EITI Albania

BO Roadmap Albania
## EITI Albania Draft Beneficial Ownership Roadmap

### Activities

<table>
<thead>
<tr>
<th>Sub Activities</th>
<th>Responsible agency</th>
<th>Estimated cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Start up</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Technical Assistance</td>
<td>EITI Albania</td>
<td></td>
</tr>
<tr>
<td>a Trainer/Coach/Moderator/Consensus Building</td>
<td>Consultancy</td>
<td>$90,000</td>
</tr>
<tr>
<td>b Legal and Regulatory Framework Review</td>
<td>Consultancy</td>
<td>$80,000</td>
</tr>
<tr>
<td>1.2 Financial assistance</td>
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<tr>
<td>Capacity Building for 1.3 stakeholders</td>
<td>Consultancy</td>
<td></td>
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<tr>
<td>a Capacity Building for MSG</td>
<td>Consultancy</td>
<td>$20,000</td>
</tr>
<tr>
<td>b Coaching Capacity Building for Government Entities</td>
<td>Consultancy</td>
<td>$20,000</td>
</tr>
<tr>
<td>c Coaching and Capacity Building for Companies</td>
<td>Consultancy</td>
<td></td>
</tr>
<tr>
<td>d Exchange activities with other countries going through BO</td>
<td>EITI Albania/Intl Sec</td>
<td>$20,000</td>
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### Objective 1: Identify needs

#### Capacity Building for stakeholders

- Reviewing local legal and regulatory framework to help identify the set of laws and regulations that are already in place and those that need revision to overcome regulatory or practical barriers to disclosure of beneficial ownership.
- Reviewing whether national laws include a definition of beneficial owner, exploring existing international and national definitions, and agreeing on an appropriate definition and ownership thresholds in order to operationalise reporting of beneficial ownership.
- Reviewing and/or amending existing company filing requirements upon company registration to include beneficial ownership information, and considering adding filing requirements related to beneficial ownership disclosure in building licences and license registries for extractive projects.
- Engage international and local lawyers to advise on BO definition and implementation.
- Reviewing international practice with regard to BO with a focus on identifying those practices that will enable the country to enforce BO disclosure as well as the best international practices.
- Identifying Approximation of legislation with EU directives and other accepted international regulations on BO.

#### Institutional framework for beneficial ownership disclosure

- Undertake Legal and Regulatory Review with regard to BO Locally and on an International level with a focus on:
  - see 1.1. b.
- Establishing the best/most effective manner to implement BO disclosure (i.e. whether by incorporating the BO definition and disclosure obligations in existing legislation or otherwise).

### Objective 2: Establishing the best/most effective manner to implement BO disclosure (i.e. whether by incorporating the BO definition and disclosure obligations in existing legislation or otherwise)

- Consultations with government agencies in order to identify the agency(ies) that is responsible or could best suited to oversee, collate and maintain beneficial ownership information.

### Estimated cost

<table>
<thead>
<tr>
<th>Year</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
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<tbody>
<tr>
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<td>25,000</td>
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Consultation with stakeholders with a view to determine the level of detail of the beneficial ownership disclosures (nationality, country of residence, level of ownership, how ownership is exerted, date of birth, residential address, means of contact, etc.), including opportunities and challenges with such disclosures. EITI Albania lead

**Objective 3:** Level of detail to be disclosed

- a. Consultation with government
  - MF, MJ, ME, Parliamentary commission

- b. Consultation with civil society
  - Moderator / Consensus Building

- c. Consultation with companies
  - Moderator / Consensus Building

Agree an appropriate definition and ownership thresholds and disclosure in order to operationalize reporting of beneficial ownership?

- a. MSG to meet, discuss and agree on definition of BO.
  - EITI Albania + MSG

Implement legal and regulative changes

<table>
<thead>
<tr>
<th></th>
<th>Govt. Working group from MF, MJ, ME, Parliamentary commission</th>
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<tbody>
<tr>
<td>Cost</td>
<td>$20,000</td>
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**Objective 4:** Reporting obligations for Politically Exposed Persons

- Investigate existing national and international definitions and reporting requirements for PEPs with a view to identifying national policy objectives on this subject and aligning the beneficial ownership definition accordingly.
  - EITI + Consultancy

**Objective 5:** Activities aimed at exploring what would be the most appropriate time for data collection of beneficial ownership information

- Review what would be the most appropriate time for data collection of beneficial ownership
  - EITI Albania + MSG

- How to reflect changes in ownership over time, once a baseline has been established
- Identify an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection
  - see legal review

**Objective 6:** Activities aimed at increasing data accessibility

- Identify the companies that will be required to participate in beneficial ownership reporting
  - MSG

- Identify the most efficient and sustainable data collection approach, including for example developing a beneficial ownership declaration form, or adaptations of the EITI's model beneficial ownership declarations form as tools for collecting beneficial ownership data
  - EITI Albania, MSG
NOTE: The process of implementation of the legislation under which it will establish rules for the dissemination and/or declaration of information about the real owners who benefit or control the company, which exercise their functions in forms of the extractive industry, oil, gas and minerals, requires an extensive analysis in relation to the current legislative framework in force, in order to highlight the legal framework which already regulates certain elements of beneficial ownership and addresses the need for additional targeted legislation to regulate the other elements of BO, already untreated and unregulated.

In this sense, it should be said that to some extent, Albania has made little progress with respect to the issue of regulation of certain elements of BO.

Specifically:

1. Based on Law No. 9917, dated 19.5.2008 “On prevention of money laundering and financing of terrorism”, it is treated narrowly the concept of BO, the beneficial owner. In fact, the law treats narrowly our issue, however, is a good point of reference for further initiatives in this direction.

Specifically, under Article 1 of Law No. 9917, dated 19.5.2008 “On prevention of money laundering and financing of terrorism”, “beneficial owner” is the natural or legal person that owns or controls ultimately a customer and/or the person, on whose behalf a transaction is executed. Here are included also those persons that exercise effective final control over a legal person.

- a) owns directly or indirectly at least 25 per cent of the shares or voting rights of a legal person;
- b) alone owns at least 25 per cent of the votes of a legal person under an agreement with partners or other shareholders;
- c) de facto determines the decisions taken by the legal person;
- d) controls in any way the elections, appointment and dismissal of the majority of the members of the administrators of the legal person”.

However, if we analyze more in details the provisions of this law, we conclude that in relation to the all inclusive regulation of the BO, presents two problems:

- Adjustments that this law makes and the treatment of BO, relates closely to the prevention and supervision of financial operations through which money laundering is realised. Thus the provisions of this Law may regulate specific issues relating money laundering, coming from illegal activities. Meanwhile the concept of BO is all inclusive and has to do with the identification of the factual beneficial owner, even if the company’s activity is regular.

- Secondly, the entities to which apply the provisions of this law, appear in an exhaustive list and create opportunities for certain categories of entities operating in the extractive industry, to attempt not to be subject of the enforcement of the provisions of this law. In addition to the reporting obligations, are charged entities that involve or facilitate transactions, i.e. commercial banks, savings and credit cooperatives, lawyers, notaries, property registration offices, etc. Thus, this law does not impose genuine obligations in relation to companies to disseminate information on the BO.

2. A positive development in terms of the process of BO, should be considered the adoption of the legal framework in terms of judicial infrastructures. In this sense, based on this framework, it becomes possible that within the verification of the figure of certain subjects such as judges and prosecutors and other categories of subjects involved in this process, to verify the data, even for cases when these categories of subjects are actually beneficial owners or factually control companies or their bodies. However, in this case the scope of this legal framework is very narrow, having to do with a certain category of subjects and does not impose general rules concerning BO.

We evaluate that the drafting, adoption and implementation of a legal framework in terms of BO, must be all inclusive by closing liability for the dissemination of data of BO to companies and not to the subjects that are involved in transactions that these companies realize. Also, it should also be evaluated the way it will be accomplished the imposing of this obligation and the mechanisms that will be used to ensure the effective implementation, since the monitoring mechanisms and measures that will be applied in case of failure to comply with this obligation are crucial to the success of law enforcement.

In this sense, the composition, adoption and implementation of a legal framework in terms of BO, requires a deep analysis and interaction with the actual legal framework, specifically with the following laws:

- Law No.9901, dated 14.4.2008 “For traders and trading companies”;
- Law No.9917, dated 19.5.2008 “On prevention of money laundering and financing of terrorism”;
- Legal framework for judicial infrastructures;
- Law No. 9857, dated 10.5.2008 “On the prevention of conflicts of interest in exercising public functions”;
- Law No. 9901, dated 14.4.2008 “On the declaration and audit of assets to liabilities of the elected and certain public officials”;
- Criminal Code of the Republic of Albania;
- Law No. 10,279, dated 20.5.2010 “On administrative offenses”;
- International conventions to which the Republic of Albania adheres.