



Technical Assistance to the Government of Malawi to support the implementation of Public Finance Management Reforms

MALAWI EITI (MWEITI) BENEFICIAL OWNERSHIP DISCLOSURE FEASIBILITY STUDY

TECHNICAL REPORT

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List of Acronyms and Abbreviations

AER	Annual Economic Report
ASM	Artisanal and Small-Scale Mining
BO	Beneficial Ownership
BOT	Beneficial Ownership Transparency
CIT	Corporate Income Tax
DoM	Department of Mining
DoF	Department of Forestry
EAD	Environmental Affairs Department
EITI	Extractives Industries Transparency Initiative
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU-AML	EU Directives on Anti-money Laundering
FIA	Financial Intelligence Authority
GSD	Geological Survey Department
IFF	Illicit Financial Flows
MoFEA	Ministry of Finance and Economic Affairs
MoM	Ministry of Mines
MRA	Malawi Revenue Authority
MSG	Multi Stakeholder Group
MWEITI	Malawi Extractives Industries Transparency Initiative
NAO	National Audit Office
OGP	Open Government Partnership
PAYE	Pay As You Earn
RBM	Reserve Bank of Malawi

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1 Introduction

This section sets out the following:

- Background and introduction to the report.
- Specific objectives and scope of the work.
- The methodology used, key guiding principles, limitations and structure of the report.

1.1 Background

1.1.1 Programme

The Government of Malawi, with financial support from the European Union, is implementing the Chuma Cha Dziko programme (Public Finance Management Reforms Project). One element of this programme is the project titled “*Technical Assistance to Public Finance Management Reforms in Malawi*”, implemented through a service contract held between the Government of Malawi’s National Authorising Office (NAO) and DAI Brussels, in consortium with Tetra Tech and with support of local operating partner O&M.

Key Result Area 3 of the project aims to improve the effectiveness and efficiency of revenue policy implementation and support the Malawi extractive industries transparency initiative (MWEITI).

Improving domestic resource mobilisation is one of the strategic priorities for Malawi and a main driver for achieving the aspirations under Malawi 2063, the national long-term development vision. In its strategic documents, the Government focuses on policies aimed at expanding the revenue base, stimulating investment and economic activities. One of the main activities to achieve the strategic priorities is by creating an enabling environment for smooth investment and governance of natural resources under the extractive sector.

Under the EITI, implementing countries are required to disclose beneficial ownership information for extractive companies from 1 January 2020. To implement this, the EITI recommends countries undertake a beneficial ownership disclosure (BOD) feasibility study to understand the alignments of legislations, regulations, institutional structures, and systems to the EITI Standard.

MWEITI Multi-Stakeholder Group (MSG) has undertaken key actions towards BO disclosure. In 2019, the MSG developed a BO disclosure roadmap and further began disclosure of BO information in its reconciliation reports, however, information disclosed did not fully satisfy EITI BO requirements. MWEITI National Secretariat has further put efforts into working with the Registrar General Department for the development of the Beneficial Ownership Regulations under the Malawi Companies Act (further Malawi BOD Regulations, 2022) to ensure that there is a comprehensive legal framework for this disclosure with a threshold of 5 percent shareholding so that the information necessary for EITI purposes can be collected through the Registrar General Department and be readily available.

1.1.2 Assignment

Global efforts to achieve beneficial ownership transparency have received international recognition and commitments under the Financial Action Taskforce (FATF) and its regional bodies; the United Nations Convention Against Corruption (UNCAC); the Extractives Industries Transparency Initiative (EITI); and the Open Government Partnership Initiative (OGP). These international standards require, at minimum, transparency of the beneficial owners of corporations, trusts, and other legal entities, to tackle tax evasion, corruption, money laundering and illicit financial flows. Individuals engaged in these illegal and illicit activities find it more difficult to conceal their criminal activities and proceeds of crime in jurisdictions that fully implement beneficial ownership transparency.

Over 170 countries have already taken steps to implement beneficial ownership disclosure. Specifically, Malawi has obligations under EITI, FATF and OGP to implement beneficial ownership transparency.

Box. 1 – The Global Push for Beneficial Ownership Information

The global community has recognized the importance of beneficial ownership transparency, leading to a growing push for disclosure. Governments and regulatory bodies worldwide are implementing measures to ensure companies reveal their ultimate beneficiaries.

The Financial Action Task Force (FATF), an intergovernmental organization combating money laundering and terrorist financing, has made beneficial ownership disclosure a priority. It has provided guidance and recommendations to member countries to establish robust mechanisms for collecting, maintaining, and accessing beneficial ownership information.

In addition to the FATF, international bodies such as the Organization for Economic Cooperation and Development (OECD), the Extractive Industries Transparency Initiative (EITI), Open Ownership, and the World Bank have also emphasized the need for beneficial ownership transparency. These organizations work collaboratively to develop standards and best practices that promote global transparency and combat financial crimes.

This global momentum reflects the recognition that beneficial ownership disclosure is an essential tool in the fight against illicit financial activities. It ensures that companies cannot hide behind complex ownership structures and helps authorities track and prevent financial crimes.

Source: Author's Construct

Table 1-1: Beneficial Ownership Disclosure Requirements under Key Global Initiative

INITIATIVES	DESCRIPTION
EITI	<p>Malawi signed up to the EITI in 2015. Under the EITI Standard, all extractives companies that bid for, operate, or invest in oil, gas and mining sectors are required to publicly disclosed their beneficial owners via the EITI reports. It is also recommended that mineral and oil and gas trading companies discloses their beneficial owners under the EITI.</p> <p>Under Requirement 2.5 of the EITI Standard, implementing countries are:</p> <ul style="list-style-type: none"> encouraged to 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); encouraged make public knowledge the level of ownership; and details about how ownership or control is exerted. Where possible, implementing countries are encouraged to incorporate beneficial ownership information 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 must include guidance on how to access this information.
ESAAMLG	Malawi is a member of ESAAMLG with the aim to combat money laundering and terrorist financing crimes by implementing the Financial Action Task Force (FATF) Recommendations. Under FATF recommendations 24 and 251, countries are required to maintain beneficial ownership information and facilitate its access to law enforcement agencies and other competent authorities . These enjoins FATF and FATF Style countries to ensure that competent authorities have access to adequate, accurate and up-to-date information on the true owners of legal entities and arrangements, including corporations, Trusts, Foundations, etc.
EU-AML	Under the EU's Anti money Laundering Directive, beneficial ownership disclosure is a key part considered as part of improved governance in countries that also receive support from the EU. Although Malawi is not directly required to implement high standards of Antimoney Laundering and Countering the Financing of Terrorism under the EU directive, it emphasizes cooperation between member states in sharing information and investigating money laundering activities to non-member states like Malawi. Malawi can benefit from information sharing and technical assistance from the EU to improve its own AML/CFT framework, hence beneficial ownership disclosure regime.
OGP	Malawi has made commitment on Beneficial Ownership Disclosure and transparency in its 2023 OGP Action Plan . This commitment expires in 2025, hence calls for urgent action on the institutionalization of beneficial ownership disclosure regime in Malawi.

1.1.3 Malawi BO Regime

Since 2011, Malawi has put in place multiple legislative and regulatory frameworks on BO disclosure, including the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act (Chapter 8:07) and its Amendments; Financial Crimes Act (Chapter 7:07) enacted in 2017 which repealed the Money Laundering Act; and the recent Minerals and Mining Act, 2023 and the Beneficial Ownership Regulations (2022). MWEITI has played an instrumental role in the latter where through consultation with the Ministry of Mines resulted in shaping the framing of BO provisions and thresholds in the law.

The legislations provide for the basis for collection, processing, management, and publication of BO data. Despite the enactments of these legislations, Malawi's implementation of BO disclosure still faces challenges. The legislations still have major gaps compared to international best practices even though EITI Standard requirements are expected to be implemented by MWEITI. Further, there have been multiple stakeholder engagements between relevant agencies including MWEITI, the Registrar General, the Financial Intelligence Authority (FIA), and other government representatives. All stakeholders agree that the Registrar General is expected to lead the implementation of BO disclosure, however, there remain capacity and system challenges. Hence, there is no current BO register.

¹ FATF Guidance on Transparency and Beneficial Ownership

Following the passage of regulations to support BO implementation in 2022, assessment of BO provisions as well as the anticipated institutional structure for its implementation has become necessary to identify areas of strength and weakness to form the basis for the development of a functioning BO regime. This encompasses an assessment of the key legal provisions against international best practices as well as the readiness of the institutions' assigned duties by the law to ensure effective BO disclosure implementation. In addition, the EITI process in Malawi is expected to be validated in January 2025, and the expectation is for MWEITI MSG to have a functioning beneficial ownership register of all companies in the extractive sector that bid, operate or invest in the sector. This expectation cannot be delivered by the Register General by January 2025.

The findings from this study will be shared with the MWEITI MSG, the FIA and, the Registrar General as well as government institutions and other key stakeholders, including Civil Society Organisations (CSOs) and development partners. It will form the basis for a national BO stakeholder capacity building and sensitization for government, professional bodies, CSOs and the media.

1.2 Objective of Assignment

1.2.1 Purpose

The overall objective of this assignment is to assist the Multi-Stakeholder Group (MSG) and MWEITI National Secretariat through the Revenue Policy Division (RPD) of the Ministry of Finance and Economic Affairs (MoFEA) with the performance of a MWEITI Beneficial Ownership Disclosure Feasibility Study, This will include:

- identification of the legal framework on BOD in Malawi, any implementation barriers to production of publicly accessible BOD register, recommendations for improvement and production of MWEITI beneficial ownership list in publishable format, and
- development of the MWEITI Beneficial Ownership Disclosure Roadmap considering the country's specific context and best international practice to BOD.

1.2.2 MWEITI and Malawi National Priorities

MWEITI is a very important initiative in the support and promotion of Malawi aspirations of achieving "an inclusively wealthy and prosperous country by 2063", Malawi Vision 2063, and its 10 years Implementation Plan (MIP-1). **MWEITI contributes directly to the MW Vision 2063 through supporting and creating a conducive environment for promoting investment climate and development of mining.** Mining is an important enabler to support Pillar of industrialization in Malawi Vision 2063 and MIP-1. Therefore, supporting MWEITI has significant benefits to enhance realization of Malawi National Priorities.

1.2.3 Scope of Assignment

This assignment ultimately encompasses providing an overview of Malawi's BO legislations and outlook for BO disclosure implementation under the EITI, including the basis for the development of regulations, BO forms, and overall implementation plan.

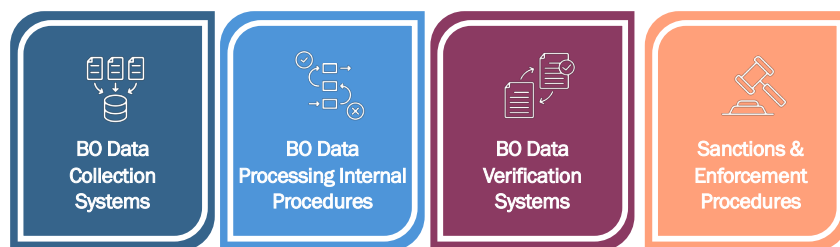
The Consultant is expected to support MWEITI with the development of a MWEITI Beneficial Ownership Disclosure Feasibility Study report with clear recommendations and Implementation Action Plan on the basis of robust data and information analysis of MWEITI reporting entities consultations, documents made available through the MWEITI National Secretariat, the validation report of the EITI International Secretariat, the EITI Board Decision 2022, the 2023 EITI International Standard requirements and consultations with other key stakeholders in Malawi. The Consultant is also expected to check if there is any legal barrier contravening this requirement directly or indirectly which could hinder BOD implementation.

Specifically, assignment will encompass:

1. Review information on MWEITI's compliance with EITI Requirement 2.5, focusing on guidance by the EITI International Standard, Malawi EITI national context and other countries experience as well as initial stakeholder interviews to understand the context
2. Consult key EITI stakeholders, including the MSG, civil society group on extractives, government and extractive industry reporting entities, experts in the legal, financial and extractives sectors, National and International EITI Secretariat to better understand how beneficial ownership disclosure is legally documented and practically applied in the context of Malawi and to develop an understanding of potential difficulties in implementing EITI BOD, legal and practical barriers, registrar general's
3. Produce all key deliverables including draft report, validation workshop, workshop report, final report, and end of assignment report.

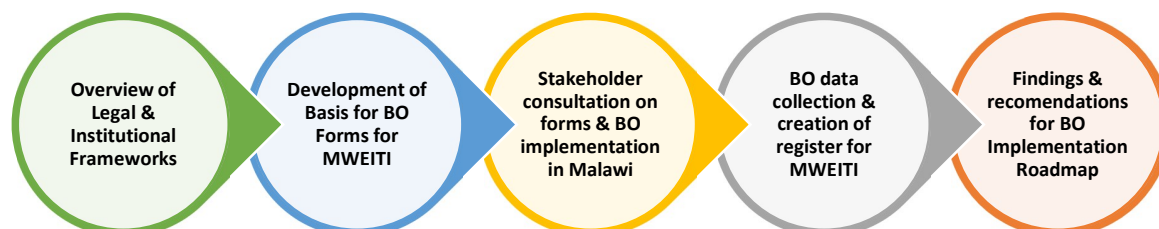
The report also assesses the readiness of the Registrar General and other relevant institutions against best practices in the following thematic areas:

Figure 1-1: Thematic Areas for Institutional Assessment






Finally, the report will proffer recommendations on effective BO disclosure implementation and the way forward for Malawi to satisfy its international obligations to BO disclosure under EITI and FATF.

Figure 1-2 Broad Scope of the Report



Source: Authors' construct

Box. 2 – Understanding the Relevance of Beneficial Ownership Transparency	
<p>Beneficial ownership refers to the individuals who ultimately own or benefit from a Corporation or Trust, or control its operations. While legal ownership may reside with one party, the beneficial owner is the true owner behind the scenes. This distinction is important for several reasons.</p> <p>Transparent beneficial ownership is vital for combating illicit financial activities such as money laundering, tax evasion, and terrorist financing. By knowing who the ultimate beneficiaries are, authorities can trace the flow of funds and prevent misuse. It also helps prevent corruption and promotes fair business practices by discouraging hidden ownership structures.</p> <p>Furthermore, beneficial ownership transparency enhances a company's reputation and credibility. Customers, investors, and partners are increasingly concerned about ethical business practices. By openly disclosing beneficial ownership, companies can demonstrate their commitment to transparency and gain the trust of stakeholders.</p> <p>In summary, understanding and disclosing beneficial ownership is not just a regulatory requirement; it is a strategic move that can protect companies from reputational and legal risks, as well as enhance their standing in the eyes of customers and investors.</p> <p><i>Source: Author's Construct</i></p>	 <p>Fight Illicit Financial Activities</p>  <p>Build Trust and Reputation</p>  <p>Prevent Legal and Reputational Risks</p>

1.3 Approach

1.3.1 Methodology

The methodology used in producing this report encompassed qualitative, and political economy analysis: These are explained in more detail below.

1.3.2 Qualitative analysis

- **Desk literature review:** The consultant conducted an extensive literature review covering relevant documents on the Beneficial Ownership Disclosure Implementation in other EITI and

FATF implementing countries. The assessment of the BO legal and institutional frameworks in Malawi was based on desk review of the following:

LAWS AND REGULATIONS	INTERNATIONAL STANDARDS, PRINCIPLES, & GUIDELINES
1. Financial Crimes Act (2017)	8. EITI Standard Requirement and Guides on Beneficial Ownership Disclosure
2. Mining and Mineral Act, 2023	9. Open Ownership principles based on the Beneficial Ownership Data Standard (BODS)
3. Companies Act 1986 (Revised 2014)	10. EU Anti-money Laundering Directives with particular emphasis on BO requirements
4. The Companies (BO Regulations, 2022)	11. Tax Justice Network’s research on BO Information Verification
5. Taxation Act (Revised 2018)	12. OECD’s Disclosure of BO Disclosure of Listed Companies
6. Public Procurement and Disposal of Assets (2017)	13. Other relevant practice notes and literature on BO disclosures
7. Trustees Act, 1967	14. FATF Guidance on Transparency and Beneficial Ownership Disclosure

- Beyond the review, the consultant analysed Malawi’s existing BO disclosure regime and plans for BO disclosure reforms against OO’s BO principles to understand the gaps to meeting relevant requirements under FATF, EITI and other international BO requirements.
- **Stakeholder mapping and interviews:** This involved a deep dive mapping and analysis of the different stakeholders involved in or intended to be part of national BO disclosure implementation. To validate findings from the desk review and independent research, the consultant conducted a face-to-face interview with the relevant stakeholders, including the Registrar General’s office, Ministry of Mines, Public Procurement and Disposal of Assets Authority, Financial Intelligence Authority (FIA), and extractive companies within the umbrella of MWEITI. This exercise also helped identify stakeholder interests and understanding of their role in BO implementation in Malawi.

1.3.3 Political economy analysis

- The findings from the qualitative analyses are further interrogated using a **Problem Driven Political Economy Analysis** to help understand the underlying cause of challenges that are identified under the study. This is also relevant to underscore the proposal of clear and feasible recommendations.

The combination of these methods allows for the effective analysis of secondary information related the MWEITI, stakeholder views and observations garnered by the consultant.

2 Overview of Beneficial Ownership Legal and Institutional Frameworks against International Best Practices

This section examines:

- The legal, institutional, and regulatory framework governing Malawi beneficial ownership disclosure.
- Specifically, this section reviews the definition of beneficial owners against international best practices, including the EITI Standard Requirement 2.5.
- It also reviews key aspects including its comprehensive coverage, BO register requirements, among other parameters based on Open Ownership's BO Data Standard

2.1 Legal and regulatory framework

The legal framework governing Malawi's BO regime is a combination of statutory provisions enshrined in multiple Acts of Parliament and Legislative Instruments, even though the current principal legislations governing BO implementation in Malawi is the Companies (Beneficial Ownership) Regulations, 2022.

- **Financial Crimes Act (2017):** Under FATF recommendations 24 and 25², countries are required to maintain beneficial ownership information and facilitate its access to law enforcement agencies and other competent authorities. Following this requirement, Malawi enacted its first Beneficial Ownership Disclosure provisions in 2006 in the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act, 2006. However, the implementation of beneficial owner disclosure was not widely enforced as accountable institutions and competent authorities demonstrated low understanding to BO disclosure implementation in order to satisfy the relevant requirements under FATF. The definition in the 2006 Act failed to target the ultimate individual beneficial owner. Subsequent amendments were made in 2017 to broaden the definition of a beneficial owner to enhance BO transparency in the financial and other sectors.
- **Mining and Mineral Bill, 2023:** The Bill provides the basis for the collection of beneficial ownership information of all persons who own 5% share capital in companies that apply for small-scale, prospecting, medium and large-scale mining licenses. BO provisions under this law applies to the mining sector.
- **Companies Act 1986 (Revised 2014):** Provides the basis for beneficial ownership disclosure for company subsidiary and the financial acquisition of shares. Sets threshold for beneficial owners at 25% of shareholding.
- **The Companies (Beneficial Ownership) Regulations, 2022:** The Acts provides for the basis for the collection, processing, management, and publication of beneficial ownership information of all companies, trustees, and partnerships that conduct business in Malawi. These

² FATF Guidance on Transparency and Beneficial Ownership

legislations are the main BO legislations that are intended to provide the establishment of a central BO register in Malawi.

- **Taxation Act (Revised 2018):** The Act does not provide a legal basis for the recognition of beneficial owners, however it recognises beneficiary with vested interests under Trust arrangements.
- **Public Procurement and Disposal of Assets (2017):** The Act does not provide a legal basis for the recognition of beneficial owners of bidding companies, however there are public procurement tenders that requests for beneficial ownership information of bidders.
- **Trustee Act, (1967, Chapter 5:02) and amendments (2018):** The Act provide the basis for the regulation of Trusts and Trustees, including those creates or constituted before and after the commencement of the Act. Whiles the Act does not require beneficial ownership disclosure, the BO Regulations enacted in 2022 apply Trusts and Trustees.

2.2 Institutional framework

The institutional capacity to oversee BO disclosure implementation rests with various government agencies. The table below provide key institutions and their role in BO implementation in Malawi:

Table 2-1: Institutional Responsibilities on BO Implementation in Malawi

INSTITUTIONS	RESPONSIBILITY
Department of the Registrar Generals	RG is the legally mandated agency responsible for the overall implementation of a central BO register in Malawi. As part of its responsibilities, RG is expected to lead the collection, processing, maintenance, and publication of BO data across all sectors in Malawi
Financial Intelligence Authority (FIA)	FIA is mandated by law to fight against Money Laundering and combat Terrorist Financing in Malawi. As part of its mandate, FIA ensures that accountable institutions (as defined in the Financial Crimes Act) conduct the necessary customer due diligence and collect the BO information of all customers based on the level of transactions. Further, accountable institutions file suspicious transactions reports with the FIA to coordinate further investigations. Ultimately, FIA coordinate between accountable institutions and law enforcement agencies to verify BO information
Mining Regulatory Authority (MRA)	Under the Ministry of Mines, the MRA is responsible for the processing of prospecting/ mining lease applications, carries out inspections and demarcation of mining areas, monitors mineral revenue. With regards to BO, MRA is responsible for the collection, processing, maintenance, verification, and disclosure BO information from all companies that apply for mining exploration license in Malawi. BO under the Minerals Bill is focused on persons who own 5% or more of the company's share capital
Malawi Extractives Industries Transparency Initiative (MWEITI)	EITI promotes the open and accountable management of oil, gas, and mineral resources. As part of Malawi's implementation of the EITI initiative, MWEITI's Multi-Stakeholder Group (MSG) is responsible for the promotion and implementation of EITI Standard.

As part of implementing the Standard, MWEITI coordinates with extractive stakeholders to collect and publish beneficial ownership information of all companies that bid for, invest or operate in the extractive sector in Malawi

Source: Authors' Construct

Box 3 – The Legal and Regulatory Framework for Beneficial Ownership Disclosure

To ensure BO transparency, **governments around the world have implemented legal and regulatory frameworks that require companies and Trust or Trust like arrangements to disclose their ultimate owners, those who ultimately control, and beneficiaries**. These frameworks vary in scope and approach but share the common goal of combatting crimes and enhancing transparency.

Many **countries now mandate the collection and registration of beneficial ownership information**. They require companies to identify and verify their ultimate beneficial owners, maintain accurate records, and disclose this information to relevant authorities.

Furthermore, **regulatory bodies have established guidelines to assist companies in complying with beneficial ownership disclosure requirements**. These guidelines provide clarity on definitions, due diligence procedures, and reporting obligations, helping companies navigate the complexities of compliance.

It is crucial for businesses to stay informed about the legal and regulatory requirements in their jurisdictions. Non-compliance can result in severe penalties, reputational damage, and even criminal charges. By understanding and adhering to the legal and regulatory framework, companies can ensure their operations are in full compliance and avoid unnecessary risks.

Source: Author's Construct

2.3 Assessment of BO Legislations Against Best Practices

This section assesses key aspect of the primary BO legislations The Companies (Beneficial Ownership) Regulations, 2022: Mining and Mineral Bill, 2023; and Financial Crimes Act (2017). The assessment is based on Open Ownership's Beneficial Ownership Disclosure Principles³.

2.3.1 Definition of a Beneficial Owner

There are three key definitions of beneficial owner in the following legislations, although the primary legislation is the **Companies (Beneficial Ownership) Regulations, 2022⁴**.

Based on the assessment, the definition of a beneficial owner in the Companies Act aligns with international best practice, however, there remain some challenges with the adequacy of BO information collected by the prescribed forms.

Robust Definition

Definition of beneficial owner must be robust, clearly enshrined in law and include the following scope:

- Natural person
- Comprehensively cover all forms of ownerships including interests, control, and influence
- Direct and indirect interest
- Target the ultimate beneficial owner to avoid the risk of documenting different layers of legal owners
- Single unified definition in a primary legislation
- Consideration to an applicable threshold
- Mechanisms of holding interest

³ <https://www.openownership.org/en/principles/>

⁴ <https://www.fia.gov.mw/publications/beneficial-ownership-regulation.pdf>

Pros	Cons
<ul style="list-style-type: none"> • The definition of a beneficial owner is focused on an individual natural person with interest in a legal entity or arrangements. • The definition explicitly emphasizes on direct and indirect ownership and controlling interest which is a primary feature of best practices on the definition of a beneficial owner. A beneficial owner of a legal entity or arrangements can be identified directly or indirectly in the form of shareholdings and voting rights or have controlling rights over a company (i.e., individual exercises the right to supervise on decision making or has significant influence over decisions made in a company). At the same time, a person can have ownership of a company through indirect means (either through a legal owner, shell companies, professional intermediaries or nominee and bearer shareholdings or trust). • Further, the definition anticipates and emphasizes on all forms of ownership and control, including but not limited to shareholding, influence, and control over a legal person or arrangements. Individual's influence or control over a legal person or arrangements can be exercised through voting rights, individual exercises the right to supervise on final decision making or has significant influence over decisions made in a company. • The definition of a beneficial owner specifically provides for thresholds in the law which aligns with international practice in terms of codifying the thresholds to make implementation of BO more practical. • The definition is intended as the primary definition for beneficial owner in Malawi, which aligns with best practices on the suggestion of having one primary definition. 	<ul style="list-style-type: none"> • The definition does not emphasize on ultimate owners to avoid the risk of documenting different layers of legal owners. The definition is limited to owners that are traceable in the ownership structure of a company but not targeted at those who have concealed their identities either for legal or illegal reasons. • The definition does not explicitly require the reporting for Politically Exposed Persons (PEPs), even though the requirements for beneficial owners to indicate their PEPs status is central to the use of BO information as a tool to fight corruption. Article 52 of the United Nations Convention Against Corruption (UNCAC)⁵ defines PEPs as “individuals who are, or have been, entrusted with prominent public functions and their family members and close associates”. This includes persons with prominent positions in country, from a foreign country or represent a foreign country domestically. Persons include current and former heads of states, senior government officials, heads of political parties, Parliamentarians, judges and other senior officials in the judiciary, executive officers of state owned enterprises or corporations, and senior military officials. The definition of PEPs also encompasses their close associates either professional or personal (such as former school mates, extended family associates, or work associates) and family members by blood, marriage or other civil partnership arrangements. Both the FATF and UNCAC definition of PEPs focus on the high level ranks who often lead decision making in their respective positions. There are different kinds of PEPs⁶, including: <ul style="list-style-type: none"> ○ Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions. Domestic PEPs encompasses persons with current positions or have formerly held such position ○ Foreign PEPs: Individuals who are or have been entrusted with prominent public positions by a foreign country. The emphasis is on persons from foreign countries who can influence decision or engage in improper actions outside of their country due to their position or through diplomatic ties they have built as result of their position (either current or former). Specifically, this covers in addition to the

⁵ The UNCAC is also referred to as the Mérida Convention, after the Mexican city where the high level signing Conference was held. The UNCAC was adopted by the United Nations General Assembly in October 2003, and subsequently entered into force in December 2005.

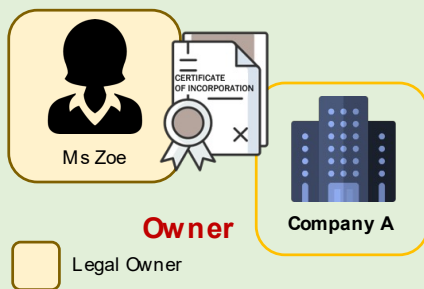
⁶ FATF Guidance on Recommendations 12 and 22, June 2013 - <http://Malawi.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>

Pros	Cons
	<p>kind of official as listed above, high commissioners, ambassadors, senior officials who work in high commissions and embassies, etc.</p> <ul style="list-style-type: none"> ○ International organisation PEPs: Individuals who are or have been entrusted with a prominent function by an international organisation, including members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions.

Box. 4 – Key Definitions and Concepts Related to Beneficial Ownership

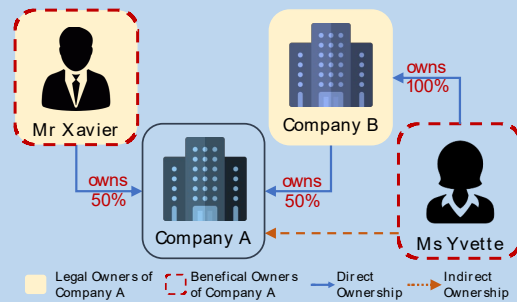
Before diving deeper into beneficial ownership, it's important to understand some key definitions and concepts associated with it. These terms will provide a foundation for grasping the intricacies of beneficial ownership.

Legal Ownership



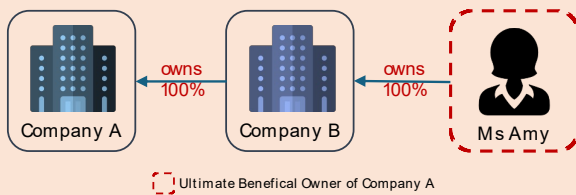
“the individual or entity registered as the owner of an asset or property. They hold the title, but they may not be the ultimate beneficiary.”

Beneficial Owner



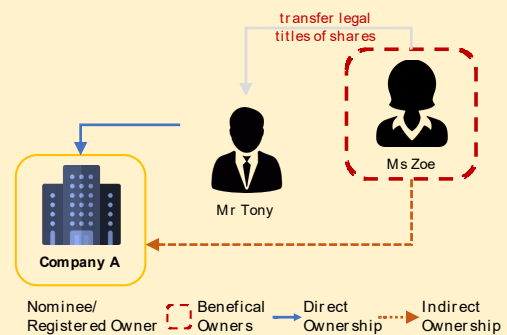
“the individual or entity that enjoys the benefits of ownership, such as profits, control, or access to assets. They may not be the legal owner but have ultimate control or benefit from the business.”

Ultimate Beneficial Owner (UBO)



“the natural person who ultimately owns or controls a legal entity. They are the individual behind the scenes who enjoys the benefits of ownership.”

Nominee Shareholder



“the person or entity that holds shares on behalf of the beneficial owner. They act as a proxy, and their name appears on the company's records, while the beneficial owner remains undisclosed.”

Understanding these fundamental terms will help clarify the roles and relationships involved in beneficial ownership structures.

Source: Author's Construct

Table 2-2: Assessment of BO Definitions Against Best Practices

Key Aspects of Definition	Companies (Beneficial Ownership) Regulations, 2022	Mining and Minerals Act	Anti-Money Laundering Law, 2013
<p>Definition of Beneficial Owner</p>	<p>“beneficial owner” means a natural person who—</p> <ul style="list-style-type: none"> • (a) directly or indirectly owns or controls more than five percent of shares of a company or other body corporate; • (b) directly or indirectly owns or controls more than five percent of a company’s voting rights; or otherwise exercises control over a company or its management; • (c) directly or indirectly, has a substantial economic interest in or receives substantial economic benefit from, a company, whether acting alone or together with other persons; • (d) has a significant stake in a company and on whose behalf activity of a company is conducted; or • (e) exercises significant control or influence over a person through a formal or informal agreement, and where such ownership, control or interest is through a trust, the trustee (s), beneficiaries or anyone who controls the trust; and “company” includes any other body corporate, a subsidiary of a company, any business arrangement associated or related with the company or such other body corporate. 	<p><i>No definition: beneficial ownership of 5% share capital</i></p>	<p><i>"beneficial owner" means a natural person who ultimately owns or controls a customer or a person on whose behalf, a transaction is conducted and includes a natural person who exercises ultimate effective control over a legal person or arrangement;</i></p>
<p>Does the definition specify</p>	<p>Yes</p>	<p>NA</p>	<p>Yes</p>

Key Aspects of Definition	Companies (Beneficial Ownership) Regulations, 2022	Mining and Minerals Act	Anti-Money Laundering Law, 2013
<i>BO as a natural person?</i>			
<i>Is the definition explicit an individual who ultimately owns a company?</i>	No, it does not explicitly specify ultimate owner, however the definition could be inferred as an ultimate owner	NA	Yes
<i>Does definition specifies direct and indirect forms of ownership?</i>	Yes	NA	Not explicit
<i>Does the definition include interest via ownership and control?</i>	Yes	NA	Yes

Key Aspects of Definition	Companies (Beneficial Ownership) Regulations, 2022	Mining and Minerals Act	Anti-Money Laundering Law, 2013
<i>Does the definition include forms of economic interests?</i>	Yes	NA	No
<i>Does the law specify thresholds</i>	Yes	Yes	No, but FATF Style legislations are guided by recommendations which suggest not more than 25%
<i>Does the law include or recognises politically exposed persons?</i>	No	No	Yes

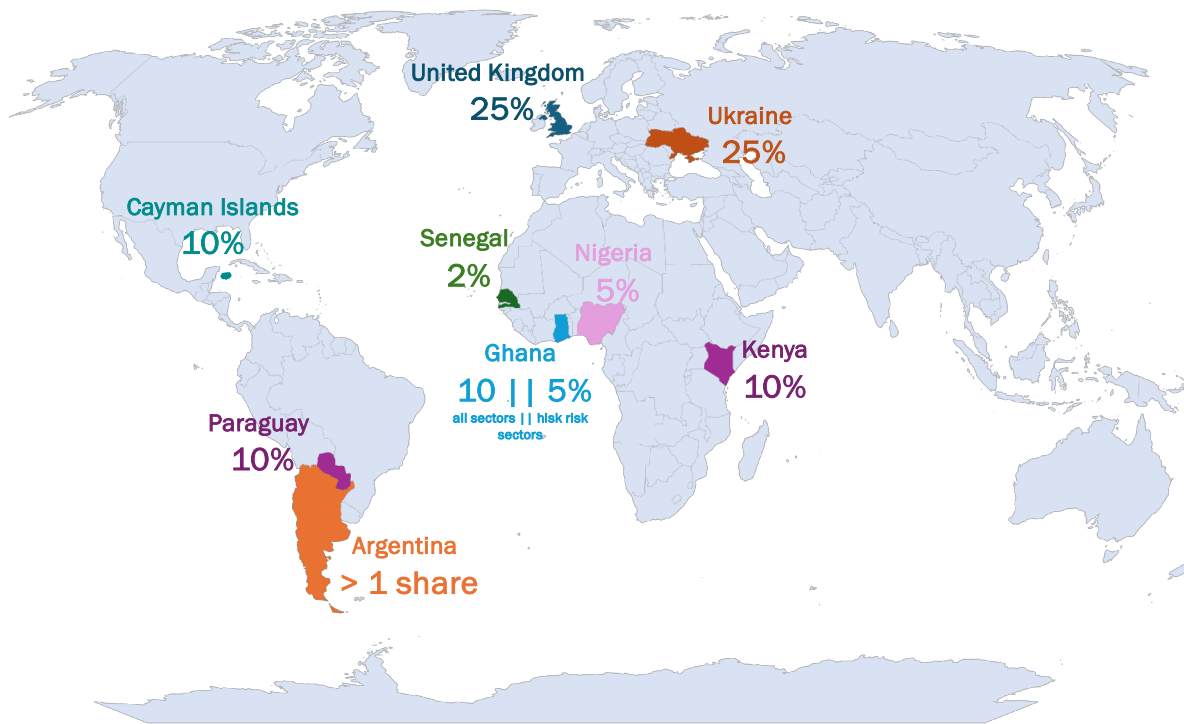
Box. 5 – Threshold in BO Disclosure Implementation

Another important regulatory parameter regarding BO disclosure is minimum reporting thresholds - the minimum ownership interest of a beneficial owner that will require their details to be reported by a legal entity. For the common forms of ownership and control, namely, direct, or indirect possession of ownership shares, voting rights, and right to income, most countries apply minimum thresholds.

This means information on beneficial owners who have interest below the minimum threshold will be deemed insignificant to be reported, and vice versa. This means information on beneficial owners who have interest⁷ below the minimum threshold will be deemed insignificant to be reported, and vice versa. Although BO disclosure remains a critical deterrent against improper acts engaged into by beneficial owners, its implementation could be challenging. Reporting thresholds should allow for a more pragmatic BO disclosure implementation. Global Witness recommends 5 percent or lower thresholds because of corruption risks in the extractive industry⁸. In the banking industry, 10 percent minimum threshold is often used while many other countries have used a 25 percent threshold in their Anti-Money Laundering and Countering Terrorist Financing (AML/TF) guidelines or legislative frameworks.

Other countries⁹ have also adopted a “no threshold” policy in their BO disclosure process which means all companies or corporate entities are required to disclose their beneficial owners. The adoption of a minimum reporting thresholds could also be varied within the same legislative framework. For instance, a country could require no minimum thresholds for beneficial owners with control via voting rights but require a 5 percent threshold for beneficial ownership through shareholdings.

BO Thresholds in Selected Countries



Source: Author's Construct (Ghana has had stakeholder reviews to agree on 20% threshold for all other sectors)

⁷ Interest in the form of shareholding, voting rights, control, etc.

⁸ Global Witness, “Assessment of EITI Beneficial Ownership pilots”, March 2015.

[https://Malawi.globalwitness.org/documents/18014/Beneficial Ownership Report March 24 FINAL.pdf](https://Malawi.globalwitness.org/documents/18014/Beneficial%20Ownership%20Report%20March%2024%20FINAL.pdf). Accessed on July 9, 2017

⁹ Such as China, Bangladesh, Malaysia, Nigeria

2.3.2 BO Legislation Coverage

A robust beneficial ownership disclosure regime must encompass a wide range of legal entities and arrangements while carefully defining exemptions to prevent exploitation. This is critical in guarding against exploitation of potential loopholes in a BO regime for illegitimate activities. Beneficial ownership requirements should also comprehensively cover all forms of natural persons (for example, domestic and foreign citizens who meet the definition of beneficial owner) to avoid gaps that could be potentially exploited.

By capturing all relevant natural persons and requiring sufficient public disclosure from exempt entities, we can minimize loopholes and ensure the effectiveness of the BO regime. The review of Malawi’s primary BO Regulations (Companies (Beneficial Ownership) Regulations, 2022) revealed the following advantages and challenges.

Comprehensive Coverage

Beneficial ownership disclosure should comprehensively cover all relevant types of legal entities and natural persons

- All types of relevant entities and arrangements through which ownership and control can be exercised should be included in declarations
- All exemptions from full declaration should be clearly defined and justified, and assessed on an ongoing basis
- Any exemptions from declaring beneficial owners should be granted only when the entity is sufficiently declaring its beneficial ownership
- All exemptions from declarations should be treated narrowly

Pros	Cons
<ul style="list-style-type: none"> • The definition of a beneficial owner is focused on an individual natural person with interest in a legal entity or arrangements. • Malawi’s BO regime covers a wide range of entities as prescribed in the Companies Act and Trust legislations, including: <ul style="list-style-type: none"> ○ Private Limited Company ○ Public Limited Company (including Publicly Listed Company) ○ Company Limited by Guarantee ○ Single Member Company ○ Foreign Company ○ State Owned Company ○ Trust <p>The coverage of the BO legislation presents an advantage to ensure that no body corporate or type of legal arrangements is left out of the BO disclosure requirements</p> <ul style="list-style-type: none"> • BO regime does not exempt any form of natural person, hence it encompasses all forms of natural persons, including domestic and foreign citizens who meet the definition of a beneficial owner. 	<ul style="list-style-type: none"> • The definition does not emphasize on ultimate owners to avoid the risk of documenting different layers of legal owners. The definition is limited to owners that are traceable in the ownership structure of a company but not targeted at those who have concealed their identities either for legal or illegal reasons. Despite the requirement of BO disclosure by all entities, Malawi’s legislation does not explicitly require some forms of legal arrangements or structures to disclose beneficial owners information. These include investment funds, anstalt, protected cell company (core companies and linked companies), corporate protectors (under Trust arrangements). Even though BO Regulations requires foreign companies who owns shareholdings in Malawian companies to disclose beneficial ownership information, it does not explicitly required the types of companies and legal arrangements that are not typically captured under Malawi’s legislations, For instance, shelf companies, anstalt, private investment funds, etc.

Box. 6 – Types of Legal Entities and Structures		
Limited liability company	Joint -stock companies	Corporate Protector
Anstalt	Trust	State owned Enterprises
Protected cell companies	Investment Fund	Publicly company
Partnerships (Limited liability partnership and limited partnership)		Not for profit corporations (Foundations and Private Foundations)

2.3.3 Details of a Beneficial Owner

In instituting a robust and effective Beneficial Ownership regime, collecting relevant data about the beneficial owner and the declaring company facilitates correct use of data in determining which individuals and companies a particular declaration is about. Additionally, collecting and publishing the means of ownership and control enables users to understand the beneficial ownership regime.

An assessment of Malawi’s BO legislative provisions shows a requirement for certain information to be collected from all beneficial owners. The data requirement is more focused on the beneficial owner with less requirements for the nature of interest and company that the BO is related to. Further, the Department of Registrar General, the main implementer of the Act, has an existing BO form that requires disclosure beneficial ownership details; however, this has not been obligatory in the past. The forms collect information on the beneficial owner, the company, and nature of interest but the information is not sufficient.

Sufficient Details - OO Principle

- Beneficial ownership disclosure should collect sufficient information to enable users to adequately understand and use the data
- Information should be collected on the beneficial owner, company and means of controlling ownership
- Sufficient information should be collected to remove any form of ambiguities in the data collected
- Absolute figures, not ranges, should be used to describe beneficial ownership control
- Data should be collected using online forms with clear guidelines that facilitate compliance

MWEITI has through its annual reconciliation report, collected BO information from in scope companies, however the particulars of beneficial owners fall short of the EITI requirements. The form does not come with guidance notes which ensures the accurate completion of the forms. Currently, there is no online form for the collection of BO information, although the Registrar General confirmed that plans are advanced to move completely online after the integration of BO into the Company Register.

Pros	Cons
<ul style="list-style-type: none"> • The BO legislation requires beneficial owners to disclose their relevant particulars for the BO register • The BO legislation empowers the Minister to prescribe additional data points to be collected from beneficial owners 	<ul style="list-style-type: none"> • The requirement for BO particulars is not exhaustive and sufficient as it does not require information on nature of interest and mechanisms by which beneficial owner exercise control or influence • The existing BO forms by RGD does not capture the politically exposed person’s status for each beneficial owner. • The existing BO forms does not provide guidance to support the completion of the forms

Table 2-3: Assessment of BO Legislations on Beneficial Owner Particulars

Details of Individuals Based Best Practice	RG BO Legislations (Companies BO Regulations)	EITI BO Information
Clear identifiers for people (e.g. tax number, or national ID number)	No	No
Full name (First and Last Names)	Yes, does not specify on first and last names	Yes, does not specify on first and last names
Alternative names (Alias, maiden name)	No	No
Residential Address	Yes	No
Service or Correspondence Address	Yes – Postal address	No
Means of contact (Email Address)	Yes	No, not applicable to publication
Date of Birth	Yes	No, not applicable to publication
Nationalities	Yes- but no nationalities	Yes
Primary ID number and type	No	No
Politically Exposed Persons Status	No	Yes
Nature of Interest	Yes but open ended	Not explicit
Date when Beneficial Interest was Acquired	Yes	No
Declaring Company Details	Yes - Implicit	NA

Box. 7 – International Requirements for Beneficial Ownership Particulars		
<p>The scope of information required for each beneficial owner differ across countries and under different laws or directives. The following information are required or recommended under EITI 2016 Standard, UK’s Small Business, Enterprise and Employment Act 2015, and the EU’s 4th Anti-Money Laundering Directive ownership disclosure:</p>		
<p>Fourth EU Anti-Money Laundering Directive (“4AMLD”)</p>	<ul style="list-style-type: none"> • Name • Month and year of birth • Nationality • Country of residence • Nature and extent of beneficial interest held 	
<p>EITI International Standard 2023</p>	<p>Required</p> <ul style="list-style-type: none"> • Name • Nationality • Country of Residence • Identification of PEPs • Nature of interest 	<p>Recommended</p> <ul style="list-style-type: none"> • National Identity Number • Date of birth • Residential or Service address • Means of contact
<p>UK’s Small Business, Enterprise and Employment Act 2015</p>	<ul style="list-style-type: none"> • Name of the beneficial owner • Month and year of birth • Nationality • Country of residence • Date when beneficial interest was acquired • Service address • Method of control 	

2.3.4 BO Central Register

To facilitate efficient management, access, and standardization of beneficial ownership (BO) information, it is recommended that a centralized BO register be established. This approach can streamline data collection and reduce administrative burdens, making it easier for both individuals and authorities to access and utilize BO data. Furthermore, evidence suggests that a centralized register can help combat corruption and related activities.

In Malawi, the BO legislation requires companies to maintain their BO registers and file with the Department Registrar General. It anticipates BO information to be integrated with the existing companies register which is in line with international applicable practices.

BO Central Register

Beneficial ownership data should be collated in a central register

- Information should be collected and stored in a single register

2.3.5 Public Access to BO

Publicly accessible beneficial ownership (BO) data not only facilitates access to information for, law enforcement, civil society, and the public but also enhances its use. It is important for BO implementing countries to assess and discuss any barriers that hinders public access to BO information, including monetary payments. As more countries recognize the benefits of open BO data, we can expect to see increased data quality and a wider range of applications. For example, publicly available BO data can streamline due diligence processes for the private sector, reducing costs and fostering a more competitive business environment¹⁰.

In Malawi, there exist a practice with the access to legal ownership information. Under the BO legislation, any beneficial ownership information shall be treated as public information and may be accessible to the public. This means the public can access BO information either conditioned on satisfactory fulfilment of payments of request fees and at the discretion of the Registrar. Although information is available to the public, its access is somewhat restricted. While this practice is underpinned by the argument of generating revenues internally, it restricts access to information which is contrary to the EITI Standard and other best practices. It further contradicts the established evidence that publicly available BO data reduces the cost and risk of conducting due diligence for the private sector and enhances overall transparency in BO data administration.

Public Access to BO Data

Beneficial ownership data should be freely accessible to the public for use

- BO information should be readily accessible for the public for their understanding and use
- BO data should be publicly available at no cost
- Data should be available as an open data
- In instances where data has been exempted from publication, the publicly available data should note that the BO information is held by authorities but has been exempted from publication

Accessibility to BO information by competent authorities and Law Enforcement Agencies (LEA) agencies is free in Malawi according to the Registrar General, however there is no explicit provision in

¹⁰ Beneficial Ownership Data Standard, Open Ownership.
<https://www.openownership.org/en/principles/public-access/>

the BO legislation which grant unconditional and free access to BO information by LEAs. In practice, LEAs are expected to have access to all data points maintained by the Registrar General.

Box. 7 – Civil Society Data Use Leads to Innovations to Strengthen Data Quality in the UK

In the largest-ever analysis of the data on beneficial owners of UK companies, Global Witness and Data Kind UK examined more than 10 million corporate records from CH in 2018. Combining persons of significant control (PSC) data with datasets about politicians and company officers, they developed algorithms to identify suspicious and erroneous filings. The analysis revealed that thousands of companies had filed suspicious entries that appeared not to comply with the rules. They highlighted methods for apparently avoiding disclosure of real owners, including naming an (ineligible) foreign company as the beneficial owner and creating circular ownership structures. Based on their research, the analysts developed a red-flagging system to help uncover higher-risk entries and identify companies that should be subject to further scrutiny.

The results of this research formed the basis of civil society advocacy to improve data in the UK's BO register, and the findings were cited multiple times in the UK Government's subsequent public consultation on proposed improvements. Several of the recommendations have been incorporated into the UK Government's proposed reforms. Whilst the UK Government could have undertaken this research itself, public access to the data in machine-readable format enabled data scientists in civil society to swiftly identify weaknesses and loopholes, and propose evidence-based solutions direct to policymakers, acting as a de facto verification mechanism to drive up data quality.

Source: Open Ownership Policy Briefing (2021) [Accessed](#)

2.3.6 BO Data Verification

Public trust and confidence in the BO register is essential for any BO disclosure regime. To maintain stakeholder confidence in a beneficial ownership (BO) register, data quality and authenticity are paramount. Implementing robust verification measures throughout the data management cycle, including at the time of submission and post-submission, is essential to ensure that BO data accurately reflects the true owners and controllers of companies and entities. Comprehensive verification at the point of submission helps establish a strong foundation for subsequent verification efforts

In Malawi, there are no explicit measures to verify BO information in the BO legislation even though there have been multiple discussions on the appropriate tools and methods that are applicable in verifying names, entities and ownership and control.

It is important to assess the current capacity and internal structures of Registrar General to effectively set up and implement a robust verification regime. Currently, the Register for legal owners can authenticate inputted data such as correcting date of births, correcting names of Malawian individual legal owners (including directors and shareholders) with the National Registration Bureau (NRB). However, verification measures after submission are yet to be fully designed (including protocols between the Registrar General and other agencies, forms to file complaints, information request forms, etc).

BO Data Verification

Measures taken to verify BO data:

- Conducting verification of beneficial owner, entity, ownership or control relationship and person making the declaration
- Assess data for errors, inconsistencies and outdated entries by cross checking with other existing data bases
- Mechanisms should be in place to raise red flags, both by requiring entities (private and public) dealing with BO data to report discrepancies and by setting up systems to detect suspicious patterns

Table 2-4: Assessment of Existing Verification Mechanisms

Stage of Verification	Verification Measures	RG Existing System
Verification During Submission	System Conformance Checks (dates, spellings, valid name checks)	Yes, manually and with NRB
	Cross check with other databases to check consistency in data	Yes, with NRB
	Cross check supporting evidence for data validation (automatic identification of dead, blacklist, criminal backgrounds, bankruptcy list, etc.)	No
Verification After Submission	System to allow reporting of errors, omissions, and discrepancies by LEAs and competent authorities	No
	System to allow reporting of errors, omissions, and discrepancies by the public	No
	Risk based approach indicators - suspicious flagging of red flags	No
	Suspicious patterns of activity	No

2.3.7 Sanctions and Penalties

The establishment of appropriate, proportionate and fair sanctions and enforcement mechanisms in BO regimes facilitates compliance with disclosure requirements, including by declaring companies, beneficial owners and legal representatives. The (Companies (Beneficial Ownership) Regulations, 2022 stipulates that a person who commits an offence under the Regulations, shall, on conviction, be liable to a fine of MKA5,000,000 and imprisonment for twelve months.

The design of appropriate sanctions should ensure that compliance violations are clearly defined; the types or extent of sanctions and responsible agencies are well defined; and sanctions are well targeted to actors.

In other BO implementing countries, sanctions are applicable to declaring entity, person making the declaration, registered officers of the company and the beneficial owners. Sanctions can be described as proportionate, dissuasive, and enforceable, but exist for all types of non-compliance, including refusal to submit a beneficial ownership declaration, late submission, incomplete submission, or falsifying information. The current sanction regime in Malawi does not apply proportionately as it does not specify whether a company, beneficial owner, or a person making the declaration is liable to the offence. Further, the sanction regime in Malawi does not apply proportionately as it does not specify whether a company, beneficial owner, or a

Sanctions

Adequate sanctions and enforcement should exist for non-compliance

- Effective, proportionate, dissuasive and enforceable sanctions should exist for non-compliance with disclosure requirements, including non-submission, late submission, incomplete submission or false submission
- Sanctions should cover the person making the declaration, the beneficial owner, registered officers of the company, and the declaring company
- Sanctions should include monetary and non-monetary penalties
- Appropriate authorities and agencies should be adequately resourced to enforce sanctions

person making the declaration is liable to the offence. Further it does not establish clear points of breaches and associated sanctions.

3 Stakeholder Interviews and Assessment of Implementation Gaps

This section examines:

- Stakeholder Mapping and Interviews.
- Specifically, this section reviews the existing BO information disclosure against EITI Standard Requirements, specifically EITI Standard Requirement 2.5.
- It also documents key stakeholder comments on barriers to BO implementation and political economy analysis of BO implementation in Malawi

3.1 Stakeholder Mapping

3.1.1 Approach

BO implementation under EITI is guided by the [EITI Standard Requirement 2.5](#) which contains a set of disclosure requirements for beneficial owners of extractive companies that operates in EITI implementing countries. EITI implementing countries (including Malawi) are required to disclose a certain level of information, notably maintaining a public available beneficial ownership register, document government policies and public discussions on beneficial ownership disclosure, identity and particulars of beneficial owners, and procedures to ensure reliability of such disclosures.

To implement BO transparency, most countries have designed their BO regime to mimic a multistakeholder approach where they assign an agency with the ultimate responsibility to maintain a central register but works with other agencies on BO implementation. Malawi has similar arrangements for her BO disclosure regime, where the Registrar General remains the main implementer but receives support from other agencies including MWEITI, FIA, Ministry of Mines, Malawi Revenue Authority, etc.

It is expected that relevant stakeholders (including state agencies and corporate agencies) are engaged to understand their experiences on BO disclosure implementation. Hence, the consultants worked closely with all stakeholders under the existing MWEITI reporting process, registrar generals BO requirements, extractive companies experience with MWEITI, etc. The stakeholders were categorised under policy makers, BO data implementers, BO data generators, and BO data use stakeholders. The process of arriving at the mapping result included:

- The review of existing MWEITI annual reconciliation, meetings with FIA and RGD and MRA reporting process to identify stakeholders that are involved in Malawi's BO disclosure regime.
- Reviewing of existing BO forms and development of new forms for MWEITI stakeholders (participating companies to fill the forms)
- Engagements with MWEITI MSG and secretariat to jointly identify other relevant stakeholders who have not previously been part of the process.
- Stakeholder interviews were conducted with agencies, including Registrar General, Ministry of Mines, Department of Forestry, FIA, other donor programmes that support BO implementation in Malawi, etc.
- Further interrogation of identified gaps to understand the political economy context of BO implementation in Malawi
- Interrogate respondents from Registrar General and PPDA on their institutional readiness, potential challenges and barriers to BO implementation

Figure 3-1: Key Stakeholders

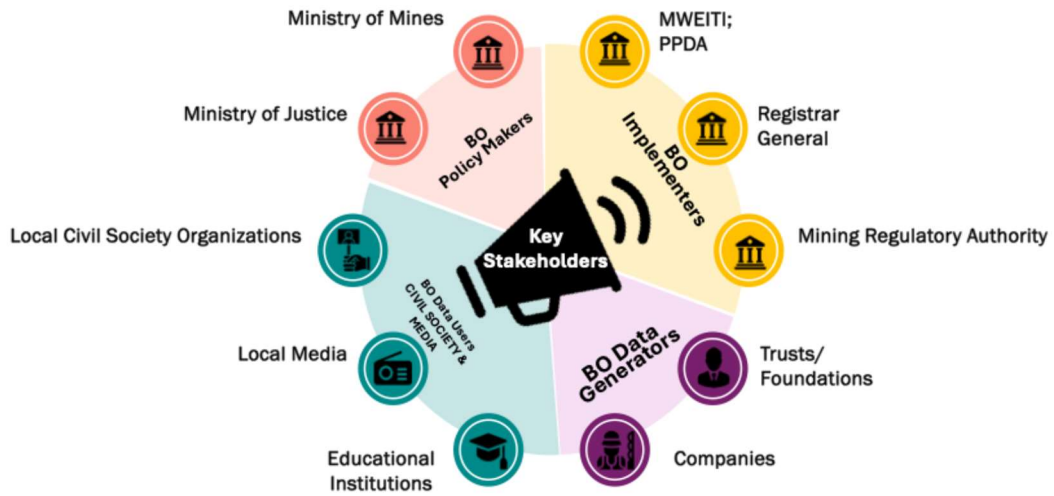


Figure 3-2: Stakeholder Categories

BO Policy Makers

Includes Ministry of Justice, Ministry of Mines, Department of Forestry, Ministry of Finance, Donors (including Chuma Cha Dzeko Project, EU Global Facility Programme which includes Malawi, and Open Ownership with support from the World Bank)

BO Implementers

- Registrar Generals Department which is the main implementing agency for BO
- MWEITI which is required under EITI Standard Requirement
- FIA who ensures BO disclosure as part of FATF requirements
- Mining Regulatory Authority who has responsibility under the new mining laws to collect beneficial ownership information
- PPDA who collects BO information from all potential bidders under the public procurement process

BO Data Generators

Engaged over 15 extractive companies who are required under MWEITI to disclose BO information.

BO Data Users

Include civil society organisations, law enforcements agencies, banks, MRA, media, academia, and other competent authority as defined in the Financial Crimes Act

3.1.2 Assessment of Existing MWEITI of disclosures against EITI Requirements

Table 3-1: Assessment of Existing BO disclosures against EITI requirements

EITI Requirement	Existing BO Disclosures (Either through EITI Reports or RG Disclosures)	Comments
Government policy on beneficial ownership	Government policy is on BO has been enacted into a legislation	The main legislation is Companies (BO Regulations) Amendments Act, 2022
Definition of the term beneficial owner	Definition of a beneficial owner aligns with international practices and comprehensive to capture most forms of legal entity and arrangements	
Laws, regulations or policies on beneficial ownership	Explicit regulations on beneficial ownership disclosure	Regulations requires improvement in terms of sanctions and enforcement, verification, politically exposed persons status, etc
Is beneficial ownership data requested?	EITI report discloses BO information of participating companies, but the data does not comprehensively satisfy EITI requirements.	Existing disclosures through the EITI report focused on shareholding of beneficial owners, meanwhile beneficial ownership can be exercised beyond shareholding to include control or significant benefits
Is beneficial ownership data disclosed?	No public disclosure unless requested for and subject to the discretion of the registrar general	Does not satisfy EITI requirements on accessibility which requires that BO data should be publicly available for free
Quality assurances for data reliability	The Registrar General has existing assurance procedures but does not have adequate means of verifying BO information with other databases	
Names of stock exchanges for publicly-listed companies	Required under Malawi's Beneficial Ownership legislation	Required under the BO legislation in principle but the draft BO forms is inadequate to capture the details of listed companies
Is information on legal owners disclosed?	Upon request at the Registrar General	
Company register (legal ownership registry)	Yes, hosted by the Registrar General	
Beneficial ownership registry	Expected to be hosted by the Registrar General	Yet to be fully implemented as the Registrar General requires further capacity and systems to fully implement BO disclosure

3.1.3 Stakeholder Interviews and Key Findings

The consultant conducted interviews of key government agencies responsible for BO implementation, with the objective to gather insights into the current state of BO implementation, challenges faced, and recommendations for improvement. The table summarizes the findings from interviews conducted with key state agencies responsible for beneficial ownership (BO) disclosure in Malawi.

Table 3-2: Feedback Highlights from Stakeholder Interviews

Agency	Key Responsibility	Key Challenges	Required Support/Assistance
<p>Department of the Registrar General</p>	<p>The registrar Generals understand that they are the core agency for BO implementation. They confirmed that they are responsible for the establishment of BO regime with focus on development of forms, BO systems, collection, processing, management and publication of BO data. Whiles this is the understanding of the department, there have not been significant progress to BO data collection since the passage of legislation in 2022</p> <p>Some of the key focus for the registrar general include:</p> <ul style="list-style-type: none"> • Definition of key terms on how to identify a beneficial owner with control or influence in a legal entity – key forms of ownership and control • Clarification of types of ownerships • Politically exposed persons • How long to remain a PEP • Categories or position to be considered a PEP • Exemptions to Publicly Listed Companies and Government owned companies • What information to collect and what information to publish • Verification • Sanctions and Penalties 	<ul style="list-style-type: none"> • Registrar General confirmed that the office is still new to BO implementation and hence required capacity building of the office to enhance BO implementation. For instance, companies attempt to complete the BO form but there remain many grey areas in the form that requires further clarification to assist the public provide accurate information • In addition, to ensure that all expected features of BO requirement conform with legal requirements and international best practices, there is a need to effectively integrate BO as part of their existing forms, which requires technical assistance • No guidance notes have been developed to guide the public o circumvent the ambiguities in the BO forms. <i>“I believe the BO forms need revision”- (rep from Registrar General)</i> • Limited resources and capacity for data collection and verification. • Difficulty in reaching all relevant entities, particularly small-scale businesses and informal sector operators. • Lack of awareness among businesses about BO disclosure requirements. 	<ul style="list-style-type: none"> • To ensure all expected features of BO software conforms with legal requirements and international best practices • Initial staff capacity building for all staff • Staff Capacity Building – Trainer of Trainers • Development of Training Materials • Specialized trainings for Staff • Development of BO Manuals, guidance notes and internal capacity building on manuals • Public sensitization campaigns and workshops across the country to enhance public’s understanding and requirements for BO
<p>Financial Intelligence Authority</p>	<p>Have responsibility to ensure that beneficial ownership information is made available to law enforcement agencies and competent authorities. FIA is responsible</p>	<p>The key challenge is that without an active beneficial ownership register, Malawi risk compliance with FATF recommendation 24 and 25.</p>	<p>Need for continuous stakeholder engagements and support to registrar general to fully establish BO register</p>

Agency	Key Responsibility	Key Challenges	Required Support/Assistance
	for the fight against money laundering and terrorist financing under the Financial Crimes Act.	<p>FIA continue to work in collaboration with the Registrar General on BO, however the Registrar General needs further technical assistance to effectively establish, maintain and manage Malawi's BO register.</p> <p>Since Malawi's BO register is not fully established, it makes it difficult for FIA to access accurate BO information to aid their investigations or analysis of data from suspicious transaction reports</p>	
Mining Regulatory Authority	Responsible for the collection of beneficial ownership information from all companies that apply for mining licenses in Malawi	<ul style="list-style-type: none"> • The newly established mining regulatory authority is yet to develop the necessary expertise and capacity to effectively implement a beneficial ownership (BO) disclosure regime. This includes challenges in data collection, verification, and analysis. • Currently there are no guidance note for companies or even internal procedures for staff to assess BO information expected to be submitted by companies • The authority is still in the process of setting up their offices, hence lack the necessary systems and infrastructure to collect, store, manage, and analyze BO data. • So far no BO information has been collected from any mining companies aside those disclosed through MWEITI reporting by companies. 	<p>Need for comprehensive capacity building of staff on BO implementation</p> <p>Need to establish systems to collect, maintain and disclose BO information</p>
Public Procurement and Disposal of Asset Authority	PPDA has issued a circular to all potential bidders to submit their BO information as part of their bids, using	<ul style="list-style-type: none"> • BO forms have grey areas and ambiguities which makes it difficult for companies to present accurate information 	<ul style="list-style-type: none"> • Specialized trainings for Staff • Development of BO Manuals, guidance notes

Agency	Key Responsibility	Key Challenges	Required Support/Assistance
	the BO forms promulgated as part of the BO legislation in 2020	<ul style="list-style-type: none"> • PPDA requires internal capacity building and technical assistance to be able to design , collect, maintain BO register for procurement purposes 	<p>and internal capacity building on manuals</p> <ul style="list-style-type: none"> • Public sensitization campaigns and workshops across the country to enhance public's understanding and requirements for BO
Malawi EITI (MWEITI)	As an EITI Implementing Country, MWEITI MSG is expected to maintain and disclose BO information for all extractive companies that bid for, invest or operate in Malawi	<ul style="list-style-type: none"> • Currently collect BO information through its annual reconciliation reports however, there remain gaps in the disclosures • No way to verify information submitted by companies as there are no other public BO database • Requires additional capacity to support MWEITI secretariat circumvent the technical challenges that they face, especially providing guidance to companies on BO requirements to ensure accurate information • Inadequate financial resources to increase public sensitization among extractive companies and CSOs 	<ul style="list-style-type: none"> • Review of BO forms (executed under this assignment) • Requires further technical capacity training of the MWEITI multistakeholder Group and secretariat • Requires additional financial resources to increase public sensitization among extractive companies

4 Key Findings and Recommendations

4.1 Key Findings and Recommendations

The report outlines key findings and recommendations to BO implementation in Malawi. Recommendations are proposed based on the identified themes and itemised in the table below.

Key Findings	Recommendations
<p>Definition of Beneficial Ownership</p> <ul style="list-style-type: none"> Malawi’s legal definition of a beneficial owner does not emphasize on ultimate owners. The definition is limited to owners that are traceable in the ownership structure of a company but not targeted at those who have concealed their identities either for legal or illegal reasons. The definition does not explicitly require the reporting for Politically Exposed Persons (PEPs), even though the requirements for beneficial owners to indicate their PEPSs status is central to the use of BO information as a tool to fight corruption. <p>Comprehensive Coverage</p> <ul style="list-style-type: none"> Malawi’s legislation does not explicitly require some forms of legal arrangements or structures to disclose beneficial owners information. These include investment funds, anstalt, protected cell company (core companies and linked companies), corporate protectors (under Trust arrangements). 	<p>Definition of Beneficial Ownership</p> <ul style="list-style-type: none"> Malawi should consider the review of the definition of a beneficial owners to place emphasis on the individual natural persons who are the ultimate or final owner, beneficiary or control a legal entity or arrangements. This will provide clarity and focus Malawi’s BO regime on ultimate owners regardless of their location. The BO regulations should provide clear guidance on how to identify qualifying beneficial owners by providing a non-exhaustive list of examples of ownership and controlling interests and mechanisms through which these interests can be maintained. The definition of beneficial owner should be explicit on the request of Politically Exposed Person’s status in line with the Malawi’s Financial Crimes Act, which is the primary legislation for anti-money laundering and combating of terrorist financing <p>Comprehensive Coverage</p> <ul style="list-style-type: none"> The BO regulations should explicitly state the legal obligations for all entities organized, or which may be organized or authorized to undertake business in Malawi, either domestic or external companies The BO regulations should provide guidance on reporting obligations for all entities and clearly provide any exemptions for BO disclosure In practice, the Registrar General could adopt a phased approach to BO implementation by piloting reporting obligations by categories of companies

Key Findings	Recommendations
<p>Sufficient Details</p> <ul style="list-style-type: none"> The requirement for BO particulars is not exhaustive and sufficient as it does not require information on nature of interest and mechanisms by which beneficial owner exercise control or influence The existing BO forms by RGD does not capture the politically exposed person's status for each beneficial owner. The existing BO forms does not provide guidance to support the completion of the forms <p>Central Register</p> <ul style="list-style-type: none"> The Registrar has confirmed that BO data collection system exist, however there remains challenges on how to collect, process and maintain in the central register- (both online and manually) <p>BO Public Access</p> <ul style="list-style-type: none"> Accessibility to BO information is conditioned on the Registrars' discretion and upon satisfactory payment of a fee which does not align with EITI requirements. However, the Registrar General considers revenues from information access to be critical for the department <p>BO Data Verification and Reliability</p> <ul style="list-style-type: none"> There is no comprehensive and robust verification mechanism for BO information as the Registrar General is still in the early stages of BO implementation 	<p>Sufficient Details</p> <ul style="list-style-type: none"> The BO regulations should expand the requirements of BO particulars to capture details on beneficial owner, details on company and details on nature of interest, in line with international best practices Registrar General's existing BO forms should be reviewed to include beneficial owner's politically exposed person's status as well as include guidance on how to complete the forms. <p>Central Register</p> <ul style="list-style-type: none"> The Registrar General should adopt a multistakeholder approach in integrating BO information with existing register. There should be consultation with MWEITI, FIA, PPDA, MRA, and a national BO committee on the design of a BO IT system to ensure all requirements are integrated into the system. <p>BO Public Access</p> <ul style="list-style-type: none"> The Registrar general and other stakeholders (MWEITI, FIA, and should consider options to publish BO information and make it freely accessible. <p>BO Data Verification and Reliability</p> <ul style="list-style-type: none"> The Registrar General should consider the development of a verification system that allows easy reporting of discrepancies, omissions, errors, suspicious patterns, or activities

Key Findings	Recommendations
<p>Sanctions and Enforcement</p> <p>The current sanction regime in Malawi does not apply proportionately as it does not specify whether a company, beneficial owner, or a person making the declaration is liable to the offence. Further it does not establish clear points of breaches and associated sanctions</p>	<ul style="list-style-type: none"> • The Department should establish an internal compliance or verification unit with the requisite technical capacity to conduct investigations into suspicious or false BO information <p>Sanctions and Enforcement</p> <ul style="list-style-type: none"> • The BO Regulations should establish clear points of breaches and associated sanctions – for instant late submissions, false information, etc. • The BO Regulations should define sanctions (either monetary and nonmonetary) for each breach, either administrative noncompliance or criminal sanctions • Define the application of the sanctions, either to the declaring entity or beneficial owner • Define sanction application procedures and timelines • Indicate how enforcement of sanctions would be done, including clear procedures for both implementing agency (Registrar general) and potential applicants (declaring entities)

5 BO Implementation Roadmap

This section presents

- **BO Implementation Framework to form the basis of stakeholder implementation of BO in Malawi**
- **Indicate implementation actions and activities and the responsible agencies**

Following the enactment of the Companies (BO Regulations), 2022; it is understood the main implementing agency for BO disclosure in Malawi shall be the Registrar General. There are other periphery BO disclosure requirements, including MWEITI, Ministry of Mines, PPDA, and potentially MRA whose responsibilities would support verification of the BO data in the central register. The table below provides the next set of implementation actions to be coordinated by the Registrar General and MWEITI

Activity	Objectives	Expected Outputs	Responsible Agency
1. REVIEW OF BO REGULATIONS			
Joint Stakeholder Review of BO Regulations	<p>To form the basis of coordinating stakeholders to make key decision on the identified gaps in this report and other identified gaps in other reports including that of Open Ownership and EU Global Facility</p> <ul style="list-style-type: none"> • Definition of key terms on how to identify a beneficial owner with control or influence in a legal entity – key forms of ownership and control • Types and scope of companies to obliged to disclose beneficial owners – include omnibus provision to capture all potential legal entities and arrangements 	Decision document developed based on consultation by Registrar General with national BO committee- Document to be use to update BO Regulations	Registrar General, supported by MWEITI, FIA, and the national BO multistakeholder Committee

Activity	Objectives	Expected Outputs	Responsible Agency
	<ul style="list-style-type: none"> • Clarification of types of ownerships- explicit provision on exercise of interest through control, ownership and influence • Politically exposed persons- clarity on the inclusion of PEP in BO disclosure requirements • How long to remain a PEP – key decision on how long an individual should remain a PEP on a register following his exit from a prominent public function- need to capture influence despite leaving office • Exemptions to Publicly Listed Companies • What information to collect and what information to publish • Verification, especially post submission verification • Sanctions and Penalties – clarity on who commits breach and who is liable – a legal entity, beneficial owner and an individual who file on behalf of a company or a beneficial owner 		
Consultations on Proposed BO Regulations Amendments	To ensure amendments to the BO regulations are agreed to by relevant stakeholders including but not limited to government agencies, Civil Society, professional groups such as the Law society or equivalent body and the accounting groups and other professional groups – banking association, media associations, chamber of commerce, chamber of mines, etc.	Consultation report	Registrar Genera, supported by MWEITI and FIA
Promulgation of Regulations	Regulations is published and converted into a legal document	Regulations is officially published	Registrar Generals supported by Ministry of Justice

2. DEVELOPMENT OF BO SYSTEMS

Activity	Objectives	Expected Outputs	Responsible Agency
Development of Software Requirements Specifications (SRS)	To ensure all expected features of existing BO software conforms with legal requirements and international best practices	SRS	Registrar General, IT Consultant, MWEITI
Stakeholder consultation on SRS	To ensure stakeholders inputs are integrated into the BO software specification. IT consultant shall demonstrate software to stakeholders	Meeting report	Registrar General and other key stakeholders, MWEITI
Review of BO forms	To ensure BO forms conforms with international best practices as well as amended BO regulations, and other legal requirements including MWEITI. Use MWEITI forms as basis for discussion	BO forms	Registrar General, supported by MWEITI, FIA, and the national BO multistakeholder Committee
3. CAPACITY BUILDING			
Initial staff capacity building for all staff of Registrar general	To introduce BO as a general concept to staff – Basic principles and the legal requirements – Integrate all other donor support including that of Open Ownership. Similar training should be organised for Ministry of Mines and PPDA	BO Training	Registrar General, MWEITI support and include Ministry of Mines, PPDA
Staff Capacity Building – Trainer of Trainers	Selected staff from different units are trained on BO requirements and they serve as the knowledge hub to enhance learning within Registrar General, PPDA, MWEITI and Ministry of Mines	Training Report	Registrar General, MWEITI support and include Ministry of Mines, PPDA
Development of Training Materials	Develop video and other forms of training manuals that allow staff to refer to enhance continuous learning within Registrar General, PPDA, MWEITI and Ministry of Mines	Knowledge materials	Registrar General, MWEITI support and include Ministry of Mines, PPDA

Activity	Objectives	Expected Outputs	Responsible Agency
Specialised trainings for Staff	Specialised training based on challenges identified by staff after the roll out of BO disclosure implementation to limit or reduce capacity gaps within Registrar General, Trainings are organised to respond to specific needs of Registrar General	Training Report	Registrar General
4. DEVELOPMENT OF INTERNAL PROCEDURES AND MANUALS			
Development of Manuals	Manuals are intended to formalise internal procedures on BO data review, processing, and maintenance. Intended manuals include: BO data collection, processing and approval manuals, verification manuals, sanctions manuals, data sharing manuals/protocols, client service manuals	Manuals developed	Registrar General
Staff Internal consultation on manuals	Intended to get staff inputs on manuals and confirmation of procedures followed to receive, review and process BO information	Consultation report	Registrar General
Finalization and Training of Staff on BO Manuals	Staff will build capacity on the manuals to be abreast with their internal responsibilities and procedures to follow in respect of BO disclosure implementation. Manuals will form the basis for integrating new staff members into BO related assignments	Training report	Registrar General
5. PUBLIC SENSITIZATION WORKSHOPS AND CAMPAIGNS			
Public sensitization workshops across the country	Workshops with key government agencies including national and subnational agencies with the aim to understand BO disclosure as a concept and also legal requirements for all businesses across various sectors. Explore donor support	Workshop reports	Registrar General, MWEITI support and include Ministry of Mines, PPDA

Activity	Objectives	Expected Outputs	Responsible Agency
	<ul style="list-style-type: none"> • Key subnational governments • Regulatory institutions • Professional groups – extractive companies, banking associations • CSOs • Media groups • Chambers of various sectors • Other stakeholders 		
Development of public campaign materials	<p>Propagate BO disclosure in the public and broadcast its relevance through public campaign materials</p> <p>Consider jingles, flyers, radio discussions, public videos an ads.</p>	Number of persons reached	Registrar General, MWEITI support and include Ministry of Mines, PPDA
Implementation of Public campaigns	<p>Implement BO campaigns to increase BO awareness in Uganda</p> <p>Media interviews – morning shows</p> <p>TV programs</p> <p>School Seminars</p> <p>Public Workshops</p>	Number of persons reached	Registrar General, MWEITI support and include Ministry of Mines, PPDA

Annexures

STAKEHOLDER CONSULTATION

Companies	Submission of BO forms
Sovereign Services Ltd	Submitted
Global METALS Ltd	Submitted
Terrastone Ltd	Submitted
Lotus Ltd	Submitted
Rukuru Mining Company	Submitted
Motal Engil Company	Submitted
Total Land Care	Submitted
ZALCO Ltd	Submitted

Lancaster/ Mkango Resources	Submitted
Mwalawanga Ruby Mine	Submitted
Portland Cement Ltd H	Submitted
Mchenga Mining company	Submitted

Companies	Submission of BO forms
Shayona company	Not submitted
Cement Product Ltd	Not submitted
Optichem 2000 Ltd	Not submitted
Lindian Natural Resources	Not submitted
VIZARA Ltd	Not submitted

Raiply Ltd	Not submitted
Kaziwiziwi mining company	Not submitted
Masters Stone Breakers	Not submitted