October, 2020 – Gap Analysis prepared
- December, 2020 – Inception Report prepared.
- December 2020 - Materiality threshold, list of reporting entities identified and reporting templates approved by GYEITI MSG for 2nd Report FY 2018
- January 2021 – Reporting templates sent to 59 extractive entities and 9 government agencies
- February 2021 – Deadline for submitting completed reporting templates
- February 2021 – Initial reconciliation and investigation of discrepancies
- March 2021 – Draft Report. MSG’s review comments, suggestions and recommendations.
- March 2021 - Final Report. Review, approve and publish by MSG
- March-April 2021 - Nomination & Appointment of new MSG in accordance with EITI open and transparent process.

milestones and deadlines on the roadmap. The Beneficial Ownership Roadmap is available on the GYEITI website at the following link: <https://gyeiti.org/wp-content/uploads/Beneficial-Ownership-Roadmap-.pdf>

Key benefits of beneficial ownership transparency

Benefits for citizens

Once published, citizens can use beneficial ownership information to work with law enforcers, civil society and others to take action to hold those who misuse anonymous companies responsible.

Increased transparency around real owners can increase trust and accountability for citizens and their government.

Benefits for companies

Hidden ownership poses problems for honest companies because they don’t know who they are doing business with. Publishing the real owners supports a level playing field for all companies and allows them to know who they are doing business with.

Transparency about real owners can reduce reputational and financial risks.

Benefits for governments

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Why is beneficial ownership transparency important?

Oil, gas and mining projects can yield great profits both to extractive companies and governments. However, where governance is weak, companies may be given access to lucrative extractive projects for unfair reasons. This could be because their owners are politically connected, or because their owners are willing to engage in questionable deals to generate quick profits.

Protecting anonymity can deter investment and make it harder to curb corruption. It can enable wrongdoers to hide behind a chain of companies often registered in multiple jurisdictions.

Beneficial ownership information supports anti-corruption efforts through the value chain – from licensing to project closure.

It is estimated that developing countries have lost USD 1 trillion a year since 2011 as a result of corrupt or illegal deals, many of which involve anonymous companies.

Attention on financial scandals like the Panama papers and closing down possibilities to hide money in financial havens draws attention to specific cases of

Beneficial ownership transparency prevents conflict of interest and can help ensure compliance with anti-corruption provisions.

Beneficial ownership transparency helps prevent tax evasion and ensures that governments are getting the revenue they are owed.

It supports governments getting the highest value for their extractive contracts and enhances revenue collection. (EITI.org)

abuse. However, these efforts will not end corruption alone. They have to be matched with better rules and enforcement in countries where the money is generated, which is why EITI's beneficial ownership requirements are so important. (EITI.org)