Beneficial Ownership Disclosure in Sierra Leone:

A LEGAL AND INSTITUTIONAL REVIEW

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Executive Summary

The global corporate structures of multinational mining companies can be incredibly complex, with many subsidiaries located in tax havens, obscuring the identity of the real owners of the company – the 'beneficial owners'. Considering this challenge, the Government of Sierra Leone (GoSL) wants to know who it is doing business with. Beny Steinmetz of Simandou fame, is one such mining investor who has prompted the GoSL to strengthen beneficial ownership disclosure. The Panama Papers implicated Steinmetz in a complex chain of ownership of Koidu Holdings, Sierra Leone's largest diamond mine.

In 2016, the Extractive Industry Transparency Initiative (EITI) established a requirement that all implementing countries, of which Sierra Leone is one, should, by 2020, require all mining, oil and gas companies to disclose the identity of their beneficial owners. In addition, any politically exposed persons (PEPs) who are beneficial owners must be identified. The GoSL has begun preparing to meet this target, specifically, it has published a beneficial ownership roadmap that sets out the broad policy objectives.

This report assesses whether Sierra Leone has in place the policies, laws and institutional practices to collect and disclose information on beneficial ownership in accordance with the EITI requirements. It also proposes a set of corresponding reforms. The Sierra Leone Extractive Industry Transparency Initiative (SLEITI) Multi-Stakeholder Group (MSG) is urged to take steps to adopt and implement the recommendations to meet the EITI standard 2.5 by 2020.

The report was produced with support from international law firm, Herbert Smith Freehills (HSF), as part of its pro bono legal services to the GoSL. HSF were asked to work with the consultant hired by the EITI Secretariat, to review the legal framework, and prepare recommendations for reform.

Sierra Leone faces several challenges with respect to beneficial ownership disclosure in the extractive sector:

- **The legal framework for the extractive sector does not empower the GoSL to request broad based disclosure of the beneficial owners of mining, oil and gas companies.** Neither the Mines Act nor the Petroleum Act contain a definition of beneficial ownership, or guidance on what constitutes influence and control. It follows that there is no register of beneficial owners for the extractive sector. Except for government officials involved in Minerals Advisory Board, there is no requirement for politically exposed persons (PEPs) to disclose potential beneficial interests in the extractive sector.

- **There is limited basis to require beneficial ownership disclosure from extractive companies under economy-wide legislation**. The Companies Act (2009) is silent on the issue, although a Corporate Governance Code of Conduct that includes a voluntary requirement for beneficial ownership disclosure is being finalised. The Anti-Money Laundering and Countering Financing of Terrorism Act (2014) ("AML Act") provides a definition of beneficial ownership, however key terms are not explained, thereby rendering it ambiguous. The AML Act is also limited in scope to governing the activities and clients of financial institutions; a company that did not use financial services in Sierra Leone would not be captured by the provisions and processes of the Act. The AML Act's definition of a PEP is a useful basis upon which further specification is required.

- None of the GoSL agencies currently collecting data from corporate entities have experience with beneficial ownership disclosure. The National Minerals Agency (NMA), Petroleum Directorate (PD) and Corporate Affairs Commission (CAC) all collect some information on shareholders; none of them review or verify this information, although there are efforts ongoing to strengthen integrity due diligence by the NMA. This is the extent of the GoSL's experience regarding beneficial ownership disclosure. Among all stakeholders, there is limited understanding of who beneficial owners are, and how they differ from legal owners.

Based on analysis of these challenges, the report contains many recommendations that would help the GoSL to strengthen beneficial ownership disclosure in the extractive industry. Part 3 of the report includes detailed recommendations for potential legal amendments; featured below are overarching recommendations.

Recommendation 1: Amend the Companies Act (2009) to include beneficial ownership disclosure requirements for all corporate entities, including mining, oil and gas companies. If this is not achievable by 2020, the GoSL could amend the Mines Act (2009) as an interim measure (proposed in the SLEITI Beneficial Ownership Roadmap). However, this alternative approach should only be used as a last resort. Amending the Mines Act would exclude the petroleum sector, extractive industry subcontractors and service companies, and lead to significant duplication of resources. The prospects of ending up with harmonized standards across three or four different pieces of legislation are extremely low. A better interim measure, if one is needed, would be to amend the Companies Act, but with an allowance for phased implementation by sector.

Recommendation 2: Put the Corporate Affairs Commission (CAC) in charge of administering beneficial ownership disclosure requirements for all corporate entities, including mining, oil and gas companies. For the CAC to fulfil this responsibility it will need to update the registration process to include beneficial ownership disclosure, and add additional data fields to the online company register. The CAC should be the agency ultimately responsible for enforcing beneficial ownership requirements. However, beneficial ownership information is also relevant to the National Minerals Agency (NMA) and Petroleum Directorate (PD), when assessing mining and petroleum license applications. To avoid the NMA and PD having to track down the beneficial ownership information themselves, license applicants should be required to submit a duplicate of the beneficial ownership information provided to the CAC as part of their application. As applicants would already be complying with beneficial ownership requirements under the Companies Act this would not be burdensome. It would also ensure that the latest beneficial ownership information is provided, and that an applicant who may not be complying with the Companies Act is not able to apply for a licence.

Recommendation 3: Include voluntary beneficial ownership disclosure requirements in the SLEITI 2015 Reconciliation Report template, as an interim measure. Drafting and passing amendments to either the Companies Act, or the Mines and Petroleum Acts, will take some time. In the short term, SLEITI should begin collecting beneficial ownership information from extractive companies through the reconciliation reporting process. Although this would be a voluntary requirement, it would enable SLEITI to begin to familiarize companies with beneficial ownership disclosure, and trial data collection and verification. SLEITI should refer to the EITI Beneficial Ownership Declaration form as a guide for interim reporting requirements. Once primary beneficial ownership legislation is in place, SLEITI should remove beneficial ownership disclosure requirements from the reporting process to avoid duplication and potential inconsistencies.

Recommendation 4: Arrange technical assistance and capacity building for the CAC, SLEITI, NMA, and PD to strengthen beneficial ownership information collection and verification processes. The CAC will require the most intensive support, specifically, technical assistance to draft amendments to the Companies Act, as well as supporting regulations. It will also need training on beneficial ownership data collection and conducting spot checks. The NMA and PD require further capacity building on verification of beneficial ownership information to include this step in the license application process.

1. Legal Framework for Beneficial Ownership Disclosure in the Extractive Industry

Key Gaps in Extractive Sector Legislation

This section of the review is limited to the Mines and Minerals Act (2009) **(Mines Act)** and the Petroleum (Exploration and Production) Act (2011) **(Petroleum Act).** Set out below are the key areas in which the two Acts fall short of EITI standard 2.5. See Annex 1 for more detailed analysis.

(a) **Publicly available registers of beneficial owners**: the Mines and Petroleum Acts provide for publicly available registers of ownership interests. However, these registers fall short of EITI standard 2.5(a), as they do not require beneficial ownership disclosure, or to the extent they do, the disclosure is more limited than what the standard requires.

For example:

- the Mines Act requires disclosure of principal owners and shareholders of a company which is applying for the grant of a mineral right, but not the beneficial owners (which may not be the same persons). The principal owners and shareholders are recorded in a register of mineral rights;
- there are many registers that are required to be maintained under the Petroleum Act. However, only the register of petroleum rights applications (which relates to applications for reconnaissance permits and petroleum licenses) requires the name of each person who is the beneficial owner of more than 5% of the shares of a company who applies for a petroleum right to be disclosed. However, the term beneficial owner is undefined and so its scope is unclear. Further, there is no mention regarding the public's access to this register. There is also no requirement for the level of ownership and details about how ownership or control is exerted to be provided; and
- there does not appear to be any ongoing requirement to update the registers for any change in beneficial ownership (to the extent such information was required in the first place).

b) **Definition of beneficial ownership**: the term beneficial owners (or equivalent) is used in the Mines Act and the Petroleum Act, but is not defined. EITI standard 2.5(f) specifically requires beneficial owners to be defined as the natural person(s) who directly or indirectly ultimately own or control the license holder. The existing legislation is silent on whether only natural persons, rather than legal persons, can be identified as beneficial owners, and whether natural persons who have significant influence or control over the license holder by means other than ownership interests must be identified.

c) **Type of information disclosed**: as indicated above, to the extent beneficial ownership disclosure is required under the relevant Acts, the details of beneficial owners to be disclosed falls significantly short of the relevant information requirements in EITI standard 2.5(d).

d) **Disclosure of politically exposed persons:** neither the Mines Act nor the Petroleum Act define a PEP. Although s.19(a) of the Mines Act prohibits public officers involved in administering the Act from acquiring mineral rights, and purchasing of shares in companies operating in Sierra Leone; and members of the Minerals Advisory Board are required to disclose any direct or indirect interest in any matter consider by the MAB, and excuse themselves from any relevant deliberations.

The EITI standard 2.5 requires that beneficial ownership disclosure apply to all "corporate entities that bid for, operate or invest in extractive assets." Ordinarily the term "corporate entity" would refer to a company. This interpretation appears to be consistent with the guidance notes on beneficial ownership produced by EITI, as they consistently refer to companies. Consequently, artisanal and small scale license holders would be exempted from beneficial ownership disclosure, because they are not required to incorporate in Sierra Leone, or register with the CAC. For both license types, it would be relatively evident who the underlying beneficial owners are.

Key Gaps in Non-Sector Specific Legislation

This section of the review includes the Companies Act (2009) **(Companies Act)**, the Anti-Corruption Act (2008) **(ACC Act)**, and the Anti-Money Laundering and Combatting Financing of Terrorism Act (2012) **(AML Act)**. Set out below are the key areas in which the legislation fall short of EITI standard 2.5. Seen Annex 1 for more detailed analysis.

a) **Publicly available registers of beneficial owners:** the Companies Act authorises the Corporate Affairs Commission (CAC) to establish and maintain a company registry (s.8(b)). There is no requirement that the company register include beneficial ownership information, or that the register be accessible to the public. Members of the public can request information from the register, but this must be done in an official capacity, and the CAC should be satisfied that the information will not be shared adversely. Sensitive information such as personal address, and photo ID, will not be shared.

a) **Definition of beneficial ownership:** the AML Act (s.1(a)&(b) defines a beneficial owner, however, the definition is ambiguous as to the meaning of key terms 'ultimately owns or controls' and 'indirect', and does not use clearly defined thresholds for control. These deficiencies limit the efficacy of provisions. The AML Act is also limited in scope to governing the activities and clients of financial institutions; a company that did not use financial services in Sierra Leone would not be captured by the provisions and processes of the Act.

b) **Type of information disclosed:** no corresponding provision in any of the Acts.

c) **Disclosure of politically exposed persons**: the definition of PEPs provided in the AML Act and adopted by the Sierra Leone EITI multi-stakeholder group can be used as a base. However, elements of the definition should be clarified to avoid ambiguity: 'prominent public positions', duration of service, 'close family ties', 'personal or business connections'. The ACC Act (s.119 and s.45 respectively) requires all public officers to declare income, assets and liabilities each year, and when leaving office, as well as disclose any direct or indirect conflict of interest. The ACC Act does not specify beneficial interests.

The CAC is currently finalizing a Corporate Governance Code of Conduct that includes beneficial ownership provisions. It was not possible to get access to a copy of the Code for review, however, it is understood that the Code requires companies to voluntarily disclose their beneficial owners with a shareholding of 5%.

2. Assessment of Institutional Capacity to Administer Beneficial Ownership Disclosure Requirements

A key objective of the consultancy was to assess the institutional capacity of GoSL entities currently collecting company data, to determine which of these should be responsible for administering beneficial ownership disclosure requirements. The first step was to understand which government entities collect company data relevant to beneficial ownership, and what information they collect.

Table 1. GoSL institutions currently collecting company data, plus any plans to collect beneficial ownership information

	National Minerals Agency & Petroleum Directorate	Corporate Affairs Commission	National Revenue Authority	Financial Intelligence Unit	SLEITI
Company data	Both agencies collect shareholder, and related party information, from mineral and petroleum license applicants.[1] The NMA is updating its forms to include additional due diligence information on directors, officials, shareholders, related parties, court proceedings/ findings.	Except for artisanal licenses, all mining and petroleum license applicants must be registered or incorporated under the Companies Act (2009). The registration process requires disclosure of shareholders with >5% (previously 10%). Other relevant company data includes: business name, date of incorporation, registration type, description of business activity, management details. See Annex 3 for details on the company register.	All mining and petroleum license applicants must apply for a Tax Identifier Number (TIN) from NRA, which requires disclosure of company data similar to CAC requirements. NRA receives annual financial statements which includes a list of directors, tax returns, and transfer pricing documentation.	FIU focuses on AML/CFT. Monitors customer due diligence in banking. Plans to work with NMA in 2017 to improve AML monitoring in mining. FIU receives transaction reports from banks. FIU can access 'account opening' packages from banks, which may be useful to BO verification.	Receives payment data from extractive companies, and government.
Beneficial ownership disclosure	Neither agency collects BO data: NMA will once there is primary BO legislation; PD is exploring amending the Petroleum Act to cover due diligence issues, including BO.	CAC has included voluntary BO disclosure requirements in the Corporate Governance Code of Conduct - to be published in 2017. At the time of the consultancy CAC's draft BO provisions only extended to shareholders.	NRA will introduce transfer pricing documentation requirements in 2017. Company submissions will contain related party information relevant to BO.	FIU will work with CAC in 2017 to enhance information collection on beneficial owners.	SLEITI has developed a BO roadmap; plans to introduce voluntary BO disclosure in 2015 SLEITI report.

[1] Disclosure requirements apply to industrial mining licenses (reconnaissance, exploration, large-scale, and small-scale), and petroleum reconnaissance permits and licenses. Mineral exporter and trader license applicants do not have to provide shareholder information.

The second step was to assess the capacity of the GoSL entities in Table 1. 'Capacity' was assessed in two ways:

- information collection i.e. collection processes, information storage, and enforcement, and

- verification i.e. experience conducting company due diligence, knowledge of corporate structures, and access to independent verification sources (e.g. company databases). Verification is a recommendation, not a requirement of the EITI standard.

Not all the entities listed in Table 1 were assessed. The FIU was excluded on the basis that its focus is too narrow (i.e. AML and CFT) to include beneficial ownership issues, and it has limited exposure to the extractive industry. SLEITI was also excluded on the basis that it does not have the human or financial resources to store, or verify beneficial ownership information. SLEITI may however assist in the collection of beneficial ownership data from extractive companies through the annual reconciliation process; passing the data over to responsible agency. The remaining candidates are the NMA, PD, CAC, and NRA. To varying degrees, each agency has the resources, and mandate to enforce beneficial ownership disclosure in the extractive sector. Table 2 provides a high-level overview of key differences between the four agencies, which is followed by a detailed account in Annex 2.

Table 2. High-level analysis of institutional capacity to collect and verify beneficial ownership information

	NMA	PD	CAC	NRA
Compliance Staff	4 in Cadastre Office; 4 in Compliance Unit.	1 Compliance Manager (possibly more staff but did not disclose.)	4 out of 12 staff work on compliance.	4 staff in Extractive Industry Tax Unit.
Company data collection	NMA stores license information on an automated system: Mining Cadastre System (MCAS), which can be accessed by the public via an online repository.	PD stores information from license holders manually.	CAC is concluding setting up an online company register.	NRA stores tax data manually, but there are plans for an 'e-tax system.'
Verification systems	The NMA does not have access to any relevant databases. NMA staff have received limited training on integrity due diligence.	The PD has a limited subscription to Dun & Bradstreet, which it used to conduct background checks during the last bid round in 2012.	The CAC does not have access to relevant databases. In limited cases, CAC staff use company records from SEC and Companies House to investigate red flags.	The NRA does not have access to any relevant databases; it has been exploring a possible subscription to a transfer pricing database. NRA staff have received limited training on beneficial ownership.

In summary;

(a) All four government agencies collect from corporate entities information on the legal owners of shares. In all cases this disclosure requirement is weakly enforced, and no verification is undertaken. None of the four government agencies have any prior experience of collecting or verifying information on individuals that hold a beneficial interest (i.e. non-legal interest) in a corporate entity.

(b) Except for the PD, which has a limited subscription to Dun & Bradstreet, none of the other government agencies have pre-existing access to databases or resources that would support verification of beneficial ownership information.

(c) Both the CAC and NMA have information technology (IT) infrastructure to collect and store beneficial ownership data (e.g. the online company register, and the MCAS respectively). Additional data fields could be added to either of these systems to collect beneficial ownership data. The MCAS is arguably more developed than the company register in that it has been operational for longer, and is managed by a specialist firm, the Revenue Development Foundation.

(d) The NMA is the only agency that currently shares company data with the public. The NMA captures information on license holders through the MCAS, which feeds into the online repository, which members of the public can request access to. Not all information captured by the MCAS is on the online repository, for example, shareholder information. The CAC does not automatically disclose information collected on the company register, however, it is available on request. In both cases, the infrastructure exists to make beneficial ownership information publicly available: the NMA would need to add additional fields in the online repository, which can be done relatively easily by the Revenue Development Foundation; the CAC would need to make certain aspects of the company register public, perhaps with a password system like NMA. The issue with disclosure is not technical, but political.

(e) All four government agencies have received limited training on beneficial ownership. The NMA has received some training on conducting background checks on mining license holders.

Of the four government agencies, the CAC and NMA would be best placed to collect, verify, and disclose beneficial ownership data. However, irrespective of whether the CAC or NMA is selected, both agencies would require updates to their IT infrastructure, as well as significant capacity building in verifying beneficial ownership information. Given that both agencies would be effectively starting from scratch, the GoSL should consider where it makes sense to locate responsibility for administering beneficial ownership disclosure requirements. The main factor to inform this decision should be the GoSL's policy objective behind requiring companies to disclose their beneficial owners.

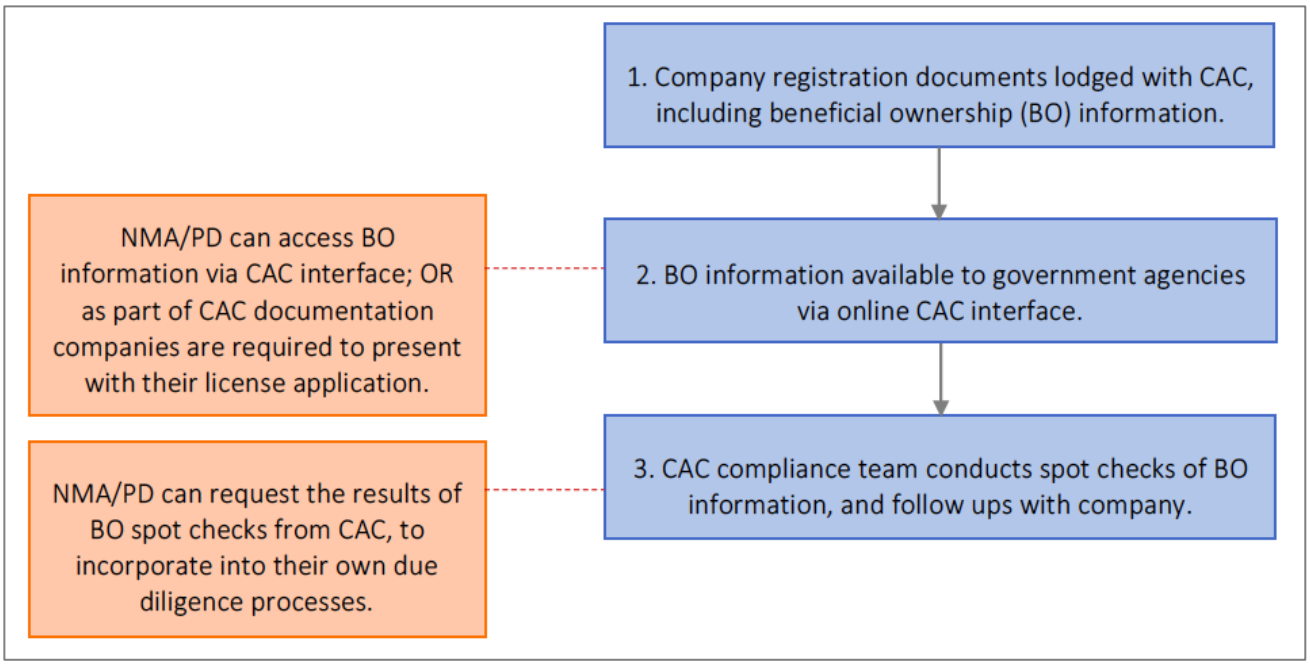
- If the objective is to improve transparency of corporate ownership in the extractive sector specifically, the NMA may be the more appropriate agency. Although, it is necessary to bear in mind that if Sierra Leone is to comply with the EITI Standard 2.5, significant resources would also need to be invested to establish a similar data collection system at the PD to ensure that the petroleum sector is covered.

- However, if the objective is to improve transparency and accountability across all sectors of the economy, then the CAC would be the most appropriate agency to take the lead. The CAC also makes sense from an efficiency perspective. It is the first point of contact for all companies seeking to operate in Sierra Leone. All companies must be incorporated in Sierra Leone, and registered with CAC, before they can

apply for a Tax Identifier Number from NRA, or an industrial mineral license, or petroleum license, from the NMA or PD respectively. All information collected by CAC during the company registration process is available to the NRA, NMA, AND PD on request; meaning any beneficial ownership data received by CAC could be accessed by these institutions for their own due diligence purposes. CAC have recently offered to sign an MoU with NMA to make exchange of company information easier and faster. In addition, mining and petroleum license applicants should be required to provide a duplicate of the beneficial ownership information submitted to the CAC, to the NMA and PD as part of the application process.

- **Therefore, it is recommended that the CAC should be the lead agency responsible for administering beneficial ownership disclosure requirements, including for extractive companies.** Beneficial ownership data should be submitted to the company register managed by the CAC. Spot checks of the data should be undertaken by the CAC (see Recommendation 17). When a corporate entity applies for a mineral or petroleum license, it should be required to provide a duplicate of the beneficial ownership submitted to the CAC, as part of the supporting documentation for the license application. The NMA and PD can then apply their industry expertise to a more thorough verification of the beneficial ownership information, the results of which will be one factor that informs whether a license is issued.

Figure 1. Processes for collection and verification of beneficial ownership information in the extractive sector



3. Proposed Legal Amendments to Strengthen Beneficial Ownership Disclosure

EITI Requirement 2.5(c)) - As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

Recommendation 1: *Beneficial ownership disclosure should apply to all corporate entities, not just those operating in the extractive asset space.*

Rationale

Although the EITI standard 2.5(c) only requires that beneficial ownership disclosure apply to corporate entities in the extractive industries, expanding the scope to include all sectors will have the following benefits:

- Secure greater transparency and accountability across the Sierra Leone economy;
- Ensure consistent treatment of corporate entities, and clarify application of the rules;
- Limit the opportunity for entities involved in illicit activities to disguise the true source or use of funds or property behind their corporate structures, throughout the entire economy;
- The EITI standard 2.5 requires that beneficial ownership disclosure apply to "corporate entities that bid for, operate or invest in extractive assets." Mining and petroleum subcontractors and service companies are not covered by extractive industry legislation, but by the Companies Act. Consequently, if beneficial ownership requirements are included in extractive industry legislation solely, these subcontractors and service companies will be excluded. The Extractive Industries Revenue Unit (EIRU) at the NRA has expressed concern that the GoSL has insufficient information about the legal and beneficial ownership structures of mining subcontractors and service companies, particularly given that concessions granted to mining companies are often extended to their major subcontractors.

Recommendation 2: *A 'corporate entity' for the purposes of beneficial ownership disclosure should include companies established for business purposes, and other vehicles that could be used to circumvent the beneficial ownership disclosure requirements, such as Limited Liability Partnerships (LLPs). Therefore, at a minimum the beneficial ownership disclosure requirements should apply to:*

- *companies incorporated in Sierra Leone;*
- *companies incorporated outside of Sierra Leone that have established a place of business in Sierra Leone;*
- *LLPs.*

Rationale

a) The EITI standard 2.5 does not define the term 'corporate entity'. However, ordinarily this term would refer to a company and this is consistent with the guidance notes on beneficial ownership produced by EITI, as they constantly refer to companies.

b) The UK has not expanded the scope of their beneficial ownership disclosure requirements to foreign companies. The reason is due to restrictions imposed by EU company law directives, and to the legal risk and challenge of applying UK law extra-territorially. However, the UK Government now plans to extend the beneficial ownership requirements to certain foreign companies who are owning or acquiring property in England and Wales, or bidding for a public contract in England. However, it is likely that foreign companies carrying on business in Sierra Leone should be subject to beneficial ownership

disclosure requirements. Part XVIII of the Companies Act (2009) currently imposes obligations on overseas companies that establish a business presence in Sierra Leone to lodge certain documents with CAC (e.g. incorporation information, director details and financial statements). It would seem logical that these obligations extend to beneficial ownership disclosure. Consequently, project owners would be covered, whether they are a silent partner or not. This is critical given that the underlying principle is to ensure the 'owners'/controllers of extractive industry assets can be identified.

c) The GoSL should consider whether to extend beneficial ownership disclosure requirements to the financiers of extractive companies. Financiers are unlikely to have a business presence in Sierra Leone. The EITI International Secretariat is currently reviewing how the term "invest" in standard 2.5 should be interpreted. It is likely that beneficial ownership disclosure will only apply to companies that hold a participating interest in an exploration or production license, thereby excluding financiers. Provided the financing arrangement is a genuine money lending arrangement, excluding financiers would be sensible given the difficulty of accessing information from offshore entities. However, this approach becomes problematic if companies use it as a way of circumventing the disclosure requirements.

d) The scope of the 'corporate entity' definition will not apply to artisanal miners and small scale miners who are individuals or part of a co-operative society. However, in these circumstances it would be relatively evident who the underlying beneficial owners are.

Foreign companies

(a) If foreign companies are not required to comply with beneficial ownership disclosure requirements, then the beneficial ownership disclosure requirements can be circumvented by using foreign vehicles to acquire assets.

(b) It is not appropriate to comment on Sierra Leonean law, however, in Australia and the UK, local law can be made to apply to foreign companies (particularly where there is a nexus between the entity and the company). Again, Part XVIII of the Companies Act (2009) applies to companies incorporated outside Sierra Leone but carrying on business in Sierra Leone.

Joint ventures

(c) To meet EITI standard 2.5 requirements, the definition of a 'corporate entity' to which beneficial ownership disclosure requirements apply must include joint ventures (EITI standard 2.5(f)(iv)). Incorporated joint ventures will clearly be caught by the beneficial ownership disclosure requirements. In the case of unincorporated joint ventures, the relevant participants in the joint venture will be caught (assuming they are corporate entities or LLPs).

Recommendation 3: *The Companies Act (2009) should be amended to include beneficial ownership disclosure requirements. These amendments could be based on beneficial ownership provisions in the draft new Corporate Governance Code. GoSL should not adopt the two-pronged approach (the preferred approach stated in the Roadmap) to first legislate beneficial ownership requirements in the Mines Act, before including such provisions in the Companies Act. The Companies Act is the most appropriate fit for primary beneficial ownership legislation.*

Rationale

The SLEITI Beneficial Ownership Roadmap states that GoSL's preference is for beneficial ownership disclosure requirements to be included in the Minerals Policy and subsequently passed into the Mines Act. This route should only be pursued as a last resort, if it is not feasible to legislate beneficial ownership requirements under the Companies Act within a practicable timeframe.

Legislating under the Companies Act should be the chosen route for the following reasons:

a) Petroleum Sector: Amending only the Mines Act would mean that the petroleum sector would not be covered, and that Sierra Leone would not meet EITI standard 2.5. There is no immediate plan to amend the Petroleum Act. Any attempt to begin such a process now is not likely to be completed by 2020. To satisfy the EITI standard 2.5 for the petroleum sector by 2020, GoSL would need to rely on the incorporation of beneficial ownership disclosure requirements in the Companies Act.

b) Consistency: To first legislate beneficial ownership requirements under the Mines Act, and then transpose these requirements into the Companies Act creates the risk of inconsistency between legislation. The prospects of ending up with harmonised standards across three or four different pieces of legislation are extremely low. Harmonisation of that kind would be an extraordinary achievement in the best governed countries in the world. There may also be pressure from various interests to adopt different approaches in each law. Investors will be discouraged by the resulting thicket of compliance obligations and the risk of EITI non-compliance is raised. By legislating predominantly through the Companies Act, inconsistencies between legislation are prevented. Once the Companies Act has been amended to include beneficial ownership provisions, any mention of beneficial ownership in the Mines Act and Petroleum Act should be replaced by a reference to the requirements in the Companies Act.

c) Costs/Duplication of work: If a two-pronged approach was adopted, similar work would be required to introduce beneficial ownership disclosure in both the Mines Act and Companies Act. By only introducing beneficial ownership disclosure in the Companies Act, there is no duplication of work. This would minimise costs and resources.

Recommendation 4: Once beneficial ownership disclosure requirements are enacted, a transitional period of one year should be provided to entities to comply.

Rationale

It is reasonable for companies to be given a period to prepare for beneficial ownership disclosure. For some companies, it may take time to identify their beneficial owners. Therefore, the UK approach of a one year transition period seems appropriate. However, given the need to comply with the EITI standard 2.5 by 2020, there could be a special requirement that extractive companies commence beneficial ownership disclosure sooner than other companies (e.g. within 3-6 months).

Recommendation 5: There should be no exemptions from beneficial ownership requirements. Specifically:

- *Public companies incorporated in Sierra Leone, and their wholly owned subsidiaries should be included (and not exempted) in the beneficial ownership disclosure requirements. Specifically, they should be required to disclose name of the stock exchange and include a link to the stock exchange filings where they are listed.*
- *Companies incorporated outside Sierra Leone that have established a place of business in or undertake investment activities in Sierra Leone should be required to comply with beneficial ownership disclosure requirements.*

Rationale

(a) It is not recommended that public companies incorporated in Sierra Leone be exempted. This is because the beneficial ownership disclosure requirements for public companies do not meet EITI standard 2.5. Currently, a person need only disclose their ownership of a public company if they own shares in the company which entitle them to exercise at least 10 percent of the voting rights. This 'legal ownership' threshold requirement does not encompass the wider concept of ultimate control required by EITI standard 2.5 for beneficial owners.

(b) Beneficial ownership disclosure requirements should apply to foreign companies operating in Sierra Leone and not only locally incorporated companies. It is not appropriate to comment on Sierra Leonean law; however, it is reasonable to expect that beneficial ownership legislation could be extended to foreign companies who establish a place of business within Sierra Leone. This is on the basis that the Companies Act already applies to foreign companies that have established a place of business in Sierra Leone. Part XVIII of the Companies Act requires such companies to lodge certain information and documents with the CAC, such as incorporation, location, director and financial information. These provisions could be expanded to include beneficial ownership disclosure obligations. This would ensure that all companies carrying on business in Sierra Leone operate on a level playing field and that transparency is enhanced amongst all companies operating in Sierra Leone, not only local ones.

(c) It could be argued that companies already subject to other transparency rules requiring them to make regular disclosures to the public regarding beneficial ownership should be exempted from requirements in Sierra Leone. For example, companies listed on certain stock exchanges or UK companies that may already be subject to equivalent requirements. Requiring these companies to 'double disclose' may seem unnecessary. However, the difficulties the GoSL experiences trying to access information from foreign companies in foreign jurisdictions, are so significant that the risk of duplication is warranted in this case.

Recommendation 6: Secondary legislation can and should be used to support the introduction of beneficial ownership disclosure, but not as an alternative to primary legislation.

Rationale

(a) There does not appear to be any power under the Companies Act for the CAC to make regulations regarding beneficial ownership disclosure or the operation of a beneficial ownership register. Therefore, regulations could only be made under the Mines Act or Petroleum Act. Any regulations made under the Mines Act or Petroleum Act would only apply to the extractive sector. As discussed above, there are benefits to requiring all corporate entities to disclose beneficial ownership information; this should be the aim of beneficial ownership disclosure in Sierra Leone.

(b) Secondary legislation could be used to clarify and expand upon primary legislation. For example, providing statutory guidance on the interpretation of the beneficial ownership disclosure. provisions, and PEPs.

EITI Recommendation 2.5(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.

Recommendation 7: *the beneficial ownership information an entity is required to disclosed should include (information required by the EITI standard 2.5 is underlined):*

- *the name of the beneficial owner;*
- *the nationality;*
- *the country of residence;*
- *an ability to identify any politically exposed persons;*
- *the national identity information;*
- *the date of birth;*
- *the residential or service address; and*
- *the means of contact.*

Rationale

(a) To ensure compliance with EITI standard 2.5, the first four items above must be disclosed. The other items are only recommended under the standard.

(b) Disclosure of the 'recommended' information would not be overly onerous. It is also consistent with international norms e.g. the Common Reporting Standard.

EITI Requirement 2.5(e) - The multi-stakeholder group should agree an approach for participating companies assuring 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.

Recommendation 8: *Corporate entities should be required to take 'reasonable steps' to identify their registrable beneficial owners. 'Reasonable steps' may be defined within the relevant Act. Alternatively, a non-statutory guidance paper could be published to assist corporate entities to identify what 'reasonable steps' entails.*

See the UK's non-statutory guidance on what may constitute 'reasonable steps'.

These guidelines should not operate as definitive or exhaustive requirements, but rather an outline of some of the reasonable steps corporate entities may take to identify their beneficial owners.

A corporate entity should also be empowered under the Act to give notice to a person likely to know someone who would know the identity of such persons. Such people may include lawyers, accountants and banks. This notice would require them to confirm whether they are a beneficial owner and to confirm their details which are to be included in the register.

Rationale

(a) By placing the burden of disclosure on corporate entities and individuals, government resources and funding are freed up to focus on compliance and verification. This is the approach adopted in the UK.

(b) Non-statutory guidance outlining what may constitute 'reasonable steps' assists entities with their enquiries. If the entity has taken reasonable steps and been unable to identify any beneficial owners, they are then released from the obligation to investigate further.

(c) The threat of sanctions for non-compliance with reporting obligations may encourage ongoing disclosure of beneficial ownership information (see Recommendation 11).

Recommendation 9: It is recommended that beneficial owners should also have an obligation to:

- *notify a corporate entity of their registrable status if certain circumstances apply, including that they know or ought reasonably to know that they are registrable and the required particulars are not currently included in the corporate entity's register;*
- *notify the corporate entity of any changes to their required particulars; and*
- *respond to notices seeking the required information.*

These obligations should extend to foreign companies who are beneficial owners of Sierra Leone corporate entities.

Rationale

a) Corporate entities may not be currently aware of who their beneficial owners are. Typically, that information will most readily lie with the actual beneficial owners.
b) A proactive disclosure obligation should ensure that any beneficial owners who have not been identified by the corporate entities are nevertheless entered in the corporate entity's register.
c) The obligation will also ensure that individuals seeking to avoid disclosing their own beneficial ownership status will be liable, rather than the corporate entity (if the corporate entity has made reasonable attempts to attain such information).

Recommendation 10: There should be a requirement that corporate entities submit current and accurate information to the beneficial ownership register. A range of mechanisms could be legislated to achieve this:

a) directors, senior officers and the beneficial owner him/herself could be required to attest to the accuracy of beneficial ownership disclosures;
b) supporting documentation could be required along with the register of beneficial owners;
c) corporate entities could be required to give notice to beneficial owners as soon as reasonably practicable once the corporate entity becomes aware that a 'relevant change' had occurred. This 'relevant change' could be defined as a change in the particulars of that person's interest. Once the individual's particulars have been confirmed, the corporate entity would be required to promptly update its register; and
d) corporate entities could be required to check their information on the central register and provide a statement each year to the CAC, attesting to the accuracy of the register and providing a log of changes throughout the year.

In addition to the above mechanisms, whistleblower protections should be established and implemented under the legislative regime to empower individuals to expose data reporting inaccuracies of information corporate entity provide.

Rationale

a) Beneficial ownership information is only useful if it is accurate and up-to-date. Despite the slightly onerous nature of imposing these obligations on corporate entities, it is particularly important in the context of Sierra Leone to utilize assurances to facilitate transparency and hold corporate entities accountable for the information they provide. The public perception of corruption and weak enforcement policies are challenged through a thorough and robust information check system.
b) In the UK, corporate entities are required to confirm information with the beneficial owners and update their own register accordingly. The corporate entity is then required to file a yearly statement with Companies House that provides a compilation of all the updated information throughout the year and confirms that the register is accurate. In contrast with the previous annual statement, corporate

entities are now required to 'check and confirm' that the information Companies House has is accurate and up-to-date.

c) It is particularly important in the context of Sierra Leone to adopt further assurance measures, such as attestations and supporting documents, to facilitate transparency and ensure accountability. Attestations signed by directors on behalf of the corporate entity are binding assurances of accuracy, and a misleading attestation may lead to personal liability of the director. To prevent onerous obligations on corporate entities, 'supporting documentation' filed should be straightforward and readily available. For example, a written agreement evidencing beneficial ownership arrangements could be supplied. An individual's particulars should be confirmed by the beneficial owner to the corporate entity before they are listed on the register. This is to ensure that people are not incorrectly listed without their knowledge. Providing a yearly statement to the CAC is a relatively inexpensive and straightforward task for corporate entities to comply with and ensures that the central register contains accurate and current beneficial ownership information. Corporate entities in the UK file this on the date of the anniversary of their incorporation.

d) Provisions protecting whistleblowers who expose reporting failures or data inaccuracy could be included in the relevant Act to further ensure accuracy and transparency. Whistleblowers play a key role in exposing acts of corruption and assist in ensuring that corporate entities and individuals are held accountable.

Recommendation 11: *Sanctions for non-compliance should include fines, imprisonment and public infringement notices. Sanctions should also be available for foreign companies who fail to comply with beneficial ownership requirements. This could involve restrictions on the ability to continue using or bidding for leases, tenements, and permits.*

Rationale

(a) The UK considers failing to take steps to identify beneficial owners, or failing to give notice to those people, an offence committed by the corporate entity and every officer of the corporate entity. The offence is punishable in England and Wales:
    a. On conviction on indictment, to imprisonment for a term of less than two years and/or a fine;
    b. On summary conviction, to imprisonment for a term of less than one year and/or a fine.

(b) Imposing similar sanctions on corporate entities that fail to comply with disclosure obligations is not unprecedented in Sierra Leone (e.g. a person who makes a false entry on the MCAS or tenders a false document commits an offence, and is liable to a fine of US$2000 or more, and/or imprisonment for less than 6 months) and may guide future discussion on fine amounts and maximum sentences.

EITI Requirement 2.5(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.

Recommendation 12: *The definition of a beneficial owner should be based on the UK definition of a 'person exercising significant influence or control'.*

The appropriate threshold that should apply for conditions (a) and (b) of the UK definition is discussed below.

Rationale

(a) The SLEITI Beneficial Ownership Roadmap adopts the Financial Action Task Force (FATF) definition of beneficial ownership. The FATF definition is relatively comprehensive, however, it does not go into the same level of detail as the UK definition, which specifies the ways in which individuals may demonstrate ownership or control, thus providing a clear and broad based test for capturing the ultimate owners or controllers of a company. Alternative beneficial ownership definitions are captured here.
(b) The UK approach is preferable to the definition of beneficial ownership in the AML Act; it is conclusive on what constitutes ownership and control, the AML Act definition on the other hand uses terms such as 'ultimately owns or controls', but does not offer any guidance as to what these terms mean.

Recommendation 13: *GoSL should adopt a threshold for control that is most appropriate to its policy objective.*

- *If the objective of beneficial ownership disclosure is to force companies to disclose individuals with controlling interests, a threshold of either 20% or 25% may be appropriate;*
- *However, if the objective is broader than control, and, for example, aims to capture all beneficial owners with a substantial interest, then a threshold of 5% or 10% could be used. In these circumstances, it should also be a requirement that where there are no beneficial owners that meet the test for control, the top five beneficial owners are still disclosed.*
- *A nil threshold should apply for politically exposed persons.*

Rationale

(a) A person holding 20% or 25% of share capital or voting rights is generally considered to be able to exert control over a company. For example, in Australia, 20% is a controlling stake in the context of takeover laws. A 25% holding, which is the basis of the UK disclosure regime, can provide negative control by allowing the holder to block special resolutions.
(b) If for policy reasons the GoSL wants more than just the controlling interests in a company to be disclosed, then a threshold of 5% would be appropriate, as it is consistent with existing Sierra Leone legislation and international norms. For example, in Australia shareholders holding 5% or more of a

company are required to disclose their interest. Similar thresholds apply to companies in the European Union. The important distinction here though is that it is the shareholder that is required to make the disclosure, not the company. Therefore, imposing a lower threshold may create a greater administrative burden for companies.

(c) In the case of politically exposed persons a nil threshold should apply, because their interests should always be disclosed irrespective of how significant they are to ensure transparency and avoid conflicts of interest.

Recommendation 14: The definition of politically exposed persons provided in the AML Act and adopted in the SLEITI Beneficial Ownership Roadmap can be used as a base, but elements of the definition should be clarified to avoid ambiguity.

Rationale

a) The current definition of PEPs in the AML Act does not explain what is meant by 'prominent public positions', 'close family ties', 'personal or business connections', or specify a duration of service, which may lead to ambiguity or uncertainty as to who the definition applies to. Each of these terms is discussed below:

- 'Prominent public positions': who will determine whether a public position is considered 'prominent'? The definition could be expanded to include a greater list of non-exhaustive public positions that would be considered politically exposed.
    - Executive;
    - Ministers;
    - Members of Parliament;
    - Paramount Chiefs;
    - City Mayors;
    - District Council representatives;
    - Judiciary;
    - Permanent Secretaries;
    - Director Generals;
    - Auditor General.
- Duration of service: the UK provision provides for any individual who has held a public position 'at any time in the preceding year'. Greater clarity will assist individuals in determining whether they are politically exposed persons under the Act.
- 'Close family ties': how far along the family tree will be considered 'close'? A non-exhaustive list of people considered to be close family ties could be included to clarify the scope of this requirement.
- 'Personal or business connections': this could be clarified to identify more closely the types of personal or business connections that would be of interest. For example, a person who has set up an arrangement to grant beneficial ownership of a legal entity to another person.

The GoSL Anti-Corruption Act (2008), s.199 and s.45 may help to define the terms, especially the duration question. The comprehensive PEPs definitions adopted in the *Money Laundering Regulations 2007* (UK) or *Anti-Money Laundering and Counter Terrorism Financing Rules 2007* (Australia) may also assist in defining 'prominent public positions', 'close family ties' and 'personal or business connections'.

EITI Recommendation 2.5(a) - It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

Recommendation 15: *One central public register should be implemented for beneficial ownership information (rather than each corporate entity maintaining its own register), or multiple government agencies maintaining a register.*

Rationale

(a) There is currently no publicly available register that includes beneficial ownership information as set out in EITI standard 2.5.
(b) A register maintained by a government body would not be too costly (considering the relatively small number of corporate entities in Sierra Leone), and would make beneficial ownership information more accessible to the public compared to each corporate entity maintaining their own register.
(c) Furthermore, the EITI standard 2.5 recommends that implementing countries maintain the public register, not the corporate entities.
(d) By ensuring one central register is used, the following benefits are achieved:
    - the public will know where they can access beneficial ownership information (assuming the information is made public);
    - companies will know which register they must submit beneficial ownership information to;
    - costs will be minimized having to only maintain one register; and
    - policies and procedures will be standardized.

Recommendation 16: *The register should be administered by the CAC. Even if the GoSL decides to amend the Mines Act to include beneficial ownership disclosure provisions (as an interim measure), the provision should be drafted such that power for collection, and verification of beneficial ownership information, as well as management of the beneficial ownership register is delegated to the CAC.*

Rationale

(a) CAC is the government body charged with administering the Companies Act. In line with Recommendation 3, that beneficial ownership disclosure provisions be included in the Companies Act, the CAC should be the nominated governing body to administer the beneficial ownership register. Additional fields for beneficial ownership disclosure would be included in CAC reporting templates, and the register itself.
b) It would also be inefficient for the NMA to set up a beneficial ownership register, and later transfer the responsibility of maintaining the register to the CAC.
c) However, license applicants should be required to submit a duplicate copy of the beneficial ownership information provided to the CAC, to the NMA or PD.

Recommendation 17: *CAC should conduct spot checks on beneficial ownership information, rather than actively verifying every entry made on the register. Additional mechanisms to ensure the accuracy of information include:*

- *data entry control to enhance the quality of reporting;*
- *sanctions to discourage reporting breaches; and*

- *a public complaints procedure.*

When a company applies for a mineral or petroleum license, the NMA and PD should conduct a more thorough review of beneficial ownership information as part of their due diligence.

Rationale

(a) Under the UK laws, Companies House, the agency which maintains the UK register, is not charged with verifying the beneficial ownership information disclosed by companies.

(b) However, different circumstances in Sierra Leone, specifically, the lower volume of corporate entities, and less capacity for public scrutiny of beneficial ownership disclosures, make it appropriate for the CAC to conduct some verification of the information provided. The NMA and PD should also play a role in verifying beneficial ownership information once a company applies for a license.
    - The CAC has limited time and capacity. Therefore, it should not verify all beneficial ownership information, but conduct spot checks on high-risk corporate entities (e.g. foreign companies, companies with affiliates registered in low-tax jurisdictions, extractive companies).

(C) Simple data entry controls can be established to enhance the quality of reporting, which will reduce the need for verification. Entries should be added to the register based on a drop-down options list rather than an open written entry format. Maintaining a drop-down list as opposed to free data entry also allows the public to better search for corporate entity information and generate a list of search results on the register. The options may be simple, for example:
    - corporate entities select which of the five specified conditions the beneficial owner satisfies;
    - the exercise of control could be identified as 'direct' or 'indirect'; and
    - if 'indirect' control is selected, a drop-down field would require the corporate entity to specify the structure of control as being via control of holding or parent corporate entity, via a trust, via a partnership, via a joint arrangement or another form of significant influence or control.

(c) The policy rationale for imposing sanctions to discourage reporting breaches is detailed above in Recommendation 11.

(d) A public complaints mechanism would also assist with verifying the accuracy of information provided to the CAC. Members of the public should be able to speak with an administrative official from the CAC, or complete a complaint form online to report disclosure concerns. The CAC should be satisfied that there is merit to the claim that warrants further investigation to prevent vexatious complaints. A public complaints mechanism will assist the CAC with identifying high-risk corporate entities that may need to be checked more often.

4. Methodology for Collecting Beneficial Ownership Information

Regardless of whether the GoSL elects to amend the Mines Act, or the Companies Act, the process will take some time. Therefore, the GoSL should adopt a staged approach to beneficial ownership information collection.

- **Stage 1 would involve updating the SLEITI Reconciliation Report template to include beneficial ownership disclosure requirements.** Without a basis in law these requirements would be purely voluntary. However, it would be a good opportunity to begin to familiarize extractive companies with beneficial ownership disclosure, as well as pilot information requirements to see what works and what doesn't. SLEITI should refer to the EITI Beneficial Ownership Declaration form as a guide for interim reporting requirements. Once primary beneficial ownership legislation is in place, SLEITI should remove beneficial ownership disclosure requirements from the reporting process to avoid duplication and potential inconsistencies.

- **Stage 2 would involve transporting the same or similar requirements into the company registration process, or the mineral and petroleum license application process.** There may be slight changes depending on the final beneficial ownership legislation, for example, the threshold for influence and control. At this point the beneficial ownership data fields should be removed from the SLEITI reporting template to avoid a heavy compliance burden on companies, as well as potential inconsistencies in requirements. Either the CAC will need to update the 'Application for Incorporation and Registration of a New Business and Tax Identifier Number' (Form AA), or the NMA and PD will need to update license application forms.

At both stages, beneficial ownership information requirements should include the following:
*Adapted from UK company registration requirements

1. **Identify the ultimate beneficial owners (natural persons) of significant share of the entity**
   - First name + Middle initial + Last name
   - Functional title & role
   - Date of birth (at least the year)
   - Place of birth (at least the country)
   - Country of citizenship
   - Country of residence
   - National identity number
   - description of current and expected roles and functions
   - service address - building name/ street number, street, county/region, postcode, country
   - residential address - same as above
   - Are they a PEP? Reason for PEP designation including dates when they assumed and left office
2. **Explain the Nature of Control** i.e. how the individual is a person with significant control over the company (NB: this will depend on the final threshold set by the GoSL. For the SLEITI Reconciliation template a threshold of 5% should be used to ensure consistency with the legislation.)
   (a) Ownership of shares: percentage of shares in the company held indirectly or directly e.g. more than 25% but not more than 50%.

(b) Ownership of voting rights: percentage of voting rights held in the company directly or indirectly e.g. more than 25% but not more than 50%.
(c) Ownership of right to appoint/remove directors: individual holds, the right to appoint or remove a majority of the board of directors of the company.
(d) Significant influence or control: the individual has the right to exercise, or actually exercises, significant influence or control over the company (only tick if none of the above apply).

The same format should be repeated for individuals exercising control via a firm, or a trust.

3. Identify Legal Entities with Significant Control
   - Full company name
   - Date of incorporation or creation
   - Place of incorporation or creation
   - Full address
   - Nature of business
4. Identify the ultimate beneficial owners of the legal entity (above) – the same requirements as (1).

Capacity Building

SLEITI should begin collecting beneficial ownership information from extractive companies as soon as possible, however, it is unlikely that the Secretariat will have capacity to verify the information provided. One option would be to give the data to the NMA and PD for analysis. Both agencies have more capacity and resources than SLEITI; the NMA has also received some training on conducting integrity due diligence, including beneficial ownership. Alternatively, a consultant could be hired to verify the information, and review information collection processes, providing recommendations for how this could be improved by the GoSL agency ultimately responsible for administering beneficial ownership requirements.

SLEITI will require technical support and capacity building in the following areas:

(a) Drafting additional beneficial ownership reporting requirements to be included in the reconciliation report template (based on the outline above);
(b) Understanding key aspects of beneficial ownership, especially the ways in which individuals can exert influence and control – SLEITI will need to be able to familiarise companies;
(c) Expanding the usual terms of reference for contracting a consultancy to produce the SLEITI Reconciliation Report to include a review of beneficial ownership data.

CAC will require technical support and capacity building in the following areas:

(d) Assuming Recommendations 3 and 16 are adopted, the CAC will need technical support to draft the amendment to the Companies Act to provide for beneficial ownership disclosure. The GoSL could ask Herbert Smith Freehills to provide this support as part of their pro bono package to Sierra Leone;
(e) Adding additional data fields to Form AA, and the company register;
(f) Understanding corporate structures and beneficial ownership issues i.e. differentiating between legal and beneficial ownership; identifying beneficial owners – nominee directors, corporate service providers, shell companies, holding companies; the EITI standard 2.5 and other global requirements;
(g) Conducting spot checks on beneficial ownership information i.e. how to search company registers, local media, and global sanctions and enforcement lists;
(h) Using global corporate information databases (financial support may be need to fund a subscription).

NMA and PD will also require further capacity building on beneficial ownership, and how to conduct checks on beneficial ownership information (e.g. (f) and (g)).

Annex 1. High-Level Legal Gaps Analysis

NB: The initial legal gaps analysis provided by HSF did not include the AML Act. The Act was subsequently considered, to inform the final recommendations.

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
2.5(a)	**Publicly Available Register** It is recommended that implementing countries: • maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets; and • include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted; • where possible, incorporate beneficial ownership information in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing;	The Mines Act requires that all applications for the grant of a mineral right be recorded in a register of mineral rights (s.41(1)). The recorded application must, amongst other things, include the name of the applicant or the names of the principal owners and or shareholders of the applicant (s.41(2)). This register of mineral rights is publicly available (ss 39, 49). Guidance on how to access the mineral rights register is brief, with the Mines Act simply providing that members of the public may inspect the register during normal office hours (s.49). <u>Gap</u> There is no public register of beneficial owners (only legal owners).	The Minister (responsible for the management of petroleum matters) is required to maintain three registers (ss section 19(1), 20(3), 36(2) and section 117)). **1. Register of petroleum rights application** The register of petroleum rights applications includes all persons applying for petroleum rights. Petroleum rights includes reconnaissance permits and petroleum licences (s.15). All applications of reconnaissance permits and petroleum licences are required to be filed in this register (s.20(3) and s.36(2)). The application for reconnaissance permits and petroleum licences (which is filed in the register of petroleum rights applications) must include the name of each beneficial owner of	The *Corporate Affairs Commission* is required to establish and maintain a company's registry: (s.8(b)) Substantial shareholders of a <u>public</u> company (holders of 10% or more of voting rights) are required to disclose their interests in writing to the company: (s.81) (NB: 10% has been reduced to 5% in the new draft Corporate Governance Code). Public companies only must keep a register of substantial interests at its registered office: (s.70) and (s.83) <u>Gap</u> There is no public register of beneficial owners and the substantial shareholder provisions only apply to public companies.

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
	• include guidance on how to access this information if it is available publicly.		more than five percent of the shares issued by the company applying (see ss 20(3), 21(a), 36(2) and 37(a)). Other information required includes the name of the company applying for a licence, particulars of incorporation and registration, the names and nationalities of directors, and the share capital of the company. <u>Gap:</u> The term "beneficial interest" is not defined, as required by the standards. Further, there are no requirements to provide the level of ownership and details about how ownership or control is exerted. 2. Register of qualified persons The register of qualified persons includes all persons wishing to qualify as an applicant for a petroleum right (s.19). This is a pre-qualification register. Petroleum rights include	

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
			reconnaissance permits and petroleum licences (s.15). S.19 indicates that this includes entities hoping to become operators and non-operating people who hold a beneficial interest in the petroleum right (defined as participants). The application shall include: 1. the name and address of applicant; 2. description of the project; 3. evidence of satisfaction of pre-qualification criteria; and 4. such other information as may be required by the Minister (s. 16(1)). <u>Gap:</u> There is no explicit requirement of beneficial ownership disclosure. However, the Minister could request this information under s.16(1)(d). 3. Register of Petroleum Rights The register of petroleum rights includes all approved	

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
			reconnaissance permits and petroleum licences (s.117). The petroleum right need only indicate the date and registration number, the name and particulars of the permit holder, the term, the particulars of the area covered, the terms and conditions under it, the work programme to be undertaken, and fees and other financial conditions (s.23 and s.41). <u>Gap:</u> This register does not disclose anything about beneficial ownership. <u>Public Accessibility</u> A person may, upon payment of a prescribed fee, inspect the register of qualified persons or petroleum rights (s.19(2), s.117(2) and s.119(1)). <u>Gap</u> There is no mention about the accessibility of the register of petroleum rights applications.	

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
			Gap The Petroleum Act does not mention the incorporation of beneficial ownership information in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing.	
2.5(d)	**Beneficial Ownership Information** 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.	The Mines Act divides applications for reconnaissance licenses, exploration licenses and large-scale mining licenses into three parts. Each part contains a requirement for license applications to contain: • the registered name and place of incorporation of the company; • its certificate of incorporation; • a certified copy of its memorandum and articles of association; • the names and nationalities of its directors, and • the name of every shareholder who is the beneficial owner of five percent or more of the issued share capital.	When applying for reconnaissance permits and petroleum licenses, beneficial owners who own more than 5 percent of the shares of the company (who is applying) must be disclosed in the application and therefore in the register of petroleum rights applications. Public officers are restricted from acquiring interests in petroleum rights and the Director General is required to disclose any interests they have. Gap There is no requirement for disclosure of the nationality, country of residence, identification of politically exposed persons (although there	No equivalent provision

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
		The beneficial owner is only required under the Mines Act to disclose his/her name. However, we understand that in practice there is no distinction between legal and beneficial shareholders and all that is required (on the application form) is details of the legal owner. No public officer can acquire a right or interest in any mineral right under the Mines Act (s.19(1)). A member of the Minerals Advisory Board must also disclose any interest in any matter to the Board. (s.15(1)). <u>Gap</u> In practice its seems that no information on beneficial owners is obtained, despite the wording in the Mines Act. The Mines Act does not require disclosure of beneficial ownership for applications for artisanal licenses and small-scale mining licenses. The Mines Act does not require beneficial owners in applications for reconnaissance, exploration or large-scale mining licenses to disclose their nationality, country of residence, national identity number, date of birth, residential or service address or means	are restrictions on such persons as outlined above), national identity number, date of birth, residential or service address and means of contact.	

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
		of contact or identify any politically exposed persons (noting the restrictions on public officers and board members above).		
2.5(e)	**Assuring Accuracy of Information** The multi-stakeholder group should agree an approach for participating companies assuring 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.	The Mines Act establishes an offence punishable by fine for making a false entry in the mining cadastre or producing a false document (s.171).	The Minister can cancel the qualification of a company for a petroleum right where the company supplies false or misleading information regarding the names of beneficial owners holding five percent of the shares. (s.35(6) and s.16(5)). This would presumably include the situation where the company fails to disclose all the names of beneficial owners holding five percent of the shares.	Fines apply for failure to comply with the register provisions referred to above.
2.5(f)	**Definitions** The following definitions should be addressed: 1. Definition of **beneficial ownership**: **i.** A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately	**Gaps** The term 'beneficial ownership' is not defined under the Mines Act. A definition of 'Politically Exposed Persons' will also be required.	**Gaps** The term 'beneficial ownership' is not defined under the Petroleum Act. A definition of 'Politically Exposed Persons' will also be required.	**Gaps** There is no 'beneficial ownership' or 'Politically Exposed Persons' concepts.

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
	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			

No.	Sections of EITI standard 2.5	Mines and Minerals Act (2009)	Petroleum Act (2011)	Companies Act (2009)
	they are listed to facilitate public access to their beneficial ownership information. 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. 2. Definition of Politically Exposed Person.			

Annex 2: Institutional Assessment

1. Corporate Affairs Commission (CAC)

Information collection	- CAC is responsible for registering all companies in Sierra Leone, including companies limited by guarantee, as well as trusts; - All mining and petroleum companies must register with the CAC, the certificate of incorporation must be provided as part of the license application to the NMA and PD; - CAC collects company data through the application for registration, as well as annual returns (see Annex 3 for more detailed information); - CAC is transferring all company data to a database, this should be complete by 2017; - CAC plans to develop a government interface so that GoSL agencies can easily access company data from the database; - CAC will introduce BO disclosure in the Corporate Governance Code of Conduct. It has no prior experience collecting BO data; - The Companies Act includes penalties for failure to disclose, but anecdotal evidence suggests that CAC may not always enforce reporting requirements. E.G. as part of the NMA Mining Due Diligence Project funded by GIZ, company data on Tonkolili Iron Ore was requested from CAC, the information received was very out of date.
Information verification	- CAC has 12 staff; - 4 of the 12 staff work on compliance; - CAC does not conduct comprehensive monitoring of companies; however, it may commence spot checks of BO data; - CAC does not subscribe to any commercial databases; it uses company records to assist with information verification and due diligence.

2. National Revenue Authority (NRA)

Information collection	- NRA is responsible for assessing and collecting tax revenues; - NRA does not collect beneficial ownership data at present, however, it does require information on shareholders, for the purpose off issuing Tax Identification Numbers (TIN). There is no threshold for share capital. The highest number of shareholders the Extractive Industry Revenue Unit (EIRU) has seen disclosed is three; companies would seem to be making their own decision regarding the reporting threshold.; - All extractive industry taxpayers are required to submit annual financial statements, which includes a list of directors, and tax returns, to the EIRU. This system is not automated, although there are plans for e-tax returns; - The Revenue Investigations Unit (RIU) receives Foreign Transaction Reports, Currency Transaction Reports, and Serious Transaction Reports from the Financial Investigations Unit (FIU). The RIU's role is to look at this information from a tax perspective. Any elements of criminality are forwarded to the police; - NRA is currently developing transfer pricing regulations which will compel taxpayers to maintain contemporaneous transfer pricing documentation. The regulations may also

	include a requirement for taxpayers to maintain a Master and Local File which with contain valuable information on corporate structure.
Information verification	- The EIRU was set up in 2015. It has four staff, and reports directly to the Commissioner General. The Unit has primary responsibility for all extractive industry taxpayers; the Head of the Unit is the NRA's representative to the Minerals Advisory Board (MAB), playing a direct role in licensing decisions; - The RIU has six staff, and like the EIRU, they report directly to the Commissioner General of the NRA. The role of the RIU is to collect intelligence on anything that affects revenue collection; - To investigate reports the RIU will use the Automated System for Customs Data (ASYCUDA), the customs declaration platform to check for imports. Beyond this the RIU relies on relationships at the OARG and CAC, they may also use LinkedIn and social media. In 2015, the RIU collected 1.5 billion Leones, as a result of investigating claims of under-invoicing.

3. National Minerals Agency (NMA)

Information collection	- NMA collects limited beneficial ownership information (i.e. shareholders with 5%); - Requirements are not always enforced (e.g. according to MCAS data less than 10% of industrial licenses include shareholder information); - NMA license and reporting forms have been updated to require more comprehensive information on shareholders, related parties, conflicts of interest, and legal actions; - All company data is stored on the MCAS: an automated database; - MCAS data is available to the public via an online repository. Shareholder information is not currently included on the online repository but may be in the future.
Information verification	- License applications are reviewed by the Mining Cadastre Office (MCO), which has three staff. The MCO's role is to check the 'completeness' of license applications before they go to the License Assessment Officer to review the technical proposal, and expenditure targets, and make a recommendation to the Director of Mines. The only reason that a license application will not progress to the Minerals Advisory Board for decision is if the applicant has failed to provide the required information; - The Compliance Unit is comprised of the Inspector of Mines, a Compliance Manager, a Large-scale Compliance Manager, an Artisanal and Small Scale Compliance Manager, and regional officers. The role of this Unit is to monitor operational and administrative compliance of industrial licenses, this includes compliance with the agreed work program, health and safety obligations, reporting and payment obligations; - NMA does not have access to any due diligence databases; - Staff from the MCO and Compliance Unit have been trained by GIZ on integrity due diligence (e.g. how to conduct background checks on public and private companies).

4. Petroleum Directorate (PD)

Information collection	- Company information pertaining to petroleum right is included on the register of title. The register is manual, however there are discussions with the World Bank about the possibility of setting up an automated system like MCAS;
Information verification	- PD has an annual subscription to Dun & Bradstreet (£600 fee p/year). The database was used to by the PD finance team to do high-level background checks during the last bid round in 2012.

Annex 3: Overview of Sierra Leone Company Register

The Sierra Leone company register is managed by CAC. CAC is in the process of taking the company register online; this should be complete in 2017. The information held by CAC is not automatically available to the public, however, it is possible to make a request for information held by CAC.

Box 1. Information included in the company register:

- business name;
- registration type;
- type of legal entity;
- business location address;
- postal address;
- telephone number and email address;
- activity/ industrial classification;
- description of business activity;
- capital employed in the business;
- auditor/ accountant;
- name of contact person;
- name and address of person to accept and receive documents;
- name and address of secretary;
- full particulars of any branches or other places of business in Sierra Leone;
- particulars of shareholders;
- particular of each company that is a shareholder

Annual Return Form for a company having shares, other than a small company (Form 317):

- particulars of past and present members since the last return was filed;
- changes to address;
- particulars of directors at date of return;
- details of authorized share capital, issued share capital; total amount called up on shares; total amount received on calls; total amount of calls unpaid; total number of shares forfeited; total amount for which share warrants are outstanding;
- total amount of indebtedness in respect of the mortgages and charges required to be registered with the commission;
- number of staff hired for the reporting year;
- number of staff terminated ore retired;
- details of the secretary.

Form 319 for small companies includes the same information minus the information on shares.

Change of Director/ Secretary/ Registered Office Address (Form 247(4))

- Information for new directors, secretaries, or address.