

FINAL

**A legal assessment of the institutional framework for
Beneficial Ownership (BO) in Suriname and advice on the first
steps of BO implementation**

Assessment Document

Prepared for:

**THE MINISTRY OF NATURAL RESOURCES
OF THE REPUBLIC OF SURINAME**

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2 Introduction

2.1 Assignment

We are pleased to present this Assessment Document in connection with the following assignment:

A legal assessment of the institutional framework for Beneficial Ownership (BO) in Suriname and advice on the first steps of BO implementation.

hereinafter referred to as the “**Assignment**”, in the framework of the following project:

Project:	Suriname Extractive Industries Technical Assistance RE
Project ID:	P163612
EGPS Grant No.:	TF0A6097

The Ministry of Natural Resources (“**MNR**”) has engaged Mr. P.P.G. Bissessur (the “**Consultant**”) to execute the Assignment. The MNR and the Consultant have entered into a Consultancy Contract on 8 September 2020 with Contract No. 001/09/2020 (the “**Contract**”). The GoS received a grant from the Extractive Global Programmatic Support (“**EGPS**”) Multi-Donor Trust Fund through the World Bank. This Assignment is funded with this grant.

2.2 Purpose and content of this Assessment Document

The purpose of this Assessment Document is to provide recommendations regarding:

- a. A definition a ‘beneficial owner’. Such definition should include at a minimum criteria on determining beneficial ownership including: (i) provisions regarding the minimum threshold for disclosure; (ii) specific measures and provisions relating to PEPs; and (iii) exemptions;
- b. The level of (personal) details of the beneficial ownership disclosures such as name, date of birth, nationality, et cetera; and
- c. The institution or agency that could best be suited to collate and maintain beneficial ownership information.

Please note that during our research, we have identified that, although the primary scope of the research is beneficial ownership (disclosure) according to EITI, we recognized that given recent international developments, that a broad approach of beneficial ownership disclosure should be recommended.

2.3 EITI Requirements

The EITI Requirements form the core of the EITI Standard and are the minimum requirements for EITI implementation. The following eight primary EITI requirements are defined in the EITI Standard 2019¹:

1. **Oversight by the multi-stakeholder group.**
2. **Disclosure of information related to the Legal and institutional framework, including allocation of contracts and licenses.**
3. Disclosure of information related to **exploration and production.**
4. A reconciliation of company payments and government **revenues collection.**
5. Disclosure of information related to **revenue allocations.**
6. Disclosure of information related to **social expenditures** and the **impact** of the extractive sector **on the economy.**
7. **Outcomes and impact:** public awareness, understanding of what the figures mean, and public debate about how resource revenues can be used effectively.
8. **Compliance and deadlines for implementing countries.**

Each requirement is divided into further detailed sub-requirements. We will not go into further detail on each (sub-)requirement as this is beyond the scope of this memorandum.

The Legal Assessment of the Institutional Framework for Beneficial Ownership (BO) in Suriname is related to the implementation of the **second EITI requirement** (disclosure of information regarding the legal and institutional framework, including allocation of contracts and licenses).

The full EITI Requirement 2.5 relating to beneficial ownership is defined as follows in the EITI Standards 2019:

2.5 Beneficial ownership

- a) It is recommended 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. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or

¹ <https://eiti.org/document/eiti-standard-2019>

agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.

- b) Implementing countries are required 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.
- c) As of 1 January 2020, it is required that implementing countries request, and companies publicly disclose, beneficial ownership information. This applies to corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract 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 entities 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 Article 1 of the EITI Board's procedures for oversight of EITI implementation in section 4.
- d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.
- e) The multi-stakeholder group should assess any existing mechanisms for assuring the reliability of beneficial ownership information and agree an approach for corporate entities within the scope of 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.
- f) Definition of beneficial ownership:
 - i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
 - ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and

relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

iv. 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.

g) Implementing countries and multi-stakeholder groups should also address disclosure of legal owners and share of ownership.

2.4 Further Introductory Information regarding EITI and Beneficial Ownership

We refer further to the Inception Report for the following relevant matters:

- The EITI Validation Process;
- The status of EITI in Suriname;
- Beneficial Ownership in accordance with the EITI Standard 2019;
- Benefits of Beneficial Ownership disclosure.

3 Overview of Research and Methodology

In general, the overall objective of the Assignment is to support the Suriname Extractive Industries Transparency Initiative (“SEITI”) Multi-Stakeholder Group (“MSG”) to implement its Beneficial Ownership Roadmap. In order to do so, and in accordance with the ToR, the Assignment will provide the following:

1. An explanation of the government’s policy and the MSG’s on disclosure of beneficial ownership.
2. A recommended definition of beneficial ownership (to be approved by the MSG in conformity with the EITI standard), including a definition of beneficiary owner for EITI reporting and as it relates to relevant law, rules and regulations for the mining sector for Suriname.
3. An analysis of gaps in legislation which are considered barriers to beneficial ownership disclosure or facilitate non-disclosure, including recommendation how to address these gaps and the level of detail to be considered for regulations and legislation on beneficial ownership.
4. An assessment of the institutional framework for beneficial ownership disclosure. This should include aspects like data timeliness, accessibility, and accuracy, as well as capacity building needs.
5. Conduct consultation through electronic means with civil society, companies, government agencies and other stakeholders in order to:
 - discuss the level of detail of the beneficial ownership disclosures.
 - Provide advice on agency(ies) and processes that could best be suited to oversee, collate and maintain beneficial ownership information.

The implementation of a beneficial ownership disclosure regime in line with the SEITI Beneficial Ownership Roadmap enables Suriname to foster further leadership in a transparent extractive industry sector business environment. In addition, by enhancing transparency and good governance in the extractive industry sector, the level of confidence in this sector will be increased, in particular for all stakeholders, such as but not limited to (international) investors, (international) financial institutions and Suriname citizens.

In accordance with the ToR, the methodology for this Assignment will be based on:

- A desk research of international good practice in beneficial ownership disclosure including definitions and legislation. – **Chapter 4**
- A desk review of relevant existing domestic Suriname laws and regulations relating to beneficial ownership disclosure, both specific as well as non-specific to the extractive sector. – **Chapter 5**
- A desk review of institutions that are responsible or could be best suited to oversee collate and maintain beneficial ownership information/data. – **Chapter 6**
- An electronic consultation with relevant stakeholders in order to:
 - discuss the level of detail of the beneficial ownership disclosures;
 - provide advice on agency(ies) and processes that could best be suited to oversee, collate and maintain beneficial ownership information.**Chapter 7**
- A desk analysis of opportunities for Suriname to fulfil the EITI Standard 2019 requirements on beneficial ownership disclosure.
Chapters 8,9 and 10

4 Research of international good practice

The desk research will focus on identifying international good practice in defining beneficial ownership and in legislating for disclosure. The purpose of this research is to consider the experience from a number of countries and multilateral institutions that are already implementing beneficial ownership disclosure regimes for the extractive industries sector. In order to understand international good practice, the Consultant will review the approach from the European Union, the Netherlands, the United States and other multilateral institutions.

In the Inception Phase, the following international good practice laws and regulations have been identified as potentially relevant:

- 5th EU Anti-Money Laundering Directive;
- Dutch Act on the registration of ultimate beneficial owners of corporate entities and other legal entities (*Nederlandse Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten*);
- United States Bank Secrecy Act;
- FATF Recommendations;
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- LBMA Responsible Gold Guidance.

Please note that the EITI Standards 2019 – which also should be regarded as international good practice – insofar this concerns beneficial ownership disclosure, has been discussed extensively in the Inception Report.

The research will focus on the following queries:

1. A (brief) description of the purpose and scope of the law or regulation.
2. Does the law or regulation contain a definition of beneficial ownership?
3. Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?
4. Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

Based on the review, the Consultant will conclude with recommendations on adoption of international good practice within the domestic Suriname legal context. These recommendations will be issued in chapters 8 and 9.

4.1 5th EU Anti-Money Laundering Directive

A (brief) description of the purpose and scope of the law or regulation.

In 2015, the EU adopted a regulatory framework encompassing on preventing the use of the financial system for money laundering or terrorist financing, the 4th EU Anti-Money Laundering Directive.²

This framework takes into account the 2012 recommendations of the Financial Action Task Force (FATF) and go further on a number of issues for anti-money laundering and to counter terrorism financing.

On 19 June 2018 the 5th Anti-Money Laundering Directive³, which amended the 4th Anti-Money Laundering Directive, was published in the Official Journal of the European Union. The Member States had to transpose this Directive by 10 January 2020.

The amendments in the 5th Anti-Money Laundering Directive were introduced to, amongst others, enhance transparency by setting up publicly available registers for companies, trusts and other legal arrangements with regard to for instance beneficial ownership disclosure.

Does the law or regulation contain a definition of beneficial ownership?

Yes, the 5th AML Directive contains the following definition of beneficial ownership:

‘beneficial owner’ means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

- i. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

² Directive (EU) 2015/849

³ Directive (EU) 2018/843

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (2);

- ii. if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(b) in the case of trusts, all following persons:

- i. the settlor(s);
- ii. the trustee(s);
- iii. the protector(s), if any;
- iv. the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- v. any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

Yes. In fact, under the 5th AML Directive, there is a mandatory beneficial ownership registration and disclosure regime. EU Member States are required to ensure that information on the beneficial ownership is accessible in all cases to any member of the general public (Article 30).

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

Yes, the definition of beneficial ownership would be suitable for incorporation in the Suriname legal system, but customized for domestic Suriname purposes. For instance, there should be provisions incorporated regarding legal entity types such as foundations under Suriname law (*Stichtingen*).

In addition, the EU definition of politically exposed person would be suitable for incorporation in the Suriname legal system, but this definition should be further enhanced and customized for domestic Suriname purposes.

4.2 Dutch Act on the registration of ultimate beneficial owners of corporate entities and other legal entities (Nederlandse Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten)

A (brief) description of the purpose and scope of the law or regulation.

The purpose of this Act is the implementation of a public register of Ultimate Beneficial Owners in the Netherlands, pursuant to the 5th EU Anti-Money Laundering Directive.

Does the law or regulation contain a definition of beneficial ownership?

The definition of UBO is provided in the general Dutch Anti-Money Laundering and Terrorism Financing Prevention Act and its related Implementation Decree, and provides for the following:

- For private limited liability companies (BVs) and limited liability companies (NVs) as well as comparable other legal entities or European public limited companies and European cooperative companies the UBOs are the individuals (natural persons) who directly or indirectly hold more than 25% of the shares, voting rights or an ownership interest in the company. But a lower percentage is not an absolute safe haven. Individuals who do not hold more than 25% of the shares, voting rights or ownership interest in a company can also be classified as a UBO if

such persons have ultimate ownership or control of a company in any other way. Also, if the ultimate ownership of, or control over, a company is held indirectly, for example through another legal person, such as a trust office foundation, or any other structure of legal persons, it is the natural person(s) with the ultimate ownership interest or control who is to be regarded as the UBO. Natural persons who hold bearer shares in a company can also be considered a UBO. If an individual holds a qualifying ownership interest in a corporate entity through depository receipts issued by a Dutch foundation (stichting administratiekantoor), the individual will still qualify as a UBO of the company.

- Foundations, together with associations, mutual insurance companies, and cooperatives, are considered “other legal entities”. UBOs are the individuals who directly or indirectly have an ownership interest of more than 25%, who can exercise more than 25% of the voting rights in respect of changes of the articles of association, or who can exercise effective control over the legal entity. The statutory director of the foundation and association will often be the UBO.
- For limited partnerships: because there can be no shareholding in a partnership, natural persons who hold more than 25% of the ownership interest in a partnership, or who, in more specifically defined cases, can exercise more than 25% of the voting rights regarding changes of the limited partnership agreement or are able to exercise actual control in a partnership, are UBOs. Ownership interest also includes a right to distribution of the profit or reserves of the partnership, or to a surplus to be distributed after liquidation.
- With respect to a trust (or trust-like structure), all persons belonging to any of the following categories are considered UBOs, irrespective of the percentage of their interest:
 - the incorporator(s);
 - the trustee(s);
 - the protector(s);
 - the beneficiaries, or where the individuals benefitting from the legal arrangement or entity have yet to or cannot be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates, irrespective of interest of or allocated to such beneficiaries individually; and
 - any other natural persons exercising ultimate control over the trust by means of direct or indirect ownership or by other means.
- Natural persons who meet the UBO threshold, through direct or indirect ownership or exercise control over the trust by any other means, also qualify as a UBO.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

Yes. Legal entities must provide the following information about their UBOs to the Dutch Trade Register, kept by the Dutch Chamber of Commerce:

- Name;
- month of birth, year of birth, country of residence and nationality;
- nature and extent of the economic interest held by the UBO;
- date of birth, place of birth, country of birth and home address;
- Tax identification number;
- copies of documents used to verify the abovementioned personal details; and
- copies of documents showing the nature and extent of the economic interest held.

The Name, birth date, country of residence, nationality, nature and extent of the economic interest held by the UBO will be made public. The remaining information will remain confidential yet accessible for Government authorities.

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

Yes, some elements of the beneficial ownership definition would be suitable for use in Suriname as a consequence of the similar types of legal entities.

4.3 United States Bank Secrecy Act

A (brief) description of the purpose and scope of the law or regulation.

The Bank Secrecy Act (BSA) is United States legislation pursuant to which certain requirements are imposed on financial institutions in the United States which could assist United States government agencies in detecting and preventing money laundering.

Does the law or regulation contain a definition of beneficial ownership?

Yes:

Beneficial owner means each of the following:

1. Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and
2. A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

- i. An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or
- ii. Any other individual who regularly performs similar functions.

If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. [...]

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

No.

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

No, the law is written for common law systems and would not be suitable for use in Suriname.

4.4 2012 FATF Recommendations

A (brief) description of the purpose and scope of the law or regulation.

According to FATF, the FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats.

The FATF Recommendations, sets out 40 standards for anti-money laundering and combatting terrorism financing, which countries should implement through measures adapted to their particular circumstances.

Does the law or regulation contain a definition of beneficial ownership?

Yes:

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It

also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

Yes, but limited. The interpretative note to Recommendation 24 refers only to “basic information” and “beneficial ownership information”, and that competent authorities, and in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties.

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

As the FATF Recommendations are the international benchmark in anti-money laundering and combatting financing of terrorism, in our opinion the definition of beneficial ownership to be incorporated in Suriname law as well as beneficial ownership disclosure regimes, should at a minimum satisfies all FATF Recommendations.

4.5 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

A (brief) description of the purpose and scope of the law or regulation.

The OECD Due Diligence Guidance provides detailed recommendations to help mining companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices.

Does the law or regulation contain a definition of beneficial ownership?

No.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

Yes, according to the guidance, all actors in a mineral supply chain should collect and disclose beneficial ownership information.

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

Yes, but the level beneficial ownership disclosure does not exceed that of the previous mentioned laws and regulations. This guidance is more specific for the extractive industries.

4.6 LBMA Responsible Gold Guidance

A (brief) description of the purpose and scope of the law or regulation.

The LBMA has set up a Responsible Gold Guidance for Good Delivery Refiners in order to combat systematic or widespread abuses of human rights, to avoid contributing to conflict, and to comply with high standards of anti-money laundering and combating terrorist financing practice.

Does the law or regulation contain a definition of beneficial ownership?

Yes:

Beneficial Owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control (over 25%) over a legal person or arrangement.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

No.

Would any provision relating to the definition of beneficial ownership and/or facilitate beneficial ownership disclosure in this law or regulation, be suitable for incorporation in the Suriname legal system?

Yes, but the level beneficial ownership disclosure does not exceed that of the previous mentioned laws and regulations. This guidance is more specific for the gold sector.

5 Review of relevant existing domestic Suriname laws and regulations

The desk review of relevant existing domestic Suriname laws and regulations will consider current provisions which could facilitate beneficial ownership disclosure. In addition, the review will identify current provisions which could prevent or interfere with beneficial ownership disclosure.

In the Inception Phase, the following domestic Suriname laws and regulations have been identified as potentially relevant, and will be included in the review:

- Trade Register Act (*Handelsregisterwet*);
- Surinamese Commercial Code (*Surinaams Wetboek van Koophandel*);
- Foundation Act (*Wet op de Stichtingen*);
- Financial Reporting Act (*Wet op de Jaarrekeningen*);
- Disclosure of Unusual Transactions Act (*Wet Melding Ongebruikelijke Transacties*);
- Income Tax Act 1922 (*Wet Inkomstenbelasting 1922*);
- Anti-Corruption Act (*Anticorruptiewet*);
- Mining Decree (*Decreet Mijnbouw*);

In addition, after the Inception Phase, we have identified the following Acts als potentielle relevant, which are included in this review:

- Service Providers Identification Act (*Wet Identificatieplicht Dienstverleners*);
- Petroleum Act (*Petroleumwet*);
- Cooperative Associations Act 1944 (*Wet Cooperatieve Verenigingen 1944*);
- Dividend Tax 1973 (*Dividendbelasting 1973*).

The review will focus on the following queries:

1. A (brief) description of the purpose and scope of the law or regulation.
2. Does the law or regulation contain a definition of beneficial ownership?
3. Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?
4. Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?
5. Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

Based on the review, the Consultant will conclude with an assessment of the progress on beneficial ownership disclosure in accordance with the EITI Standard 2019, in Suriname.

5.1 Trade Register Act (Handelsregisterwet)

The Trade Register Act (Handelsregisterwet) is dated 15 June 1936.⁴

A (brief) description of the purpose and scope of the law or regulation.

The purpose of the Trade Register Act is to establish a trade register in which all in Suriname in which all companies located and/or incorporated in Suriname, are registered.

According to the Act, the Trade Register is kept by the Chamber of Commerce and Industry. The Trade Register is, according to Article 1 sub 6 of the Trade Register Act, under supervision by the Trade Register Commission.

Does the law or regulation contain a definition of beneficial ownership?

Although the Trade Register Act does contain provisions relating to the information to be registered for individual (natural person) owners of a sole proprietorship, the Trade Register Act does not contain any definition of beneficial ownership.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

For beneficial individual (natural person) owners of a sole proprietorship, the Trade Register Act does contain provisions on which certain information on such individuals, is mandatory to be disclosed in the Trade Register.

However, in the case of corporate entities / legal entities, the Trade Register Act does not contain any provision relating to disclosure of beneficial ownership.

In addition, please note that the Trade Register Act contain a provision that the Trade Register is available for inspection for the general public, free of charge. In addition, the Secretary of the Chamber of Commerce and Industry has to provide extracts of the Trade Register to anyone who requests such extracts.

In addition, there are penal provisions for cases in which someone makes intentionally makes an incorrect registration in the Trade Register.

⁴ Verordening 15 juni 1936 (G.B. no. 149, geldende tekst G.B. 1937 no. 144) tot instelling van een handelsregister zoals zij luidt na de wijzigingen daarin aangebracht.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

This law contains a provision in which four businesses are required to be registered in the trade register. This concerns the following businesses: general partnership (*vennootschap onder firma*), limited partnership (*commanditaire vennootschap*), limited liability company (naamloze vennootschap) and cooperative associations (*coöperatieve verenigingen*).

The other businesses like a sole proprietorship (*eenmanszaak*) and partnership (*maatschap*) are also compulsory to register.

Companies belonging to public law bodies are excluded from the registration requirement. This also applies to sole proprietorships in which only agriculture, horticulture, fishing or the hunting is exercised.

As far as the registration of UBOs is concerned, the law has shortcomings. This is explained in more detail below. Article 5 paragraph 1 states that if the business belongs to a natural person, that natural person is registered by name and surname in the trade register. If, of course, this person is a woman, the surname and first names of the husband or deceased husband will also be registered. This registration relates, among other things, to a sole proprietorship, partnership, general partnership and limited partnership.

In accordance with paragraph 2 of this article, if a company belongs to several persons, each of the natural persons is registered, stating their share (contribution capital). Although the aforementioned forms of company can in practice be used as vehicles, it is assumed in this document that they are purely companies that actually belong to the registered persons.

However, in Article 8 in which the registration of a limited liability company (*naamloze vennootschap*) is regulated, the registration of the UBOs and their shares or control is missing. There is no obligation to register the UBOs and their shares in capital or controlling capital. This appears to be a big loophole in the law that allows UBOs to disclose themselves freely.

This also applies to the cooperative association (see article 9), the association as a moral body (article 10) as well as when the business belongs to a mutual insurance or guarantee company and the foundation (article 11).

The same applies to a business belonging to a foreign national or to a legal person established under the legislation of a foreign country (article 12). If a company has a

branch or branch office in Suriname, or if it is represented in Suriname by a commercial agent, then the same data applies for the registration as mentioned above. The registration of the UBO is therefore also missed at the registration of these businesses/companies (article 14).

In short, this Act does not include an obligation for the registration of UBOs, except for natural persons who are owners of a business. Logically, therefore, no obligation has been included to register shares or controlling capital.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

In general, this Act does not contain a provision that (mandatory) prescribes registration of UBOs. However, an exception is found in Article 14 dealing with a branch or suboffice of a foreign business/company. In paragraph 4 of this article is stated that if the business itself is established abroad, the branch or suboffice is also obliged upon registration to state everything that is required under the legislation of the country of its establishment regarding the matter for registration in the trade register or otherwise publicly disclosed.

5.2 Surinamese Commercial Code (Surinaams Wetboek van Koophandel)

The Surinamese Commercial Code (*Surinaams Wetboek van Koophandel*) is dated 2 June 1936.⁵

A (brief) description of the purpose and scope of the law or regulation.

The purpose of the Surinamese Commercial Code to provide provisions on Surinamese commercial law. It provides regulations with regard to the various company forms in Suriname, in particular the partnership firm (*vennootschap onder firma*), money lending (*geldschieting*), commandite, the limited liability company (*naamloze vennootschap*), brokers (*makelaars*), cashiers (*kassiers*), commercial agents (*handelsagenten*), trade travelers (*handelsreizigers*), commissioners (*commissionairs*), forwarders (*expediteurs*), carriers (*voerlieden*), captains (*kapiteins*), bills of course (*wisselbrieven*) and order letters (*orderbriefjes*), endorsement, checks (*cheques*), promises, quittances to bearers (*quitantien aan toonder*), insurances (*verzekeringen*) and about shipping and everything connected therewith.

For the purpose of this research, the focus will be on the issue of mapping the UBO.

⁵ WET van 2 juni 1936, houdende vaststelling van het Surinaams Wetboek van Koophandel (G.B. 1936 no. 115), gelijk zij luidt na de daarin aangebrachte wijzigingen, zoals laatstelijk gewijzigd bij S.B. 2017 no. 84.

Does the law or regulation contain a definition of beneficial ownership?

Although the Surinamese Commercial Code indicates that a limited company has shareholders, it does not provide a definition of beneficial owner. De Act states that the limited company is the company with a share capital, in which each partner (shareholder) participates for one or more shares.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The Surinamese Commercial Code has made the following provisions to disclose the ultimate beneficial owners:

1. Article 33 states that the limited liability company is a legal entity with one or more registered shares.
2. Article 51 states that the share certificates are registered by name.
3. Article 54 states that the board keeps a register in which the names and addresses of all holders of registered shares are included, stating the type of share, the associated voting right, the amount paid up on it or amount shown as deposited, any additional deposit obligation, the day of acquisition, any liability under Article 37, fourth paragraph, and Article 50, first paragraph, and whether or not a share certificate.
4. Furthermore is stated that the register must include the names and addresses of the holders of depositary receipts for shares to whom meeting rights have been granted, stating the date on which the meeting rights are held by them certificate is attached and the date of recognition or service.
5. The register must regularly be updated. Of every mutation, the day on which it was applied, must be noted in the shareholders register.
6. Shareholders and others whose information must be included in the register, must provide the board timely the necessary information.
7. Every shareholder has the right to inspect the register. This provision guarantees that the register is correct and complete.
8. Furthermore, if the deed of incorporation so states, can the right of inspection also be granted to others. They can too limit the right of access to the data relating to the shares held by the shareholder himself.
9. The deed of incorporation may stipulate that the shareholders register:
 - a. is kept under the responsibility of the board by a third party.
 - b. is kept in electronic form.

Please note that indirect beneficial ownership of economic ownership is not regulated in the Surinamese Commercial Code.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

According to article 57a, the right of usufruct (*recht van vruchtgebruik*) may be established on shares. The authority to establish a usufruct on shares may not be limited or excluded by the deed of incorporation. On the establishment of usufruct are subject to the provisions that apply for the delivery of such items.

This article states further that unless determined otherwise at the time of the creation of the usufruct, the voting rights and other controlling rights accrue to the shareholder. The deed of incorporation may grant this limit or exclude rights to the usufructuary. This means that the possibility exists that the usufructuary may be granted with voting rights and other controlling rights.

Under article 57b rights in rem (*zakelijk recht*) can be established on shares. According to this article the authority to encumber shares with a security interest may be limited or excluded by the deed of incorporation. The provisions that apply to the delivery of such goods also apply to the encumbrance of shares. Article 55a, second paragraph applies mutatis mutandis. Insofar as the contrary does not follow from a provision as referred to in the third paragraph, the rights attached to the share accrue to the shareholder.

Unless the deed of incorporation provides otherwise, the formation of the security right or in an additional deed between shareholder and security holder are determined that the shares attached rights, conditional or otherwise, in whole or partially accrue to the security holder.

In short, the foregoing shows the possibility that the usufructuary or security holder can exercise the rights of the shareholder if this is not excluded in the articles of association. If the shareholder fails to report the established right of usufruct or of the right in rem to the board of the limited liability company, the usufructuary or the holder of the security rights will remain out of the company's sight – although the establishment of the right should be recognized by the (then sitting) board in order to be legally established.

On the other hand, this law does not impose an obligation to register UBOs in a public register, for example in the Trade Register. As a result, it can be said that there is an automatic confidentiality with regard to the UBO.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

In general, this law only allows the legal owners to be registered in a register kept by the board, the so-called shareholders register, and to be kept up to date at all times. However,

the law does not prescribe that shareholders are always obliged to report changes to the board, although basic information should be provided. Rather, it is a non-committal provision in this regard.

The law does not provide any special rule for disclosing UBOs other than to provide marginal space for third parties to gain knowledge of the contents of the shareholders' register if permitted by the company's articles of association. As already explained above, this right of inspection can even be subject to restrictions.

5.3 Foundations Act (Wet op de Stichtingen)

The Foundations Act (Wet op de Stichtingen) is dated 19 July 1968.⁶

A (brief) description of the purpose and scope of the law or regulation.

The purpose of this law is to regulate what a foundation is, its legal status, how it is established and for what purpose. In addition, what should be taken into account when establishing in order to prevent that foundation from belonging to a prohibited foundation and its objectives contrary to public order.

Does the law or regulation contain a definition of beneficial ownership?

The Foundations Act does not contain a definition of beneficial ownership.

Please note that that Foundations under Suriname law (*Stichtingen*) do not possess shareholders like a limited company by shares. A foundation has a board whose composition, appointment and dismissal are regulated in the articles of association. The board members are considered or compared with beneficial owners.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

Article 1 paragraph 3 of the Act implies that a foundation has founders. Pursuant to article 9 paragraph 1a the founders must be registered in the Public Foundations Register.

This article states that the board is should register the name of the foundation, in addition to the surname, first names and place of residence or last residence of the founder or founders and the name, first names and residence of the board members, the public register of foundations intended for this purpose. In Suriname this public register of foundations is kept by the Chamber of Commerce and Industry (*Openbaar Stichtingenregister*).

⁶ WET van 19 juli 1968, houdende wettelijke regeling van stichtingen (G.B. 1968 no. 74), gelijk zij luidt na de daarin aangebrachte wijzigingen bij S.B. 2016, no. 103

If a foundation is established for the economic benefit of its founders, its founders can be considered beneficial owner of the foundation.

Pursuant to article 3 paragraph 3c, the articles of association of the foundation must regulate the number and manner of appointment of directors. This clearly implies that the foundation has a board. Pursuant to article 6 paragraph 1, the board is entitled to act and to take legal action in the name of the foundation, insofar as the articles of association do not provide otherwise.

As stated above, the board is responsible for that the surname, first names and residence of the board members, are registered in a public register of foundations intended for this purpose. Also in the event of a change in the person of the directors, the board must ensure that the required information of the new board members is deposited with the Chamber of Commerce and Industries for updating the Public Foundations register, as stated in article 9 paragraph 2.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain any provision which prevent or interfere with beneficial owner disclosure. The only thing that can be noted is that no sanction has been included in case the board fails to register new board members with the Chamber of Commerce and Industries.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law does not contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically.

5.4 Financial Reporting Act (Wet op de Jaarrekening)

The Financial Reporting Act (Wet op de Jaarrekening) is dated 24 September 2017.⁷

A (brief) description of the purpose and scope of the law or regulation.

The law on annual accounts lays down rules with regard to this to annual accounts with regard to certain categories of companies, institutions or public bodies.

This law applies to:

⁷ WET van 24 september 2017, houdende regels inzake de jaarrekening en wijziging van het Wetboek van Koophandel en Wet Coöperatieve Verenigingen (Wet op de Jaarrekening) (S.B. 2017 No. 84)

1. the cooperative (*cooperatie*), the mutual insurance company (*onderlinge waarborgmaatschappij*) and the public limited company (*naamloze vennootschap*);
2. a limited partnership (*commanditaire vennootschap*) or a general partnership (*vennootschap onder firma*) of which all members are fully liable to creditors for the debts, capital companies are under foreign law;
3. the legal entities established by or pursuant to the public law (*publiekrechtelijke rechtspersonen*), unless the regulations regarding accountability (*comptabiliteit*) provide otherwise;
4. the foundation (*stichting*) and the association (*vereniging*) that maintain one or more companies that must be registered in the trade register pursuant to the Trade Register Act, unless the foundation or association is obliged by or pursuant to the law to draw up a financial statement that is equivalent to an annual account as referred to in this law and it must be made public;
5. formal foreign companies (*formeel buitenlandse vennootschappen*).

Does the law or regulation contain a definition of beneficial ownership?

The law does not contain a definition of beneficial ownership.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law does not contain provisions directly which facilitate beneficial ownership disclosure. Article 8 paragraph 1 and 2 mentions an indirectly way of disclosure of beneficial ownership as far as legal persons are concern. Paragraph 1 states that the legal person who, alone or together with another group company, at the head of a group, proposes one consolidated financial statements, including the company's own financial statements data with those of its subsidiaries in the group, other group companies and other legal entities over which he predominates can exercise control or over which he has central control.

Paragraph 2 states that a legal person to which paragraph 1 does not apply, but which is in its group has one or more subsidiaries or other legal entities over which he can exercise or over which he has dominant control has central management prepares consolidated financial statements. This one includes the financial data of the component, consisting of the legal entity, its subsidiaries in the group, others group companies that fall under the legal entity and others legal persons over which he can exercise dominant control or over which he has central control.

This article provides the possibility to disclose the legal entity who is the beneficial owner.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

Not applicable, because the law does not contain any provision that facilitate nor prevent the disclosure of beneficial ownership.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law contains provisions relating to the legal/registered owner in the sense that approval of the annual accounts or annual report must be given by the legal/registered owners. In the case of a public limited liability company (*naamloze vennootschap*) and comparable companies, this approval or determination is made in the general meeting of shareholders (*algemene vergadering van aandeelhouders*), while in the case of legal entities established by law (*sui generis*), the approval is given by the Minister or another government authority, depending on the provisions in the law which established the legal entity.

The law does not contain any provision specifically regarding disclosure of beneficial ownership.

5.5 Disclosure of Unusual Transactions Act (Wet Melding Ongebruikelijke Transacties)

The Disclosure of Unusual Transactions Act (*Wet Melding Ongebruikelijke Transacties*) is dated 6 August 2012.⁸

A (brief) description of the purpose and scope of the law or regulation

The purpose of the Disclosure of Unusual Transactions Act (Wet Melding Ongebruikelijke Transacties) is to fulfill the obligations arising from the special recommendations of the Financial Action Task Force (FATF) and in relation to improving the mechanism to prevent and combat money laundering and terrorist financing.

The Act establishes a "Reporting Point Unusual Transactions" or Financial Intelligence Unit Suriname (FIU Suriname), with its offices in Paramaribo. The reporting center is an independent part of the Ministry of Justice and Police.

Furthermore, the Act puts an obligation on Service providers who, in the performance of their duties, discover facts that indicate money laundering and the financing of terrorism, insider dealing and market manipulation, with due observance of indicators to be

⁸ WET van 6 augustus 2012, houdende nadere wijziging van de Wet Melding Ongebruikelijke Transacties (S.B. 2002 no. 65, zoals gewijzigd bij S.B. 2016 no. 33).

determined by State Decree, to immediately report in writing, digitally or otherwise, an unusual transaction performed or intended to the Hotline (FIU Suriname).

Does the law or regulation contain a definition of beneficial ownership?

The law contains a definition of ultimate beneficial ownership as follows: “the natural person who has ultimate or actual ownership or control over the legal person, or the person on whose behalf a transaction is carried out. It also includes the person who ultimately exercises actual control over a legal person or a legal arrangement.”

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law does not contain direct provisions to disclose beneficial owners. It can be indirectly deduced that that disclosure is hidden very blurred in some determinations, as given below.

In article 1 paragraph 1e is in the definition of client: the person with whom a business relationship is entered into as well as the person who has a transaction carried out, being a natural person or legal person to or on behalf of whom a service is provided.

It becomes clearer from article 16 wherein is prescribed that Service providers are obliged to keep all relevant documents concerning national and international transactions for at least seven years after the time of the termination of the business relationship or the execution of the relevant transaction. The data and information are always stored in such a way that individual transactions can be reconstructed at any time and can be made available for inspection at the request of the competent authorities without much effort and loss of time. The data and information include at least:

a. from natural persons:

1 ° the surname, first names, date and place of birth, address and place of residence or place of business of the client and the ultimate beneficial owner, as well as of the person acting on behalf of that natural person or a copy of the document identifying a person contains the number and on the basis of which the identification took place;

b. of legal entities established under Surinamese law:

2 ° of those who act on behalf of the legal person and of the ultimate beneficial owner, the surname, the first names and the date of birth;

c. of foreign legal entities and comparable entities:

2 ° of those who act on behalf of the legal person and of the ultimate beneficial owner, the surname, the first names and the date of birth;

Although nothing concrete is stipulated in this Act about the disclosing of ultimate beneficial ownership, it can be inferred from Article 16 that this is the intention of the legislator and also prescribed, since without this disclosure the retention of their information and documents becomes impossible.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain any provisions that prevent or interfere the disclosure of beneficial ownership.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law does not contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically than the articles mentioned above.

5.6 Income Tax Act 1922 (*Wet Inkomstenbelasting 1922*)

The Income Tax Act 1922 (*Wet Inkomstenbelasting 1922*) is dated 4 May 1921.⁹

A (brief) description of the purpose and scope of the law or regulation

The purpose of this law is to impose a direct tax under the name of income tax from domestic and foreign taxpayers. The law gives a description of the term taxpayers, distinguishing between taxpayers established in Suriname and taxpayers not established in Suriname.

Does the law or regulation contain a definition of beneficial ownership?

This law does not contain any definition or description of beneficial ownership.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law does not contain provisions which facilitate beneficial ownership disclosure.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain provisions at all which facilitate, prevent or interfere with beneficial ownership disclosure.

⁹ WET van 4 Mei 1921 op de inkomstenbelasting (Inkomstenbelasting 1922) (G.B. 1921 no. 112), gelijk zij luidt na de daarin aangebrachte wijzigingen bij G.B. 1924 no. 84, zoals laatstelijk gewijzigd bij S.B. 2003 no. 30

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law does not contain any provision relating to beneficial ownership, nor in general nor specifically.

5.7 Anti-Corruption Act (Anti-Corruptiewet)

The Anti-Corruption Act (*Anti-Corruptiewet*) is dated 24 September 2017.¹⁰

A (brief) description of the purpose and scope of the law or regulation

The goal of this law is to establish rules on the Establishment of an Anti-Corruption Commission in charge of preventive tasks, the registration of reports of abuse, the compulsory delivery by public officials of written statements regarding income and assets, as well as further amendment of the Criminal Code and the Decree on Issuance Domain ground, with the ultimate purpose of the prevention and control of corruption in the public sector.

Does the law or regulation contain a definition of beneficial ownership?

The law does not contain a definition of beneficial ownership.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law does not contain provisions which facilitate beneficial ownership disclosure.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain provisions at all regarding beneficial ownership.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law does not contain any provisions relating beneficial ownership.

5.8 Mining Decree (Decreet Mijnbouw)

The Mining Decree (Decreet Mijnbouw) is dated 8 May 1986.¹¹

¹⁰ WET van 24 september 2017, houdende regels inzake preventie en bestrijding van corruptie en instelling van een Anti-corruptie Commissie, alsmede wijziging van het Wetboek van Strafrecht en het Decreet Uitgifte Domein-grond (Anti-corruptiewet) (S.B. 2017 no. 85).

¹¹ DECREET van 8 mei 1986, houdende algemene regelen omtrent de opsporing en ontginning van delfstoffen (Decreet Mijnbouw) (S.B. 1986 no. 28), S.B. 1997 no. 44.

A (brief) description of the purpose and scope of the law or regulation

The purpose of this Act is to set rules with regard to mining and mining rights and obligations, as well as the exploration and exploitation of minerals and substances. Also rules regarding property rights to minerals and substances.

Does the law or regulation contain a definition of beneficial ownership?

The law does not contain a definition of beneficial ownership.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law does not contain provisions which facilitate beneficial ownership disclosure.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain any provision regarding beneficial ownership disclosure.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law does not contain any provision relating to beneficial ownership, nor in general nor specifically.

5.9 Service Providers Identification Act (Wet Identificatieplicht Dienstverleners)

The Service Providers Identification Act (*Wet Identificatieplicht Dienstverleners*) is dated 6 August 2012.¹²

A (brief) description of the purpose and scope of the law or regulation

The purpose of this law is to impose an obligation on service providers to identify their customers before providing services. The implementation of this law became necessary to implement the obligations arising from the special recommendations of the Financial Action Task Force, and in connection with improving the mechanism to prevent and combat money laundering and terrorist financing.

To prevent and combat money laundering and terrorist financing service providers are obliged to perform customer due diligence on their clients. The law prohibits a service provider from entering into a business relationship or executing a transaction if he has not

¹² WET van 6 augustus 2012, houdende wijziging van de Wet Identificatieplicht Dienstverleners (S.B. 2016 no. 32)

conducted customer due diligence, is unable to conduct customer due diligence or if the customer due diligence has not led to transparency and to establish a clear and obvious client profile.

The law also prescribes that if a service provider can no longer comply with the obligation of due diligence after entering into a business relationship, it will immediately terminate this business relationship. Likewise, if a service provider deems a customer due diligence necessary after the business relationship has commenced and it is unable to perform this examination in the prescribed manner, it will terminate the business relationship and file a notification pursuant to Section 12 of the Disclosure of Unusual Transactions Act.

Does the law or regulation contain a definition of beneficial ownership?

The law contains a definition of ultimate beneficial owner as follows: “ultimate beneficial owner is the natural person who has ultimate or actual ownership or control over the legal person, or the person on whose behalf a transaction is carried out. It also includes the person who ultimately exercises actual control over a legal person or a legal arrangement.”

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

The law contains provisions which facilitate the disclosure of beneficial ownership. In article 2 paragraph 1 it states that to prevent and combat money laundering and terrorist financing service providers perform customer due diligence that includes at least the following:

- b. where applicable, the identification of the beneficial owner and taking reasonable steps to verify his / her identity in such a way that the service provider is satisfied of the identity of that beneficial owner;
- d. conducting continuous monitoring of the business relationship and the transactions conducted during the duration of this relationship to ensure that they correspond to the knowledge that the service provider has of the customer and ultimate beneficial owner of their risk profile, including, where applicable, an investigation into the source of the assets involved in the transaction or business relationship.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

The law does not contain provisions which prevent or interfere the disclosure of beneficial ownership.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

The law contains the following other provisions also relating to the beneficial ownership:

1. A service provider verify the identity of the client and the ultimate beneficial owner during the business relationship, if this is necessary in order not to disrupt the service and there is little risk of money laundering or terrorist financing; in that case, the service provider verifies the identity as soon as possible after the first contact with the client;
2. A non-financial services provider who is a notary public, establish the identity of the client and verify that of the beneficial owner when identification is required.

Specifically, the law states regarding the beneficial ownership in article 3 paragraph 1:

- A service provider coordinates customer due diligence on the risk sensitivity for money laundering and terrorist financing of the type of customer, business relationship, product or transaction; To this end, he draws up a risk profile of the client and the ultimate beneficial owner. A service provider takes all necessary steps to obtain information to establish the identity of those for whom services are provided.
- In article 6 paragraph 2 it states: A service provider shall ensure that the data and information obtained in the context of a customer due diligence, in particular those relating to customers, beneficial owners or business relations who present a higher risk to money laundering and terrorist financing are up to date and relevant.
- In article 6 paragraph 3 the law states: The service provider obliges a client to notify him without delay of any changes to the documents or data with the help of which his identity or the identity of the ultimate beneficial owner has been established.
- In article 9 paragraph 1 the law states: A service provider has adequate policies and special procedures aimed at determining whether a client, potential client or beneficial owner is a politically exposed person. A service provider shall also have procedures for determining the source of the assets of clients and beneficial owners identified as politically exposed persons under the first sentence.
- In article 9 paragraph 3 the law states: If a client or ultimate beneficial owner is regarded as a politically exposed person after the start of the business relationship, the business relationship will only be continued after approval has

been obtained from the persons responsible for the overall management of the service provider.

- Finally, in article 9 paragraph 4 it states: A client, potential client or beneficial owner shall be regarded as a politically exposed person for up to one year after he has ceased to hold the prominent public office. The first sentence applies mutatis mutandis to immediate family members and close associates of such a person.

In addition, the law contains a definition of a Politically Exposed Person: a person who holds or has held a prominent public position abroad, unless he or she has not held the said position for at least one year, as well as his immediate family members and close associates.

5.10 Petroleum Act (Petroleumwet)

A (brief) description of the purpose and scope of the law or regulation.

The Petroleum Act is a set of rules that govern the petroleum industry in Suriname. It contains instructions and directions for the petroleum operations. State Enterprises with petroleum concession rights are authorized to enter into petroleum agreements with other established petroleum companies.

Does the law or regulation contain a definition of beneficial ownership?

No.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

No.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

No.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

No.

5.11 Cooperative Associations Act 1944 (Wet Cooperatieve Verenigingen 1944)

A (brief) description of the purpose and scope of the law or regulation.

The Cooperative Associations Act governs the legal entity type Cooperative. A Cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through either a jointly-owned enterprise, or jointly owned assets, or the joint issuance of loans to its members

Does the law or regulation contain a definition of beneficial ownership?

No.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

No. The board members of a cooperative association are required to publish the articles of incorporation in the Government Gazette. In addition, it is mandatory that the board publish and update the membership list at the office of the Trade Register.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

No.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

No.

5.12 Dividend Tax 1973 (Dividendbelasting 1973)

A (brief) description of the purpose and scope of the law or regulation.

The Dividend Tax governs the levy of dividend withholding tax on profit distributions from shares, profit certificates and profit participating loans from public limited companies, limited partnerships with shares and other companies established in Suriname, the capital of which is wholly or partly divided into shares.

Does the law or regulation contain a definition of beneficial ownership?

No.

Does the law or regulation contain provision(s) which facilitate beneficial ownership disclosure?

No. Although, closely related to beneficial ownership, the Dividend Tax does recognize *direct or indirect* profit distributions.

Does the law or regulation contain provision(s) which prevent or interfere with beneficial ownership disclosure?

No.

Does the law or regulation contain any other provisions relating to beneficial ownership in general and beneficial ownership disclosure more specifically?

No.

5.13 Conclusion on progress on beneficial ownership disclosure

Based on the review, we conclude that there has been effectively nil progress on beneficial ownership disclosure in accordance with the EITI Standard 2019, in Suriname.

It will be required to include a universal, more substantial definition of beneficial ownership in domestic Suriname legislation. In addition, a universal, more substantial definition of politically exposed person is required. We provide recommendations in this regard in chapter 8.

Finally, according to our review, there are no provision relating to public beneficial ownership disclosure. New legislation or existing legislation should be amended which promote beneficial ownership disclosure. We provide recommendations in this regard in chapter 9.

6 Review of institutions

The desk review of institutions will gather information on relevant institutions that could be suited to oversee, collate and maintain beneficial ownership information/data.

In the Inception Phase, the following potentially relevant institutions have been identified as potentially relevant, and will be included in the review:

- Ministry of Natural Resources (*Ministerie van Natuurlijke Hulpbronnen*)
- Geological Mining Service (*Geologisch Mijnbouwkundige Dienst*)
- Tax Authorities (*Belastingdienst*)
- Chamber of Commerce and Industry (*Kamer van Koophandel*)
- Management Institute for Land Registration and Land Information System (*Management Instituut Grondregistratie en Landinformatie Systeem*)

The review will focus on the following queries:

1. A (brief) description of the current status, activities, tasks and role of the institute.
2. A (brief) description of the governance structure of the institute.
3. A (brief) description of the data processed by the institute.
4. Does the institution have any legal authority to collect beneficial ownership information?
5. Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

Based on the review, the Consultant will conclude in §9.6 with a recommendation which institution(s) could be best suited to oversee, collate and maintain beneficial ownership information/data.

6.1 Ministry of Natural Resources (Ministerie van Natuurlijke Hulpbronnen)

A (brief) description of the current status, activities, tasks and role of the institute.

The Ministry of Natural Resources is headed by a Minister and a Department Director, supported by two Deputy Directors. The ministry is located in Paramaribo.

The special tasks of this ministry are described as follows:

The care for:

- a. a national policy on energy and natural resources, with the exception of forest policy;

- b. the inventory, exploration, optimal exploitation and management of minerals, the natural resource water, the natural resources required for energy;
- c. water management, where necessary in an interdepartmental context;
- d. the drinking water supply;
- e. the energy supply;
- f. monitoring compliance with rules and regulations with regard to water management, minerals, generation, transport and distribution of energy.

This Ministry is also charged with the care of all matters directly or indirectly related to the matters referred to in the preceding paragraph, insofar as not specifically assigned to another Ministry.

In the event that mining concessions and licenses for the exploration and exploitation of natural resources are issued, it should be very important that records or registers of ultimate beneficial owners will be kept by this Ministry.

A (brief) description of the governance structure of the institute.

The management structure of this Ministry is as follows. The Ministry is headed by a Minister who is politically responsible for policy developments and policy implementation. He is supported operationally by a Department Director and two deputy directors. Operations are further supported by staff, heads of departments and officials.

A (brief) description of the data processed by the institute.

There is currently no insight into data collected and processed by this institute. This is due to a lack of transparency.

Does the institution have any legal authority to collect beneficial ownership information?

Under the Mining Act, the institution has at this time no legal authority or powers to collect or obtain information regarding beneficial ownership.

Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

The institution might be suitable for collecting and maintaining information and / or data about ultimate beneficial owners, but only insofar this relates to the exploration and exploitation of natural resources.

6.2 Geological Mining Service (Geologisch Mijnbouwkundige Dienst)

A (brief) description of the current status, activities, tasks and role of the institute.

De Geological Mining Service (Mijnbouwkundige Dienst (G.M.D.)) is responsible for promoting mining in general. The GMD is engaged in geological mapping and the production of geological maps. The service is charged with the inventory of the minerals occurring in Suriname and advises the minister on mining rights and their control. The GMD also provides information to third parties, for example when applying for concessions and permits.

A (brief) description of the governance structure of the institute.

The Geological Mining Service of Suriname is a Surinamese government agency that falls under the Ministry of Natural Resources. The Geological Mining Service consists of the following departments:

- Field Service: In charge of assembling field crews and collecting minerals from the field.
- Technical service: responsible for the logistics facilities for the field groups, in particular the transport of the groups.
- Laboratory: examines samples collected from the field. The collected data from all the above departments is sent to the drawing office in a work report, made by a geologist.
- Drawing office: responsible for making maps, maintaining the map archive and binding work reports.

A (brief) description of the data processed by the institute.

No data was found or available that could show how much data was processed by the GMD.

Does the institution have any legal authority to collect beneficial ownership information?

The institution does not have legal authority to collect beneficial ownership information.

Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

Because of the fact that this institution does not possess expertise in collecting and processing data, it will be a great challenge for GMD to be in charge for data collection and data processing.

6.3 Tax Authorities (Belastingdienst)

A (brief) description of the current status, activities, tasks and role of the institute.

The tax authorities belong to one of the directorates of the Ministry of Finance. The directorate is headed by a department director who is further supported by the Tax Collector, Staff and personnel.

In Suriname taxes are levied on the basis of guidelines in the law. The Tax and Customs Administration is responsible for the implementation of these tax laws and has the task of levying and collecting taxes, such as Income Tax, so that the tax money ends up with the Government.

A (brief) description of the governance structure of the institute.

The tax authorities come under the Taxation Directorate of the Ministry of Finance. This directorate is headed by a permanent secretary. It levies taxes on the basis of laws and guidelines.

A (brief) description of the data processed by the institute.

The tax authorities keep a file of taxpayers, both natural and legal persons. Based on that file, tax return forms are sent to the taxpayers for filing tax returns. Usually, the tax authorities obtain information from taxpayers through the licensing authorities and from the Chamber of Commerce and Industries. How many taxpayers are added or removed from that database on an annual basis and how many taxpayers actually pay tax cannot be said with certainty due to a lack of transparency.

Does the institution have any legal authority to collect beneficial ownership information?

The tax authorities do not have any legal authority to collect beneficial ownership information.

Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

The tax authorities are certainly suited to oversee, collate and maintain beneficial ownership information.

6.4 Chamber of Commerce and Industries (Kamer van Koophandel en Fabrieken)

A (brief) description of the current status, activities, tasks and role of the institute.

The Chamber has a committee consisting a chairman and vice-chairman and a secretary. The day-to-day management of the chamber lies with the chairman and the secretary.

Furthermore, the Chamber consists of 29 members who are elected every 4 years. There are eight business groups or branches in the Chamber:

- Business group A: Retail;
- Company group B: Other trade and intermediaries;

- Business group C: Industry and Industry;
- Business group D: Financial Institutions and Insurance;
- Company group E: Traffic companies;
- Business group F: Hotel, Café, Restaurant and Entertainment companies;
- Group G: Mining and industrial mineral processing companies;
- Group H: Forest exploitation companies and companies in the industrial processing of forest products.

The Chamber of Commerce and Industries is by law appointed as the keeper of the Trade Register.

A (brief) description of the governance structure of the institute.

The Chamber is established by national ordinance of 15 June 1962 regulating the composition, organization, duties and powers of the Chambers of Commerce and Industry. This regulation also describes the duties of the Chamber. Further regulations regarding the Chamber can be arranged by Rules of Order (*Reglement van Orde*). The Chamber is accountable to the Minister of Trade and Industry. The Chamber is a legal person.

A (brief) description of the data processed by the institute.

The Chamber keeps records of all companies that are required to register by law. When registering companies, in addition to the details of the company, such as name, date of incorporation, company form, address, the names of authorized representatives, such as owners, partners, directors and supervisors (members of the supervisory board, members of the supervisory board supervision) and proxies. The beneficial owners are not registered.

Does the institution have any legal authority to collect beneficial ownership information?

Legally the Chamber does not have any legal authority to collect, register and maintain beneficial ownership information at this time.

Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

The Chamber is ideally suited to supervise the ultimate beneficial owners, collect their information, administer it and keep it up to date.

6.5 Management Institute for Land Registration and Land Information System (Management Instituut Grondregistratie en Landinformatie Systeem)

A (brief) description of the current status, activities, tasks and role of the institute.

The Management Institute for Land Registration and Land Information System (MI-GLIS) is a legal person. The Institute has, without prejudice to other legal provisions regulations, to:

- a. the promotion of legal certainty with regard to registered property:
 - in legal transactions;
 - in the course of trade;
 - in administrative interaction between citizens and administrative bodies of the Government;
- b. an efficient provision of information to the government for the benefit of the proper performance of public law duties and the fulfillment of legal obligations by administrative bodies, and
- c. the support and promotion of economic activities and the further development of the economic use of the land.

The MI-GLIS has the following tasks:

- a. keeping and updating the public registers, in which at or pursuant to law facts that constitute the legal status of registered property are important, are transferred, or registered;
- b. keeping and updating the parcel administration, as well as the create, maintain and maintain the geometric file and keeping the underlying documents in such a way, that they collectively determine the legal situation and the factual condition of immovable property as well as the legal status of rights in rem to which those matters are subject, according to the at the Institute display known data;
- c. maintaining the National Geodetic Reference System;
- d. keeping and maintaining records for ships;
- e. maintaining and maintaining a registration for aircraft;
- f. keeping and updating, or having the others kept up to date data that form part of the digital system GLIS;
- g. the provision of information about data, by the Institute obtained in the context of the fulfillment of his orders tasks.

A (brief) description of the governance structure of the institute.

The Management Institute for Land Registration and Land Information System is established by the law of 25 September 2009, containing rules regarding the establishment of a Management Institute for Land Registration and Land Information

System (MI-GLIS). In this law also mention is made of the objectives, tasks and responsibilities of MI-GLIS.

The MI-GLIS comes under the minister responsible for land registration and country information. The board consists of the director, the custodian and the GLIS surveyor. The President appoints the members of the board on the nomination of the Minister, after obtaining approval from the Council of Ministers.

A (brief) description of the data processed by the institute.

The data regarding the parcel administration contains:

- a. as far as known the surname, first names, date of birth, the identity number, legal residence with address and the marital status or, if it concerns a legal person, the legal form, name and legal residence, of those who according to the information known to the Institute is owner or have limited right in rem with regard to immovable property and in the case of community the share of each of them partners;
- b. with respect to each owner and beneficial owner, as referred to under a, a reference to all relating to them in the public registers, as referred to in Article 50 paragraph 1 under a, documents transferred or registered or placed notes;
- c. the legal name of the rights in rem to which the immovable property, and of the attachments placed on its goods or rights in rem have been laid, as well as whether those goods or limited real rights under administration;
- d. the parcel identification and the size of the parcels;
- e. with regard to each parcel a reference to all on it relating to the public registers referred to in Article 50 paragraph 1 under a, transcribed or registered documents or notes posted;
- f. with regard to an elected place of residence, its indication, as well as a reference to all the public registers referred to in Article 50 paragraph 1 under a, documents transferred or registered, then notes placed, in which place of residence has been chosen, or a chosen place of residence has been changed or discontinued;
- g. with regard to any parcel on which a right of mortgage rests, at least the data regarding the underlying piece, the nature of the immovable property and the key data regarding the debt, and information regarding the possible cancellation of this mortgage, as further determined by or pursuant to state decree;
- h. a brief description of the nature of the information in the public records posted notes on government decisions that exist chargeable to the immovable property and rights, correspondingly by rules to be issued by the board;
- i. data concerning the factual condition of and other than the information referred to in this paragraph with regard to immovable property that pursuant to other statutory provisions or pursuant to decision of the Minister.

Does the institution have any legal authority to collect beneficial ownership information?

The parcel administration is regulated in Article 59. In paragraph 1a, the following is stated with regard to the parcel administration:

The parcel administration contains:

- a. as far as known the surname, first names, date of birth, the identity number, legal residence with address and the marital status or, if it concerns a legal person, the legal form, name and legal residence of those who according to the information known to the Institute is the owner or have limited right in rem with regard to immovable property and in the case of community the share of each of them associates;

It can be deduced from this that information from beneficial owners is not collected and administered.

Could the institution be suited to oversee, collate and maintain beneficial ownership information/data?

MI-GLIS might be a suitable institution for monitoring beneficial owners and for collecting, maintaining and keeping their information up to date, insofar this relates to land and/or land rights, including mining right or concessions (since these are also registered in MI-GLIS).

7 Consultation with relevant stakeholders

We have issued a questionnaire to the following stakeholders:

- Suriname EITI Multi Stakeholder Group

Civil Society

- Suriname Lawyers Association (*Surinaamse Juristenvereniging*)
- Association of Economists in Suriname (*Vereniging van Economisten in Suriname*)
- Conservation International Suriname

Companies (representative organizations)

- Suriname Trade and Industry Association (*Vereniging Surinaams Bedrijfsleven*)
- Association of Surinamese Manufactures (*Associatie van Surinaamse fabrikanten*)
- Suriname Bankers Association (*Surinaamse Bankiersvereniging*)

Government

- Ministry of Natural Resources (*Ministerie van Natuurlijke Hulpbronnen*)
- Ministry of Justice and Police (*Ministerie van Justitie en Politie*)
- Ministry of Finance (*Ministerie van Financiën*)
- Chamber of Commerce and Industry (*Kamer van Koophandel en Fabrieken*)
- Project Management Team National Risk Assessment

The questionnaire is included as Annex to the Inception Report and was done electronically with use of Microsoft Forms. We have received eight completed questionnaires. The average time one person took to complete a questionnaire was 79 minutes.

Here below we will discuss each question and the answers received.

How should beneficial ownership be defined?

The answers were equally divided amongst the European Union 4th Anti-Money Laundering Directive, the FATF Recommendations 2012 and the Dutch Anti-Money Laundering and Terrorism Financing. One respondent recommended a combination of these definitions.

Do you think beneficial ownership transparency, would help combat corruption and illegal financial activities, including money laundering and financing of terrorism?

All respondents agreed that beneficial ownership transparency will help combat corruption and illegal financial activities, including money laundering and financing of terrorism. One respondent specifically mentioned that beneficial ownership in this context should be updated yearly and publicly available.

Do you think beneficial ownership transparency could provide (substantial) benefits for Suriname?

All respondents agreed that beneficial ownership transparency will provide (substantial) benefits for Suriname.

- One respondent mentioned specifically that beneficial ownership transparency has added value for Customer Due Diligence purposes for financial and non-financial institutions and is a key requirement for tax transparency.
- One respondent mentioned that although transparency will provide substantial benefits, further legislation should be developed with regard to data protection and safeguard security against kidnapping.
- One interesting reply was that beneficial ownership transparency will help transition the informal sector towards a mere formal sector.

How do you think the introduction of an UBO Register would affect businesses operating in Suriname?

In general, all respondents agreed that the introduction of an UBO register would have a positive effect on businesses operating in Suriname, since this brings more transparency and will prevent money laundering.

- One respondent mentioned that small companies might have a hard time complying with the requirements for registration, but at the same time will encourage such companies to have their business operations in order.
- It was also mentioned that the introduction of an UBO register might lead to close down of businesses controlled by Politically Exposed Persons whose conflicts of interest would now come to light.
- For bona fide businesses should the introduction of an UBO register not make much difference.
- One respondent specifically mentioned that an UBO register would contribute to the ease of access for Suriname businesses to foreign capital.

If an UBO Register is established, who should have access to it?

- All respondents agreed that the tax authorities should have access to this register.
- All respondents but one agreed that government authorities and regulated institutions or persons should have access to this register.
- Only two respondents agreed that the general public should have access to the UBO register.

- An interesting reply was that journalists should have access to the register, in addition to government and tax authorities and regulated institutions – but not the general public.

Which companies should be required to disclose beneficial owners to an UBO Register?

- Three respondents were in favor of “All domestic Suriname corporate entities & all foreign corporate entities operating in Suriname with a local branch”.
- Four respondents were in favor of “All corporate entities on which the Financial Reporting Act (Wet op de Jaarrekeningen) is applicable”
- One respondent limits the disclosure requirement to only corporate entities which are deemed ‘large corporate entities’ according to the Financial Reporting Act.
- There is therefore broad consensus that beneficial ownership disclosure should be amongst all corporate entities operating in Suriname.

Should a framework of exemptions be put in place? If yes, which categories of beneficial owners should be exempt?

- There is general consensus that no exemptions should be put in place.
- One respondent mentioned that a framework of exemptions could be developed in line with international good practice.
- One respondent mentioned that a sole proprietorship should be exempt.
- One respondent mentioned that exemptions could be put in place if necessary.

Who should be responsible for reporting the beneficial ownership of a company?

- All but one respondent finds that the corporate entity and not the beneficial owner should be responsible for reporting the beneficial ownership of a company.

Would access to an UBO Register help financial institutions in their due diligence?

- All respondents agree that access to an UBO Register would help financial institutions in their due diligence.

Which institution(s) could be best suited to oversee, collate and maintain beneficial ownership information/data?

- Four respondents regarded the Chamber of Commerce and Industry best suited.
- Two respondents regarded the Tax Authorities best suited.
- One respondent suggested MI-GLIS with a link to the Ministry of Natural Resources.
- Interestingly, one respondent mentioned that the choice is difficult because of corruption and political influence.

What information relating to UBOs should an UBO Register collate and what should be publicly available?

- All respondents agreed that the name of the UBO and the country of residency should be collected and publicly available.
- Six respondents agreed that the nationality of the UBO should be collected and publicly available, while two respondents mentioned that this should be collected but not publicly available.
- Six respondents agreed that the type and size of the economic interest in the corporate entity should be collected and publicly available, while two respondents mentioned that this should be collected but not publicly available.
- Four respondents agreed that the date of birth of the UBO should be collected and publicly available, while four respondents mentioned that this should be collected but not publicly available.
- Three respondents agreed that the place of birth of the UBO should be collected and publicly available, while four respondents mentioned that this should be collected but not publicly available. Interestingly, one respondent mentioned that this should not be collected.
- With regard to the more personal information the tendency was more to collect this information but not make this information publicly available. This regards the residential address, the tax identification number and the verification documents.

When should beneficial ownership information be reported to the UBO Register?

- All but one respondent mentioned that beneficial ownership information should be reported yearly and when changes occur.
- Only one respondent mentioned that beneficial ownership information should only be reported yearly.

Further remarks

- One respondent recognized that the availability of beneficial owner information is necessary for transparency, in order to satisfy FATF Recommendations, for AML purposes as well as for tax purposes.
- Other respondents had no noteworthy further remarks.

The information collected in the questionnaire will be used for the following analysis.

8 Recommended definition of Beneficial Ownership

Although the issue of beneficial ownership disclosure is a worldwide issue, there is no universal definition. Based on our desk research, we have recognized that, based on international good practice laws and regulations, there is a general consensus on including the following elements in the definition of 'beneficial ownership':

- a. A beneficial owner is in principle an individual (natural person), but can also be a publicly listed company (on a recognized stock exchange) or a government.
- b. A beneficial owner can be established either directly or indirectly through other legal entities.
- c. Beneficial ownership can be established by economic interest and/or by control.
- d. A beneficial owner has to disclose beneficial ownership in the target legal entity, after a certain threshold of economic interest and/or control.
- e. PEPs are generally subject to a more stringent regime of beneficial ownership disclosure, in which lower (or no) thresholds are applicable.

The 2019 EITI Standard 2.5 (sub f under ii) states regarding the definition of beneficial owner:

The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

Hence, from a 2019 EITI Standard perspective, an appropriate definition of beneficial ownership should:

- a. Be aligned with the definition in the 2019 EITI Standard 2.5 (sub f under i)
- b. Take international norms into account;
- c. Take relevant national laws into account;
- d. Include ownership threshold(s);
- e. Specify reporting obligations for PEPs.

We will hereafter further elaborate on the following elements of a Beneficial Ownership definition:

- Natural Person;

- Possible Exception for Publicly Listed Companies;
- Beneficial Ownership by Economic Interest and by Control;
- Direct or Indirect Beneficial Ownership;
- Thresholds of Beneficial Ownership Disclosure;
- Politically Exposes Persons;
- Legal Entities in the Scope of the Beneficial Ownership Disclosure Regime.

8.1 Natural Person

There is absolute consensus amongst all definitions of beneficial ownership in international good practice laws and regulations, that a beneficial owner should in principle be an individual (natural person). We refer to the following examples.

According to the 2019 EITI Standard 2.5 (sub f under i), a ‘beneficial owner’ is defined as follows:

*“A beneficial owner in respect of a company means **the natural person(s)** who directly or indirectly ultimately owns or controls the corporate entity.”*

The 5th EU Anti-Money Laundering Directive includes the following as part of its definition of beneficial owner:

*‘beneficial owner’ means any **natural person(s)** who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least: [...]*

The 2012 FATF Recommendations include the following as part of its definition of beneficial owner:

*Beneficial owner refers to **the natural person(s)** who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.*

The United States Bank Secrecy Act includes the following as part of its definition of beneficial owner:

Beneficial owner means each of the following:

- 1. Each **individual**, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and*
- 2. A single **individual** with significant responsibility to control, manage, or direct a legal entity customer,*

The LBMA Responsible Gold Guidance includes the following as part of its definition of beneficial owner:

*Beneficial Owner refers to **the natural person(s)** who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control (over 25%) over a legal person or arrangement.*

Recommendation

We recommend that a beneficial owner must, in principle, be an individual (natural person). This recommendation is in line with international good practice laws and regulations.

8.2 Possible Exception for Publicly Listed Companies

Although, in line with international good practice laws and regulations, that a beneficial owner must, in principle, be an individual (natural person), certain exemptions to this principle could be considered.

It is generally accepted - in line with international good practice laws and regulations – that an exception for Publicly listed companies could be considered.

The 2019 EITI Standard 2.5 (sub f under iii) states the following exception regarding publicly listed companies:

Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

The 5th EU Anti-Money Laundering Directive states the following exception regarding publicly listed companies in its beneficial ownership definition:

other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

The term 'Union Law' refers to the EU Transparency Directive¹³.

The Dutch Decree to implement the Anti-Money Laundering and Anti-Terrorist Financing Act refers to the definition in the 5th EU Anti-Money Laundering Directive and states that legal entities listed on a stock exchange or a 100% subsidiary of such company, that is subject to the disclosure requirements of the EU Transparency Directive or equivalent international standards, are not required to identify beneficial owners.

The EU Transparency Directive imposes stringent governance and transparency regimes under which security issuers should ensure appropriate transparency for investors through a regular flow of information. To the same end, shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights, should also inform issuers of the acquisition of or other changes in major holdings in companies so that the latter are in a position to keep the public informed.

On the basis of international good practice, it is accepted that legal entities which are listed on stock exchanges which impose stringent governance and transparency regimes, are not required to further disclose beneficial owners.

In the Suriname context, although the Capital Markets Act imposes regulations on stock exchanges in Suriname, this act is based on the principle of self-regulation. Hence, there are no clear legal requirements with regard to any requirement that stock exchanges have to adopt impose stringent governance and transparency regimes.

Consequently, under domestic Surinamese law there is no reference against which to test whether a domestic or foreign stock exchange imposes sufficient disclosure, governance and transparency regimes for companies listed on such stock exchange in order to exclude such companies from the beneficial owner definition.

Recommendation

¹³ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJEU 2004, L 390)

As a result of the absence of local Surinamese laws and regulations that sufficiently regulate listed legal entities, and also the absence of a domestic framework of laws and regulations which stipulate minimum requirements that a (local or foreign) stock exchange must impose on listed legal entities in order for such legal entity to maintain a sufficient level of good governance and transparency, we do not recommend to include an exception for publicly listed companies at this time.

However, we do encourage to draft and implement laws and regulations which could regulate listed legal entities and further enhance good governance and transparency, in accordance with international standards and practice. Once such laws and regulations are implemented under domestic Suriname law, an exception for publicly listed companies can be considered.

8.3 Beneficial Ownership by Economic Interest and by Control

There is also consensus amongst all definitions of beneficial ownership in international good practice laws and regulations, that a beneficial owner not just refers to a natural person that owns a legal entity, but also refers to a natural person that effectively controls a legal entity – independent of the legal ownership of the legal entity. We refer to the following examples.

According to the 2019 EITI Standard 2.5 (sub f under i), a ‘beneficial owner’ is defined as follows:

*“A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately **owns or controls** the corporate entity.”*

The 5th EU Anti-Money Laundering Directive includes the following as part of its definition of beneficial owner:

*‘beneficial owner’ means any natural person(s) who ultimately **owns or controls** the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least: [...]*

The 2012 FATF Recommendations include the following as part of its definition of beneficial owner:

*Beneficial owner refers to the natural person(s) who ultimately **owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.*

The United States Bank Secrecy Act includes the following as part of its definition of beneficial owner:

Beneficial owner means each of the following:

- 1. Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, **owns** 25 percent or more of the equity interests of a legal entity customer; and*
- 2. A single individual with significant responsibility to **control**, manage, or direct a legal entity customer,*

The LBMA Responsible Gold Guidance includes the following as part of its definition of beneficial owner:

*Beneficial Owner refers to the natural person(s) who ultimately **owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control (over 25%) over a legal person or arrangement.*

The primary rationale behind this is that the individual (natural person) who ultimately controls a legal entity, could have the power to make decisions regarding the assets of the legal entity, can control the fund flows and can decide where the economic benefits of the legal entity should end up.

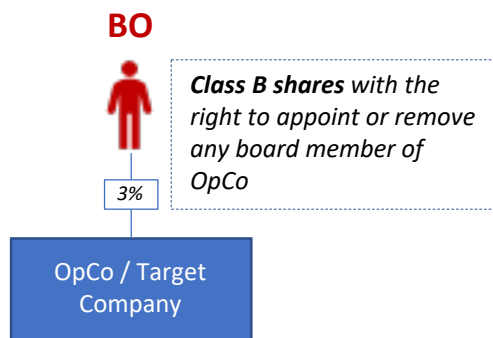
Control is usually determined by a percentage of voting rights, but also by the ability to appoint or remove board members.

The first applies for instance if different classes of shares are issued, with which different levels of effective control can be exercised over the legal entity, independent of the right of (dividend) proceeds of the legal entity.

The latter applies for instance if a legal structure is implemented under which effective control can be exercised without or with just limited legal ownership, such as a structure

in which nominee directors or nominee shareholders are representing the interests of the ‘real’ decisionmaker.

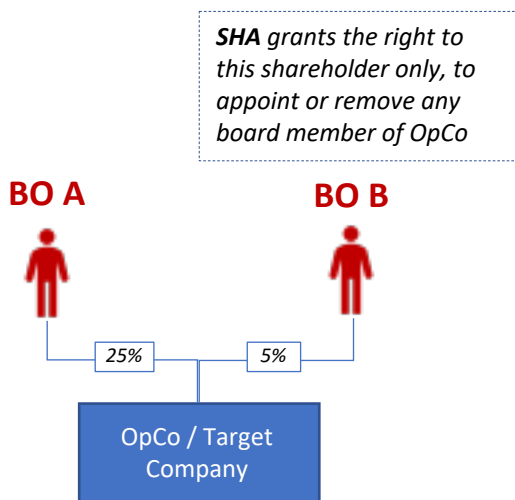
Examples of beneficial ownership established as a result of effective control are:



An individual (“BO”) is the legal owner of 3 of the 100 outstanding Class B shares in OpCo. All other outstanding shares are Class A shares, which are regular shares.

Class B shares bear the right to appoint of remove any board member of OpCo. With this right, BO effectively controls OpCo.

Consequently, as BO effectively controls OpCo, BO is a beneficial owner of OpCo.



An individual (“BO A”) is the legal owner of 25 of the 100 outstanding regular shares in OpCo. Another individual (“BO B”) is the legal owner of 5 of the 100 outstanding regular shares in OpCo. There are no other classes of shares in OpCo.

Pursuant to the Shareholder Agreement (“SHA”), although BO B has only 5 of the 100 outstanding shares in OpCo, only BO B has the right to appoint of remove any board member of OpCo.

Consequently:

- BO A is legal owner of 25% of the shares in OpCo and beneficial owner of OpCo; and
- BO B is beneficial owner of the shares in OpCo as a result of its authority to exercise effective control over OpCo.

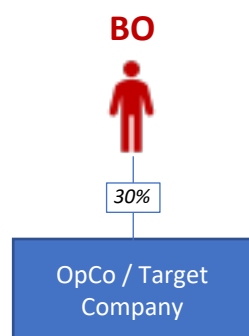
Recommendation

In order to prevent the possibility that a beneficial owner could hide behind legal structuring by separating effective control and share ownership, we recommend including in the definition of beneficial owner both ‘ownership’ and ‘control’. This recommendation is in line with international good practice laws and regulations.

8.4 Direct or Indirect Beneficial Ownership

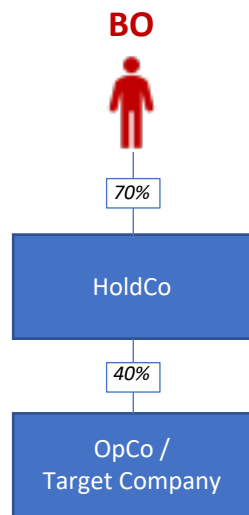
A natural person can be a direct owner of shares in a legal entity or can own such shares through another legal entity and even a series of legal entities or other legal arrangements. The disclosure of ownership of a (target) legal entity by an individual (natural person) at the top of the chain is one of the essential characteristics of beneficial ownership, which distinguishes beneficial ownership from legal ownership.

This is illustrated with the following examples, in which it is assumed that an ownership percentage of 25% triggers beneficial ownership.



An individual (“**BO**”) is the legal owner of 30 of the 100 outstanding regular shares in OpCo. There are no other classes of shares.

Consequently, BO is both legal owner of 30% of the shares in OpCo and beneficial owner of OpCo.

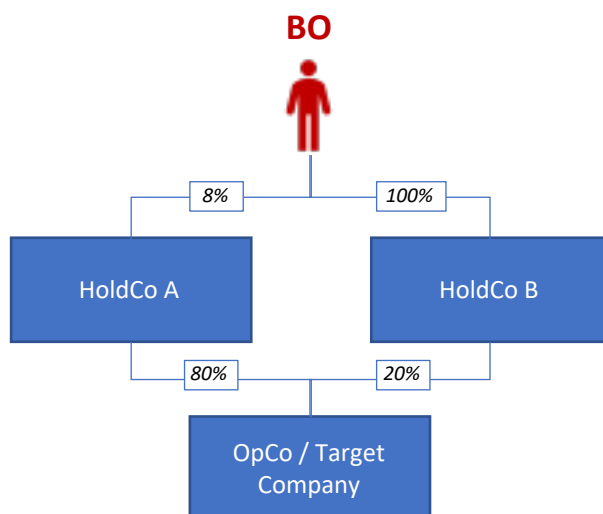


An individual (“BO”) is the legal owner of 70 of the 100 outstanding regular shares in HoldCo. There are no other classes of shares in HoldCo.

HoldCo is the owner of 40 of the 100 outstanding regular shares in OpCo. There are no other classes of shares in OpCo.

Consequently, BO is:

- legal owner of 70% of the shares in HoldCo; and
- beneficial owner of HoldCo as a result of its indirect ownership of $70\% \times 40\% = 28\%$ of the shares in OpCo.



An individual (“BO”) is the legal owner of 8 of the 100 outstanding regular shares in HoldCo A. There are no other classes of shares in HoldCo A.

In addition, BO is the legal owner of all outstanding regular shares in HoldCo B. There are no other classes of shares in HoldCo B.

HoldCo A is the legal owner of 80 of the 100 outstanding regular shares in OpCo, and HoldCo B is the legal owner of 20 of the 100 outstanding regular shares in OpCo. There are no other classes of shares in OpCo.

Consequently, BO is:

- legal owner of 8% of the shares in HoldCo A;
- legal owner of 100% of the shares in HoldCo A;
- beneficial owner of OpCo as a result of its indirect ownership of $(8\% \times 80\%) + (100\% \times 20\%) = 26,4\%$ of the shares in OpCo.

Recommendation

Since the beneficial owner inherently refers to the individual (natural person) at the top of the chain, we recommend that a definition of beneficial ownership should include both direct or indirect ownership or control of a legal entity. This recommendation is in line with international good practice laws and regulations.

8.5 Thresholds of Beneficial Ownership Disclosure

A threshold of beneficial ownership disclosure refers to a level of ownership in a (target) legal entity which triggers beneficial ownership. There is consensus amongst all definitions of beneficial ownership in international good practice laws and regulations, that a beneficial ownership definition should contain a specific threshold of ownership. Also the EITI Standard 2019 prescribes that a Beneficial Ownership definition “*should include ownership threshold(s)*”.

If an ownership threshold level is included in a Beneficial Ownership definition, this does not mean that an ownership level which is below the threshold does by definition not trigger beneficial ownership. In such cases, the effective control test could still be applicable.

EITI suggests an ownership threshold range of 5-25%.¹⁴ FATF suggests an ownership threshold of 25%.¹⁵

According to the 5th EU Anti-Money Laundering Directive, an ownership level of 25% triggers beneficial ownership:

A shareholding of 25% plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

The United States Bank Secrecy Act includes an ownership threshold of 25% of the equity interests:

Beneficial owner means each of the following:
*1. Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, **owns 25 percent or more** of the equity interests of a legal entity customer; [...]*

The LBMA Responsible Gold Guidance includes a threshold of 25% but instead of referring to ownership, refers to effective control:

*Beneficial Owner refers to the natural person(s) who ultimately **owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who **exercise ultimate effective control (over 25%)** over a legal person or arrangement.*

¹⁴ EITI Publication: “Developing a roadmap for beneficial ownership disclosure” - Guidance note 22 – Requirement 2.5; page 6 (<https://eiti.org/files/documents/guidance-note-22-beneficial-ownership-roadmap-en-2016.pdf>)

¹⁵ FATF Recommendations 2012 last updated June 2019 – page 86: “Beneficial ownership information for legal persons is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(i). Controlling shareholders as referred to in, paragraph 5(b)(i) of the interpretive note to Recommendation 10 may be based on a threshold, e.g. any persons owning more than a certain percentage of the company (e.g. 25%).”

Other regional countries use lower thresholds. For example, Argentina and the Dominican Republic use a threshold of 20%; Uruguay, 15%; Barbados, the Bahamas, Belize, and Jersey, 10%; and Colombia, 5%.¹⁶

A threshold must be balanced in the sense that it must take into account the following points:

- It needs to ensure an adequate level of transparency; and
- It needs to take the residual administrative burden into account.

In addition, a threshold should be in line with international and regional good practice laws and regulations.

In addition, we recommend that for PEPs (please be referred to 8.6) no threshold will be applicable so that all PEP beneficial ownership should be disclosed.

Recommendation

Given the balance that must be taken into account, but also given that a threshold should be in line with international and regional good practice laws and regulations, we recommend an ownership threshold of 20%. In addition, we recommend that for PEPs no threshold will be applicable so that all PEP beneficial ownership should be disclosed.

Both recommendations are in line with international and regional good practice laws and regulations.

8.6 Politically Exposed Persons

The involvement of Politically Exposed Persons (“**PEP**”) in the extractive industries is usually viewed with suspicion and can be cause for controversy. Recently, there have been some high-profile cases in the media, such as the involvement of the daughter of the former President of Angola with the State Oil company¹⁷, or the payments to Nigerian politicians by the Italian oil company Eni and the Dutch oil company Royal Dutch Shell¹⁸.

One of the principle purposes of EITI is to diminish (any shade of) mistrust and corruption in the extractive industries. In particular the beneficial ownership disclosure of PEPs contributes to achieving that purpose. From that perspective, the EITI Standard 2019 specifically prescribes that a Beneficial Ownership definition “*should also specify reporting obligations for politically exposed persons*”.

¹⁶ OECD/IADB Publication: “A Beneficial Ownership Implementation Toolkit”, March 2019, page 14

¹⁷ <https://www.icij.org/investigations/luanda-leaks/>

¹⁸ <https://www.reuters.com/article/us-eni-shell-nigeria-idUSKBN2432Y7>

If beneficial owner is considered a PEP, a more stringent beneficial ownership regime applies. For instance, we have recommended that for a PEP, no minimum ownership threshold should be applicable (§8.5).

The 5th EU Anti-Money Laundering Directive, contains the following definition regarding PEPs:

***‘politically exposed person’** means a natural person who is or who has been entrusted with prominent public functions and includes the following:*

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliament or of similar legislative bodies;

(c) members of the governing bodies of political parties;

(d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;

(e) members of courts of auditors or of the boards of central banks;

(f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(g) members of the administrative, management or supervisory bodies of State-owned enterprises;

(h) directors, deputy directors and members of the board or equivalent function of an international organisation.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;

***‘family members’** includes the following:*

(a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;

(b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person;

(c) the parents of a politically exposed person;

***‘persons known to be close associates’** means:*

(a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;

(b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.

The 2012 FATF Recommendations, which makes a distinction between foreign PEPs and domestic PEPs (although materially similar) include the following definition of a PEP:

Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.

The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

The definition in the 5th EU Anti-Money Laundering Directive is substantially more detailed than the FATF definition. This is a very clear definition, from which it clearly follows whether or not someone can be classified as a PEP, and which prevents misunderstandings.

Recommendation

We recommend including a detailed definition of a PEP in the definition of beneficial ownership, similar to the definition in the 5th EU Anti-Money Laundering Directive.

8.7 Legal Entities in the Scope of the Beneficial Ownership Disclosure Regime

The EITI Standard 2019 applies only to the extractive industry sector. We refer for to the Inception Report under Chapter 4 “*Scope of the Assignment*”.¹⁹

At the same time, worldwide there is special attention for beneficial ownership disclosure and multilateral organizations that fight against corruption, money laundering and financing of terrorism urge participating countries to introduce beneficial ownership

¹⁹ Bissessur & Co, Inception Report, Report No. PB/96-00165/01, Version 1.1, page 13

disclosure regimes. Recent controversial events such as the Angola case, the Panama Papers leak and other events have further fueled this development.

Consequently, most developed economies have recently introduced or will introduce in the near future beneficial ownership disclosure regimes which transcend the extractive industry sector and apply to the whole economic landscape. The introduction of a beneficial ownership disclosure regime economy wide will bring many benefits for the economy, while the downsides for *bona fide* individuals should be limited.

The introduction of an economy wide beneficial ownership disclosure regime will benefit Suriname's participation in international trade and international capital markets. It will contribute to the fight against corruption, money laundering and financing of terrorism. Furthermore, it will help companies and financial institutions with their due diligence before entering into any business relationship with another company.

In addition, an economy wide beneficial ownership disclosure regime will contribute to clarity and unambiguous interpretation and application of the laws and regulations. From an institutional perspective, the absence of an assessment framework to determine whether a company is subject to a beneficial ownership disclosure regime, will reduce administrative burdens.

Please note that in the consultations, the general feeling was also that the beneficial ownership disclosure regime should be implemented economy wide, but with a strong preference for all legal entities on which the Financial Reporting Act²⁰ is applicable.

The legal entities on which the Financial Reporting Act is applicable, are:

1. the cooperative (*cooperatie*), the mutual insurance company (*onderlinge waarborgmaatschappij*) and the public limited company (*naamloze vennootschap*);
2. a limited partnership (*commanditaire vennootschap*) or a general partnership (*vennootschap onder firma*) of which all members are fully liable to creditors for the debts, capital companies are under foreign law;
3. the legal entities established by or pursuant to the public law (*publiekrechtelijke rechtspersonen*), unless the regulations regarding accountability (*comptabiliteit*) provide otherwise;
4. the foundation (*stichting*) and the association (*vereniging*) that maintain one or more companies that must be registered in the trade register pursuant to

²⁰ Wet van 24 september 2017, houdende regels inzake de jaarrekening en wijziging van het Wetboek van Koophandel en Wet Coöperatieve Verenigingen (*Wet op de Jaarrekening*) (S.B. 2017 No. 84).

- the Trade Register Act, unless the foundation or association is obliged by or pursuant to the law to draw up a financial statement that is equivalent to an annual account as referred to in this law and it must be made public;
5. formal foreign companies (*formeel buitenlandse vennootschappen*).

This includes nearly all legal entities which operate businesses in Suriname. In addition, since it is already compulsory for these legal entities to publish financial reports, the drafting and publication of financial reports and at the same time updating beneficial ownership information will not result in a substantial residual administrative burden.

At the same time, we do recognize that the disclosure of the ultimate beneficial owner to combat money laundering, terrorism finance and corruption, will only be effective once mandatory disclosure is imposed upon all legal entities.

Limiting the disclosure of the ultimate beneficial owner opens possibilities for structuring for disclosure avoidance. In order to have one uniform rule, we will recommend that all legal entities disclose their ultimate beneficial owners.

In addition, please note that the EITI Standard 2019 stipulates that in the case of joint ventures, each entity within the venture should disclose its beneficial owner(s).

Recommendation

We recommend that a compulsory beneficial ownership disclosure regime will be implemented economy wide, to all legal entities.

In addition, we recommend that in the case of joint ventures, each entity within the venture should disclose its beneficial owner(s).

8.8 Summary of recommendations

Please find here below a summary of the recommendations made hereabove.

We recommend:

- that a beneficial owner must, in principle, be an individual (natural person).
- including in the definition of beneficial owner both 'ownership' and 'control'.
- that a definition of beneficial ownership should include both direct or indirect ownership or control of a legal entity.

- an ownership threshold of 20%. In addition, we recommend that for PEPs no threshold will be applicable so that all PEP beneficial ownership should be disclosed.
- including a detailed definition of a PEP in the definition of beneficial ownership, similar to the definition in the 5th EU Anti-Money Laundering Directive.
- that a compulsory beneficial ownership disclosure regime will be implemented economy wide, to all legal entities.
- that in the case of joint ventures, each entity within the venture should disclose its beneficial owner(s).

8.9 Proposed Definition for Beneficial Ownership

Based on the summary of recommendations hereabove, we propose, we propose the following definition of Beneficial Ownership.

Beneficial Owner

1. A 'beneficial owner' means any natural person(s) who ultimately owns or controls a legal entity or a legally binding arrangement, and/or the natural person(s) on whose behalf a transaction is carried out or an activity is conducted.
2. A natural person shall be deemed to "own or control" a legal entity or a legally binding arrangement, if that person:
 - a. ultimately owns or controls a legal entity through direct or indirect ownership of a at least 20% of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means; or
 - b. is able to exercise more than 20% of the votes in the case of resolutions amending the articles of incorporation of the legal entities; or
 - c. has the right to appoint, veto the appointment or remove a majority of the board of directors or equivalent body of a legal entity or a legally binding arrangement; or
 - d. is able to exercise effective control over the legal entity or legally binding arrangement; or
 - e. derives significant economic benefit from a legal entity or a legally binding arrangement.

3. In case the legal entity is a “Stichting” or a similar legal entity, then all following persons shall be deemed beneficial owners of the legal entity:
 - a. the board member(s);
 - b. the beneficiaries, or where the individuals benefiting from the legal entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
 - c. any other natural person exercising ultimate control over the legal entity;
4. In case the legally binding arrangement is a “Trust” under foreign law or a similar legally binding arrangement, then all following persons shall be deemed beneficial owners of the legally binding arrangement:
 - a. the settlor(s);
 - b. the trustee(s);
 - c. the protector(s), if any;
 - d. the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; and
 - e. any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;
5. In case the natural person is a Politically Exposed Person, any direct or indirect ownership or control of a legal entity or a legally binding arrangement by that person will constitute beneficial ownership, irrespective of the actual level of ownership or control.
6. For the avoidance of doubts, agents, nominees, trustees and other intermediaries shall not be deemed to be a beneficial owner.
7. In the case of a joint venture, each entity within the venture should disclose its beneficial owner(s).

Politically Exposed Person

1. A ‘politically exposed person’ means a natural person who is or who has been entrusted with prominent public functions and includes the following:

- a. heads of State, heads of government, ministers and deputy or assistant ministers;
- b. members of parliament or of similar legislative bodies;
- c. members of the governing bodies of political parties;
- d. members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- e. members of courts of auditors or of the boards of central banks;
- f. ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- g. members of the administrative, management or supervisory bodies of State-owned enterprises;
- h. directors, deputy directors and members of the board or equivalent function of an international organization.

and their family members and persons known to be their close associates.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;

2. A 'family member' of a politically exposed person includes, but is not limited to, the following:
 - a. the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;
 - b. the siblings, children, grandchildren, and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person;
 - c. the parents and grandparents of a politically exposed person;
3. A 'person(s) known to be close associates' of a politically exposed person(s) includes, but is not limited to, the following:
 - a. natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;
 - b. natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.

The definition is largely inspired by the following definitions of beneficial ownership:

- the 5th EU Anti-Money Laundering Directive
- the FATF Recommendations 2012,

- the Dutch Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrosisme*) including the related implementation Decree (*Uitvoeringsbesluit*); and
- the domestic Suriname Service Providers Identification Act (*Wet Identificatieplicht Dienstverleners*).

An advantage of using definitions that are widespread in use is that, on the basis of concordance, pre-existing case law can be applied for the interpretation of the definition.

9 Disclosure: level of details and UBO Register

In this chapter, we will focus on disclosure:

- The level of details of beneficial ownership disclosure;
- Who should disclose beneficial ownership;
- Who should have access to beneficial ownership information;
- The means of disclosure (UBO Register);
- Who could best be suited to collate and maintain beneficial ownership information in Suriname.

9.1 Level of details in relation to beneficial ownership disclosure

Just as there is no universal definition of beneficial ownership, so there is no universal rule on the level of details. We will therefore elaborate further on international good practice laws and regulations.

The 2019 EITI Standard 2.5 (sub c), states the following with regard to the level of details to be disclosed:

should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

In addition, 2019 EITI Standard 2.5 (sub d), elaborates further on the level of detail that should be disclosed:

Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

As such, according to the 2019 EITI Standard, the level of details in relation to beneficial ownership disclosure, are as follows:

Mandatory	Recommended
<ul style="list-style-type: none"> • the name of the beneficial owner • the level of ownership • details about how ownership or control is exerted 	<ul style="list-style-type: none"> • national identity number • date of birth • residential or service address • means of contact

<ul style="list-style-type: none">• the nationality• the country of residence• politically exposed persons status	
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The 5th EU Anti-Money Laundering Directive prescribes the following regarding the level of details to be disclosed:

The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

The 2012 FATF Recommendations do not prescribe the level of details to be disclosed. The interpretative note to Recommendation 24 refers only to “basic information” and “beneficial ownership information”.

In the consultation, there is universal consensus that the name of the UBO and its country of residence should be collected and also be publicly available. There is a tendency that more personal information such as residential address, tax identification number and verification documents should be collected but not be publicly available.

Recommendation

Based on international good practice rules and regulations, and based on the consultation, we recommend that the following level of detail should be collected:

- Name of the UBO
- Date of birth
- Place of birth
- Nationality
- Country of residence
- Type and size of economic interest in corporate entity
- Details about how ownership or control is exerted
- Residential address
- Tax identification number
- Copies of documents verifying the identity of the UBO
- Copies of documents verifying the type and size of the economic interest of the UBO

9.2 Who should disclose (report) beneficial ownership

The requirement to disclose (report) beneficial owners can be imposed on the legal entity or on the beneficial owner.

The 2019 EITI Standard 2.5 (sub c) imposes the requirement for disclosure on the companies:

*As of 1 January 2020, **it is required that** implementing countries request, and **companies publicly disclose**, beneficial ownership information.*

The 5th EU Anti-Money Laundering Directive states that:

*Member States shall ensure that **corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.** Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.*

*Member States shall ensure that **those entities are required to provide**, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.*

Member States shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, bearer shareholdings or control via other means, provide those entities with all the information necessary for the corporate or other legal entity to comply with the requirements in the first subparagraph.

The 2012 FATF Recommendations do not provide any guidance on who should disclose.

From an enforcement perspective, it will be more effective to impose the requirement on the legal entity than on the beneficial owner: it is the legal entity that does business in Suriname and therefore has local presence. The beneficial owner might not have local presence and as a result, enforcement can be jeopardized.

In addition, there should be sufficient legislation which impose obligations to beneficial owners to provide the information required by the legal entity to comply with the disclosure requirements.

In the consultation, all but one respondent takes the standpoint that the legal entity should disclose beneficial ownership.

Recommendation

We recommend that the legal entity should be responsible for disclosing (reporting) beneficial ownership. In addition, there should be legislation which compel beneficial owners to provide the required information to the legal entities.

9.3 Who should have access to beneficial ownership information

The 2019 EITI Standard 2.5 (sub c) stipulates the following with regard to the access level of beneficial ownership information:

*As of 1 January 2020, it is required that implementing countries request, and companies **publicly disclose, beneficial ownership information***

The 5th EU Anti-Money Laundering Directive stipulates the following with regard to the access level of beneficial ownership information:

5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

- (a) competent authorities and FIUs, without any restriction;*
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;*
- (c) **any member of the general public.***

The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

The 2012 FATF Recommendations state in its Interpretive Note to Recommendation 24 the following:

Competent authorities, and in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties.

In addition, FATF states that²¹:

The trend of openly accessible information on beneficial ownership is on the rise among countries.

This means that according to the EITI Standards and according to the 5th EU AML Directive, the Beneficial Ownership information should be publicly available. FATF recognizes a trend of openly accessible information on beneficial ownership. It is likely that future FATF Recommendations will include a requirement that beneficial ownership information is publicly available.

Although we recommend that beneficial ownership information should be publicly available, we do recommend that some, more personal, information should remain non disclosed insofar disclosure of such information is not required by EITI Standards.

In the consultation only 3 out of 8 respondents agreed that the general public should have access to beneficial ownership information. However, given the international trend and the likeliness that FATF will prescribe that beneficial ownership information should be publicly available, we believe that complying with international regulations prevails over the opinion. We recommend that better awareness should be promoted to Suriname citizens.

Recommendation

In general, beneficial ownership information mentioned in §9.1 should be accessible to the general public. This excludes the following more personal information: Residential address; Tax identification number; Copies of documents verifying the identity of the UBO; Copies of documents verifying the type and size of the economic interest of the UBO. This information should however be made available to law enforcement agencies.

9.4 The means of disclosure (UBO Register)

The means of disclosure refers to where the beneficial ownership information can be obtained. In general, three approaches are recognized:

- The Registry Approach, requiring company registries to obtain and hold up to date information on beneficial ownership.

²¹ FATF Publication: Best Practices Beneficial Ownership Legal Persons, October 2019, page 74

- The Company Approach, requiring companies themselves to obtain and hold up-to-date information¹⁸ on beneficial ownership by maintaining a list of shareholders or members, and keeping it up-to-date.
- The Existing Information Approach, using existing information collected on the beneficial ownership of corporate entities to identify beneficial owner.

The 2019 EITI Standard 2.5 (sub a), states the following with regard to the means of disclosure:

*It is recommended 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. **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 this information is already publicly available, the EITI Report should include guidance on how to access this information.*

The 5th EU Anti-Money Laundering Directive states the following with regard to means of disclosure:

*Member States shall ensure that the information referred to in paragraph 1 is held in a **central register** in each Member State, **for example a commercial register**, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council (1), or a public register.*

Consequently, international good practice is to apply the registry approach as the primary approach, so that a register of beneficial owners is established. This register could be part of the commercial register.

In addition, the company approach and existing information approach could be used to verify the information recorded in the register, so that the different approaches supplement each other. If a universal data collection and disclosure standard is adopted (please be referred to §9.5), domestic government authorities could use each others information to verify the information. The FATF recommends this multi-pronged approach. However, we do recognize that this multi-pronged approach will require additional institutional strengthening and might not be feasible on short term basis.

Recommendation

We recommend establishing a public central register for beneficial ownership disclosure purposes. In addition, we recommend that - in the near future - a multi-pronged approach should be implemented for data validation and verification purposes.

9.5 Data collection

For data collection and disclosure purposes, we recommend implementing a standardized approach for the following reasons:

- A standardized approach simplifies sharing of information between law enforcement agencies, tax authorities and trade registries. Information could be shared domestically amongst different government agencies or the tax authorities or could be shared international on a case by case basis or even under automatic information exchange agreements.
- A standardized approach improves accessibility of data for international organizations and foreign companies or multinationals and will further enable Suriname to globalize its economy.
- A standardized approach improves validation and verification of information against foreign beneficial ownership registries – in case of cross border beneficial ownership.

A standardized approach for data collection and disclosure purposes is the Beneficial Ownership Data Standard. This Standard is developed by the Open Ownership organization. This organization has partnered with, amongst others, Transparency International, Global Witness, Tax Justice Network and EITI, and is funded by, amongst others, the World Bank.

A detailed technical analysis of the Beneficial Ownership Data Standard is beyond scope of this Assignment. However, we do recommend as part of the Assignment that data collection and disclosure will occur according to a standardized framework.

Recommendation

We recommend that data collection and disclosure will occur according to the Beneficial Ownership Data Standard developed by the Open Ownership organization.

9.6 Who could best be suited to collate and maintain beneficial ownership information in Suriname

In §9.4 we have recommended that Suriname should establish a register for beneficial ownership disclosure purposes. This section continues on this recommendation.

When establishing a register for beneficial ownership disclosure purposes, such register could be added to an existing register, for example a commercial register, companies register, or could be a stand-alone register.

There are two considerations which should be taken into account when making this decision:

- What is the scope of beneficial ownership disclosure: only a certain industry or line of business, or economy wide? If the scope is limited, a limited register might be less costly in terms of development costs, maintenance costs and administrative costs. On the other hand, if the scope is economy wide, then adding a beneficial ownership register to an existing register could be more economical but also more practical.
- What is the level of sophistication of the current registers in place. If the existing register is fully automated and database driven, adding beneficial ownership information might be more straightforward than if the current register is kept manually.

In §8.7 we have recommended that a compulsory beneficial ownership disclosure regime should be implemented economy wide, to all legal entities on which the Financial Reporting Act is applicable. Hence, adding a beneficial ownership register to an existing register may be more economical but more importantly can be more practical.

In §9.4 we have recommended that a public central register for beneficial ownership disclosure purposes should be established.

It is mandatory (by law) that every business in Suriname is registered in the trade register (*handelsregister*) which is kept by the Suriname Chamber of Commerce. The Trade Register Act already has a mandatory registration requirement for legal entities which conduct a trade or businesses including details on directors and share capital, and already includes penal provision in case the information is incorrect. From that perspective, it makes sense to include the register of ultimate beneficial owners as a part of the company registration in the trade register.

As described in §5.1, the Trade Register Act should be amended for purposes of (mandatory) registration of the ultimate beneficial owners. In addition, we recommend that the penal provisions are updated.

The consultation also shows a strong preference that the Chamber of Commerce is the institution that is best suited to oversee, collate and maintain beneficial ownership information/data.

Recommendation

We recommend that the Suriname Chamber of Commerce and Industry will oversee, collate and maintain beneficial ownership information as part of its statutory task to maintain the Trade Register. The information relating to beneficial ownership of legal entities should be included the Trade Register. The Trade Register Act should be amended for this purpose.

10 Opportunities for Suriname in relation to the implementation of the EITI Standard 2019 requirements on beneficial ownership disclosure

Based on the desk research, desk review and consultation, the Consultant will analyze opportunities for Suriname to fulfil the EITI Standard 2019 requirements on beneficial ownership disclosure. The analysis of opportunities will be performed from a practical viewpoint.

The opportunities are in line with the recommendations in chapter §9.

Based on international good practice rules and regulations, and based on the consultation, we recommend that the following level of detail should be collected and should be disclosed or not:

Type of information to be collected	Public	Non-Public
Name of the UBO	X	
Date of birth	X	
Place of birth	X	
Nationality	X	
Country of residence	X	
Type and size of economic interest in corporate entity	X	
Details about how ownership or control is exerted	X	
Residential address		X
Tax identification number		X
Copies of documents verifying the identity of the UBO		X
Copies of documents verifying the type and size of the economic interest of the UBO		X

We have made the following specific, practical recommendations:

- In general, beneficial ownership information should be accessible to the general public, with the exception of the non-public information mentioned above.
- We recommend that the legal entity should be responsible for disclosing (reporting) beneficial ownership (and not the beneficial owner). In addition, there should be legislation which compel beneficial owners to provide the required information to the legal entities.

- We recommend establishing a public central register for beneficial ownership disclosure purposes. In addition, we recommend that - in the near future - a multi-pronged approach should be implemented for data validation and verification purposes.
- We recommend that data collection and disclosure will occur according to the Beneficial Ownership Data Standard developed by the Open Ownership organization.
- We recommend that the Suriname Chamber of Commerce and Industry will oversee, collate and maintain beneficial ownership information as part of its statutory task to maintain the Trade Register. The information relating to beneficial ownership of legal entities should be included the Trade Register. The Trade Register Act should be amended for this purpose.

11 Conclusion

As extensively discussed, there is no universal definition of beneficial ownership and no universal practice of beneficial ownership disclosure. At the same time, it is recommended to adhere to international good practice. In view of international developments, it is inevitable that Suriname will also have to keep a public register for disclosure of ultimate beneficial owners.

The implementation of a beneficial ownership disclosure regime reflects that a country takes prevention of corruption, money laundering and terrorism finance seriously. Recent controversial leaks such as the Panama Papers, have put a specific focus on beneficial ownership disclosure. As a result, countries which implement a high level of AML/CFT compliance, are preferred interesting trading partners. According to the consultation, there seems to be broad support for the implementation of beneficial ownership disclosure in Suriname. There are many benefits for all stakeholders operating in an environment with improved beneficial ownership transparency.

Primarily, bona fide companies deem it as of paramount importance to know who they are doing business with. A business environment characterized with transparency, clear and consistent reporting requirements results in a more stable investment environment. Consequently, beneficial ownership transparency can provide further benefits for companies operating in the extractive sector:

- Reducing risk in business relations;
- Creating a level playing field;
- Improved investment climate;
- Preventing corruption and illicit financial flows;
- Building trust.

In particular for Suriname, beneficial ownership transparency could provide substantial benefits. In connection with the substantial recent offshore oil discoveries, substantial foreign direct investment is expected. Beneficial ownership transparency enables Suriname to mitigate risks related to corruption and illicit financial flows, as well as tax evasion, money laundering and financing of terrorism. As a result, more foreign direct investors will be interested in doing business in Suriname. This improves business competitiveness and enables the Government of Suriname and Suriname domestic businesses to negotiate agreements on more favorable terms with foreign direct investors.

In line with the main objectives of this Assignment, in this Assessment Document we have provided recommendations on the following:

- a. A definition a 'beneficial owner'.
- b. The level of (personal) details of the beneficial ownership disclosures such as name, date of birth, nationality, et cetera; and
- c. The institution or agency that could best be suited to collate and maintain beneficial ownership information.

All recommendations provided are in line with international and regional good practice laws and regulations and are customized for domestic purposes.

We recommend further research on the following matters:

- A detailed legislative product that provides for the amendment of existing legislation in order to incorporate the definition of beneficial owner;
- A detailed legislative product that provides for the amendment of the trade register law in order to facilitate beneficial ownership disclosure;
- A detailed timetable for implementation of beneficial ownership disclosure and transitional legislation in this regard;
- Raise awareness amongst the general public in Suriname, of the benefits of a public beneficial ownership register
- Further consultation with all stakeholders to gain further support for a public beneficial ownership register in general, and the legislative products and detailed timetable more specifically.

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