



Albania, July 2018; revised July 2020

Terms of Reference

Consultancy Service – Scoping Study of Beneficial Ownership Reporting Requirements and Development of Public BO Register

Approved by the [MSG EITI Albania](#) on [date August 3, 2018](#) and
[revised by MSG on July 01, 2020](#)

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1 Background

The Extractive Industries Transparency Initiative (EITI) is a global standard for improving transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator, and published annually alongside other information about the extractive industries in accordance with

the EITI Standard.

- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI reporting, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business. The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

As the revelations of the Panama Papers have conclusively shown, anonymous company ownership bears an unacceptably high cost for: • **Society**, allowing criminals and corrupt individuals to escape accountability or evade tax, and • **Business**, costing companies and their investors millions of dollars when opacity leads to fraud or corruption, hobbling national economies by limiting healthy competition, and making it difficult for businesses to know what they are ultimately invested in. As a global community, we tackle these costs by building a new norm of corporate transparency that makes it significantly more difficult, risky, and more expensive to use company structures for corrupt or criminal activity than it is now. The only way to do this, is to end the problem of anonymous companies by providing public, free access to beneficial ownership as open data. This ensures that business and civil society can make use of this data for due diligence or investigations.

Transparency about government revenues from the extractive sector is important for accountability, but says little about who owns and ultimately profits from the activities of the oil, gas and mining companies. The identity of the real owners – the ‘beneficial owners’ – of the companies that have obtained rights to extract oil, gas and minerals is often unknown, hidden by a chain of unaccountable corporate entities. This problem affects other sectors and often helps to feed corruption and tax evasion. People who live in resource rich countries are at risk of losing out as extractive assets are too often misallocated for corrupt reasons.

The EITI Board agreed in February 2013 that following a period of testing and learning, the EITI should, in the future, require disclosure of beneficial ownership in oil, gas and mining companies operating in implementing countries.

With the adoption of the 2016 EITI Standard, and in particular **Requirement 2.5**, the EITI Board has agreed that by 1 January 2020, all implementing countries must ensure that corporate entities that bid for, operate, or invest in any extractive assets disclose the identity of their beneficial owners. The EITI Standards also require that any “politically exposed person” who is a beneficial owner must be identified by 1 January 2020. It is recommended that the beneficial ownership information is made available through a public register. By 01 January 2017, as required, Albania published a BO roadmap, that listed the expected activities, resources and responsibilities that will enable full closure by 2020.

¹ <http://eiti.org/document/standard>

The Government of Albania and EITI Albania National Secretariat requires the services of a competent and credible firm to produce a scoping study on developing mechanism that sets out how beneficial ownership reporting data requirements should be collected and published and developing a public Beneficial Ownership register.

EITI Implementation in Albania

The Albanian Government supported this initiative and engaged for EITI implementation on March 2009. It became an **EITI Candidate Country** on May, 2009.

The International EITI Board, declared Albania as an **EITI Compliant Country** according to EITI standard on May 2013. Compliance with EITI Standard means that the country has an effective process for annual declaration and the reconciliation of all revenues from the extractive industries. This process gives possibility to the citizens to see the revenues from the companies of oil & gas, mining and those hydro power sectors.

Albania has published EITI reports for 8 fiscal years (2009 – 2016) so far. In the EITI Reports for the fiscal years 2015 and 2016 EITI Albania requested a voluntary declaration of Beneficial Ownership (BO) for the reporting companies. In 2015 EITI Report of the 134 reporting companies, 31 provided details on legal and/or beneficial owners and in 2016 EITI Report of the 141 reporting companies, 32 provided details on BO. EITI Albania will in the lead up to 2020 consider issues related to establishing an institutional framework for disclosure, defining the scope and level of details of disclosures and developing efficient data collection and assurance procedures.

2 Objectives of the assignment

On behalf of the government of Albania and the Albanian MSG, the EITI Albania seeks a competent and credible firm, free from conflicts of interest, to provide Consultancy Services in accordance with the EITI Standard and this Terms of Reference. The objective of the assignment is to i) Identify the current legal and regulatory framework and practices related to company reporting on ownership information, ii) Map the companies that will be required to publish their beneficial owners in accordance with the EITI Standard, iii) Assess of the institutional capacity of government agencies currently collecting company data to facilitate beneficial ownership data collection, vi) Provide recommendations for the methodology of data collection and suggest which institutions could be suitable platforms for implementing the MSG/government's objectives related to beneficial ownership; v) Develop and finalize a public Beneficial Ownership register template; vi) Provide workshop presentations for MSG, EITI Albania and other stakeholders on the Register template;

3 Scope of service and tasks

The consultant will be expected to undertake the following tasks:

1. Consultations. The consultant will organize broad consultations with stakeholders, in particular the members of the multi-stakeholder group as well as the government agencies involved in the management of the extractive industries (in particular company registration or issuing of extractive industry licenses) and

wider stakeholders (members of Parliament, companies and civil society) on legal concerns, obstacles, on-going reforms and opportunities for beneficial ownership disclosures. Findings of the consultations should be documented in the scoping study.

1.1. Establishing the best/most effective manner to implement BO disclosure. Undertake Legal and Regulatory Review with regard to BO with a focus on: a) Reviewing local legal and regulatory framework to help identify the set of laws and regulations that are already in place and those who need revision to overcome regulatory or practical barriers to disclosure of beneficial ownership, b) Reviewing whether national laws include a definition of beneficial owners exploring existing international and national definitions, and agreeing an appropriate definition and ownership thresholds in order to operationalize reporting of beneficial ownership, c) 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 bidding processes and license registries for extractive projects, d) Legal advice on BO implementation, e) 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, f) Identify Approximation of legislation with EU directives and other accepted international regulations on BO,

1.2 Data level to be disclosed. Consultation with stakeholders with a view to determine the level of detail of the beneficial ownership disclosures (The full name, date of birth, place of birth, nationality, country or state of residence, residential addresses and service address of each beneficial owner, an official identification document number indicating the type of document, and the country of issue, the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto, the effective date on which a natural person became, or ceased to be, a beneficial owner of the legal entity or has increased or reduced his beneficial interest in the entity, Beneficial owners should be required to report their holding of shares or voting rights in exact percentages, date of data submission, etc.) including opportunities and challenges with such disclosures, agree an appropriate definition and ownership thresholds disclosure, additionally identifying if there are barriers to enabling public disclosure of BO information.

1.3 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. Analysis of already existing data disclosures to High Inspectorate on Declaration and Audit of Assets and Conflict of Interests (HIDAACI) and the National Business Center.

1.4 Activities aimed at exploring what would be the most appropriate time for data collection of beneficial ownership information. 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.

1.5 Data collection procedures and data accessibility. Identify the most efficient and sustainable data collection approach, including developing a beneficial ownership declaration form, Increase data accessibility by publication of data in electronic or other open data formats.

2. Scoping study. The consultant should undertake a scoping study on beneficial ownership to help understand whether the country has, in place policies and institutional practices to collect and disclose information on beneficial ownership in accordance with the EITI Requirements. The consultant should undertake an assessment of the institutional capacity of government agencies currently collecting company data to facilitate beneficial ownership data collection in Albania. This should include:

- a) A brief overview of laws governing extractive companies operating in the country, including any provisions related to company registers or requirements for companies to report beneficial ownership information.
- b) Assessment of the institutional capacity of relevant government entities currently collecting company data to determine their bandwidth to manage beneficial ownership data collection in Albania;
- c) A brief review of existing company registers in the country including the information contained within such registers and whether this information is publicly accessible.
- d) Suggest methodology for collecting beneficial ownership information from companies and existing registries, both in the short run (through EITI reporting) and in the longer run by identifying the appropriate government agency to be responsible. This should include development of beneficial ownership reporting register to be used by EITI Albania/IA in their data collection, provide recommendations for efficient data collection. It should also include consulting with the Independent Administrator to take into account challenges identified during the data collection. In light of the above, the Consultant will analyze/review the information collected willingly from the extractive companies in Albania on beneficial ownership in the EITI 2015- 2016, 2017- 2018 Reports and identify gaps and provide recommendations on how to improve data collection, how the EITI in the country can work to address any identified challenges and possible next steps in implementing beneficial ownership disclosure.
- e) Establish the format of the Beneficial Ownership register template, methodology, methods, processes and procedures to be used for the collection of data as well as for the assessment of the gathered information.

3. Beneficial Ownership Register template.

- a) Develop a Beneficial Ownership register template and draft the Decisions of Council of Ministers for the approval of the format and methodology of the BO Register and the approval for the BO Register implementation;
- b) The register shall reflect adequate, accurate and current information in respect of the beneficial owners of the companies: The full name, date of birth, place of birth, nationality, country or state of residence, residential addresses and service address of each beneficial owner, an official identification document number indicating the type of document, and the country of issue, the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto, the effective date on which a natural person became, or ceased to be, a beneficial owner of the legal entity or has increased or reduced his beneficial interest in the entity, Beneficial owners should be required to report their holding of shares or voting rights in exact percentages, date of data submission, etc.;
- c) A statement of the nature and extent of the interest held by each beneficial owner;
- d) Develop a Beneficial ownership Declaration Template Form, which will be accessible on the EITI Albania website and shall include accurate information;

4. Capacity building. The consultant should deliver the following capacity building activities:

a) One-day event presentation on workshop on beneficial ownership for members of MSG and relevant government agencies to explain the reporting register Template for the disclosure of Beneficial Ownership to the extractive companies that will be selected for EITI Report 2019. The event will provide an opportunity to respond to questions from the extractive companies regarding the BO Register sample and disclosing Beneficial Ownership.

4 Deliverables

The assignment is expected to commence on August 2020 and culminating in the finalisation of the assignment by December 2020.

The consultant will have a period of 15 weeks to prepare and deliver the assignment. The study will be prepared in both English and Albanian language.

- The consultant will prepare and present the draft study and BO Register Template, BO Declaration Template Form, to the MSG and the EITI Albania Secretariat for review and comment within 11 weeks from the date of the assignment;
- EITI Albania Secretariat will deliver comments to the consultant within the next 1 week.
- The consultant will prepare the presentation of the final study, the BO Register and DCM Decisions for approval and implementation of BO Register, BO Declaration form within 2 weeks from delivery of comments.

The proposed schedule is set out below:

Signing of contract	August 2020*
Preparation work	5 weeks
Consultation with MSG and stakeholders	1 week
Undertaking legal review	3 weeks
Submission of Draft Study and BO Register, BO Declaration form	2 weeks
Submission of Final Study and BO Register Template, BO Declaration Template form	3 weeks
Event Presentation for stakeholders	Within one week after the submission e the Final study

* The Signing of the contract date will be set according to the deadlines of WB procurement procedures, at the end of the selection process. This contract will be effective and financial relations will start only after the WB funding will be officially available.

5 Consultant Qualifications requirements

The Consultant will need to demonstrate:

- Legal and technical skills, including knowledge on Beneficial Ownership issues, transparency and governance in the extractive sector, and mandatory company reporting standards and practices;
- Country knowledge and knowledge of the institutional environment in Albania;
- Knowledge of the oil, gas and mining sectors in Albania;
- Experience in writing legal papers, laws and regulations or amendments to laws/regulations;
- Experience in IT systems solutions and auditing.

The Consultant must have proved track record in undertaking similar assignments and at least 3 years in business. This service requires a team consisting of Legal and IT experts with the following qualifications:

a) One team leader / Legal Expert:

- Master Degree in Law;
- Have at least 3 years of experience with Beneficial Ownership issues, transparency and governance in the extractive sector;
- Have at least 3 years of experience participating in the consultancy process of various regulatory acts;
- Significant experience in the analysis and preparation of the legal framework;
- General knowledge on the functioning of state institutions in Albania;
- Experience in public administration offices
- Knowledge of the oil, gas and mining sectors in Albania would be an asset;
- Experience with conducting training/workshops
- Experience in training especially in company law or business organisations would be an asset;
- Strong skills in communication, report writing and presentations;
- Very good knowledge of English language.

b) Two Legal Experts:

- University education in Law;
- Have at least 3 years of experience in practicing law;
- At least 3 years of experience in public administration offices
- Knowledge of the oil, gas and mining sectors in Albania would be an asset;
- Very good knowledge of English language.

IT Expert:

- University education in informatics, telecommunications or computer sciences is a must requirement. Master Degree is preferred;

- At least 3 years of professional working experience in the similar-related field, including experience with management information systems applied in private and public entities;
- Knowledge of the oil, gas and mining sectors in Albania would be an asset;
- Strong analytical, communication, writing and reporting skills;
- Very good knowledge of English language.

6 Contract Duration:

The contract is lump sum and the services should be performed within 15 weeks from contract signing. The maximum estimated input of Key Experts' time input is 91 person/calendar days. The consultant is expected to complete it within the period August - December 31, 2020. This date is the Grant's Closing Date and no contract extension can take place beyond it. Therefore, the assignment should be completed, and respective invoices should be submitted until this date.

7 Selection Method:

The consultant will be selected in accordance with Consultant Qualification method with the procedures set out in World Bank's Procurement Regulations for IPF Borrowers (July 2016, revised November 2017) (Procurement Regulations).

8 Schedule of payments

The schedule of payments will finally be agreed during contract negotiations and shall have the following structure:

- 30% following submission of Draft Study and BO Register, BO Declaration form;
- 60% following submission of Final Study and BO Register Template, BO Declaration template form;
- 10% following successful completion of Event Presentation for stakeholders.

9 Administrative arrangements

The EITI Albania Secretariat will assist the consultant with the following:

1. Liaison with the relevant Ministries and Government agencies to facilitate consultant's work.
2. Weekly co-ordination on the work of the consultant with relevant government agencies, MSG and stakeholders.

10 Reference materials

- Relevant reference documents are available from <https://eiti.org/beneficial-ownership>
- EITI Albania Draft Law on Transparency, <http://www.albeiti.org/wp-content/uploads/2014/03/Legal-review-Final-Report-ENG.pdf>

- EITI Albania BO Roadmap <http://www.albeiti.org/wp-content/uploads/2016/02/BO-Roadmap-Albania.pdf>
- Eurosupport S.r.l Study: Background research, analysis of Albanian national legislative and regulatory framework in implementing EITI standards <http://www.albeiti.org/wp-content/uploads/2014/03/Legal-review-Final-Report-ENG.pdf>