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BENEFICIAL OWNERSHIP IN MONGOLIA:

A Way Forward

A **Leveraging Transparency to Reduce Corruption** report prepared by

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LTRC

Leveraging Transparency to Reduce Corruption

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LTRC supports the efforts of diverse good governance and anti-corruption actors who engage with the extractives sector at the global, national, and subnational levels. We do this through research, knowledge brokerage, and testing of new approaches. Our TAP-Plus approach is used to understand, through dialogue between key stakeholders, the roots of existing challenges and implementation gaps in order to co-design multi-pronged strategies that can overcome them.

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Executive Summary

The Leveraging Transparency to Reduce Corruption (LTRC) program, is pleased to present this report on the pending beneficial ownership (BO) agenda and a recommended path to implementation in Mongolia's mining sector. This work is the first in a larger agenda LTRC identified together with local stakeholders in Mongolia, which seeks to identify and build the conditions for an effective beneficial ownership ecosystem in the country. LTRC launched its efforts to strengthen the ongoing BO transparency process in a virtual roundtable in November 2020, with stakeholders in Mongolia from civil society, government, and international organizations. Research priorities emerged from that roundtable, including a look at the legislative framework that governs BO transparency and the supply of data in the registry, which are the topics of this report.

THE KEY FINDINGS OF THE RESEARCH ARE:

- Mongolia is in the early stages of implementing a legal obligation on all legal entities to disclose their beneficial ownership to the General Authority for State Registration (GASR). Approximately 30,000 legal entities provided their BO details before the deadline of 31 December 2020.[1]
- This BO information is not yet accessible to the public but basic information on companies is publicly available. Draft amendments to the right to information law currently being considered by parliament will grant a legal public right to access BO information. These amendments are expected to become law later this year.
- While a right to access BO information will mark significant progress towards beneficial ownership transparency (BOT), significant practical obstacles will remain, including the lack of digitization of the information and the need to design and implement a public BO register. The authors understand that the GASR has embarked on the digitization of this data and that more widely digitization of government services is a priority.
- With the implementation of the BO disclosure obligation and Mongolia's removal from the Financial Action Task Force's list of "jurisdictions under increased monitoring", informally known as the "grey list", the momentum behind further progress on BOT appears to have slowed. A number of interviewees noted the lack of a high profile champion for BOT.
- The public officials' asset declaration register, operated by the Independent Authority Against Corruption, appears to enjoy a high level of compliance. There is interaction between this register and the GASR's BO register. Such interaction plays an important role in verifying the data in both registers.

[1] Mongolia had 198,000 legal entities in 2019, but data about how many were active are unavailable. In 2021, there were 205,000 legal entities, 45 percent of which were active. Assuming the same number of total legal entities as 2019 and the same active rate as 2021, 30,000 companies providing BO details in 2020 would represent approximately one third of total active entities. Source: https://montsame.mn/mn/read/260726.

THIS REPORT CONTAINS A TOTAL OF 10 RECOMMENDATIONS. THEY ARE:

1. **Identify a BOT champion:** A BOT champion is to be identified who has the stature and credibility to drive progress on BOT. Such a champion could be from government, parliament, civil society or business but should have the support of all these constituencies.
2. **Secure technical assistance funding and support:** Providers of technical assistance (TA) to Mongolia to fund and support the digitization of the GASR's BO register, including the information collection process, should also be identified. The Government of Mongolia should be encouraged to request such assistance. Potential TA providers include regional development banks (e.g., ADB or EBRD), an international organization (e.g., the EU), an individual country bilateral donor (or group of donors) or combination of any of these.
3. **Establish a cross-agency taskforce:** The government of Mongolia should establish a taskforce to oversee the design and implementation of a public BO register. This task force should include representatives of all relevant government agencies that will be involved in the development, administration, enforcement and use of the BO register.
4. **CSOs to monitor "Right to Information" legislation:** Civil society organizations should monitor passage of the amendments to the public right to information law through the parliamentary process and its implementation to ensure a positive impact on BOT.
5. **Adopt a default BO definition:** The Government of Mongolia should adopt one of the current BO definitions as the default definition. This should probably be the definition contained in the AML Law as this is used by the GASR as the basis for the registration of BO information.
6. **Specify measures for reporting requirements and redaction requests:** As well as legislating for the public access to BO information, the GoM should introduce measures to create specific BO reporting requirements for stock exchange listed companies, government owned companies and foreign PEPs.
7. **Coordinate between registers:** The IAAC and GASR should ensure a high level of interaction between the public officials' asset declarations register and the BO register. The two authorities should maximize the opportunities to use the data held in each register for verification purposes.
8. **Adopt strategic approach to verification for the BO register:** The GASR should adopt a strategic approach to verification to ensure the accuracy and reliability of information held within the BO register.
9. **Adopt strategic approach to verification for the Public Officials Asset register:** The IAAC should also adopt a strategic approach to verification (see Appendix 4) of the data in the public officials asset register to ensure the accuracy and reliability of information held within the register.
10. **Implement strategic communication campaign:** The GASR should design and implement a strategic communication campaign with key messages on the importance of BO information and benefits of public access to this information.

A team of international and Mongolian experts, led by Michael Barron and Tim Law, undertook the research in the period 24 March to 30 April.

This report focuses on beneficial ownership in Mongolia's mining sector and reflects the scope of companies required to disclose their beneficial ownership under the Extractive Industries Transparency Initiative (EITI) Standard 2019.

The authors deployed a combination of research and interviews with stakeholders to assess the legal framework, supply of BO data and the public officials' asset register. The research included review of relevant Mongolian laws and other key documents both directly related to Mongolia and those relevant to the international architecture and examples of good practice in other countries.

Abbreviations and Acronyms

AML	Anti-money laundering
AML Law	Law on Combating Money Laundering and Terrorism Financing, 2013
BO	Beneficial Ownership
BOT	Beneficial Ownership Transparency
CFT	Counter terrorist financing
EITI	Extractive Industries Transparency Initiative
EITIM	EITI Mongolia
EST Law	Draft Law on Extractive Sector Transparency (Draft Mining Transparency Law)
FATF	Financial Action Task Force
GASR	General Authority for State Registration
GDP	Gross Domestic Product
GLT	General Law on Taxation
GoM	Government of Mongolia
IAAC	Independent Authority Against Corruption
IO5	FATF Immediate Outcome 5
LTRC	Leveraging Transparency to Reduce Corruption
MSG	EITI Multi-stakeholder group
PEP	Politically Exposed Person
R24	FATF Recommendation 24
R4D	Results for Development
SRLE Law	Law on State Registration of Legal Entities, 2018
TA	Technical assistance

1. Introduction

Beneficial ownership transparency (BOT) is important to build trust and confidence in the integrity of the extractive industries, and indeed the whole economy, for citizens, government, industry players and providers of finance, both domestic and international. The demands for increased transparency from international investors, finance providers and other stakeholders are growing. At the same time, focus on the ultimate owners of companies is increasing globally as governments seek to build trust and clamp down on tax evasion, corruption and money laundering. Accordingly, disclosure of the beneficial owners of companies is increasingly on the agenda of policymakers. As Mongolia continues to attract investment and financing to its mining sector, it will need to meet the expectations of greater transparency, including of the beneficial owners of companies operating in the extractives sector. Mongolia has been, and will be, in competition with many other countries to attract such investment and financing, and countries that offer more transparency are likely to be more successful in doing so, especially in the new post-Covid environment.

BO refers to natural persons who directly or indirectly ultimately own and derive financial benefit from a company or commercial activity. There is no single global standard of BO disclosure. An overview of the international architecture is given below in section 3. There are various policy options for implementing BO reporting regimes and this research will consider those relevant to the legislative framework and the supply of data for Mongolia.

BOT allows stakeholders to ascertain who actually benefits from revenues generated by extractive industries or controls companies involved in the sector. It enhances governance and accountability. BOT prevents the true beneficiaries of extractive industry revenues from hiding behind opaque shell companies or using complex corporate or other legal structures to:

- Avoid the reporting of income;
- Evade tax obligations;
- Disguise conflicts of interest; and
- Engage in money laundering activities, carry out corrupt practices, or financing criminal practices or violent activities, including terrorism.

BO disclosure also allows stakeholders to obtain a clear view of who is investing in the extractives sector and any links to politically exposed persons (PEPs). Many countries, including Mongolia, have introduced the concept of BO into their legislation as part of anti-money laundering laws. Public disclosure of this information for companies engaged in the extractive industries sector is particularly important and can bring further benefits through enhancing governance and accountability in the sector.

This report presents the result of research conducted into:

- The legal framework for beneficial ownership disclosure in Mongolia,
- The supply of reliable information on beneficial ownership,
- The register of public officials' asset declarations.

A team of international and Mongolian experts undertook the research in the period 24 March to 30 April. A detailed methodology is provided below.

This report comprises the following sections:

- Assessment of the current situation in the Mongolia with regard to beneficial ownership and the register of public officials' assets;
- Description of the current international architecture of beneficial ownership;
- Stakeholder mapping and engagement;
- Gap analysis between Mongolia's current situation and international best practice; and
- The recommendations including proposed next steps.

BOT is still evolving as a concept. This report reflects the authors' understanding of the Mongolian and international approach to BOT at the time of writing, and is intended to elicit further discussion in Mongolia and among international partners supporting the country in this area.

1.1 OBJECTIVES

This report provides clear recommendations on actions that Mongolia can take to enhance the collection, storage, verification and public disclosure of BO information. These recommendations will focus on the legislative framework and supply of data.

Specifically, this report will provide:

Recommendations on a BO definition that can be incorporated into Mongolian law and act as a basis for identifying beneficial owners both in the extractives sector and the wider economy. The definition will take into account work that has already been undertaken in this area in Mongolia and international best practice. The BO definition will include all key terms including, "ultimate owner," "final decision-maker," and "majority owner" as well as concepts such as "indirect control". It will also include other elements of the definition such as those relating to PEPs e.g., "family member" and "close associate" and the period for which a person remains a PEP.

1. A recommended threshold for considering a natural person a beneficial owner. This will be based on international best practice, current trends in setting thresholds in a variety of jurisdictions and the current situation in Mongolia. This threshold will also be capable of being incorporated into Mongolian law.
2. A recommended roadmap for drafting and enacting legislation to create a statutory basis for all registered companies to report BO information and to make that information public.
3. A stakeholder map that identifies parliamentarians and other stakeholders supportive of enacting BO transparency legislation.
4. An analysis of current processes to collect BO data in Mongolia.

5. Recommendations on the types of data to collect and protocols and other measures to ensure collection of high-quality data, including harmonization of data collection processes. These recommendations will include measures to build awareness in both government and the private sector.
6. Recommendations on communicating how to use BO information and the benefits of using BO information.
7. Recommendations on creating a robust register of public officials' assets and its interaction with the BO register.

1.2 SCOPE

This report focuses on beneficial ownership in Mongolia's mining sector and reflects the scope of companies required to disclose their beneficial ownership under the Extractive Industries Transparency Initiative (EITI) Standard 2019. Requirement 2.5 of the EITI Standard demands that companies that apply for or hold licenses to explore for and extract minerals disclose their beneficial ownership.[2] This report considers the legal obligations that mining companies in Mongolia must comply with regarding BO disclosure as well as initiatives such as EITI. The report also considers the international expectations that Mongolia faces and in particular the need to comply with the Financial Action Task Force (FATF) Recommendations on anti-money laundering (AML) and counter-terrorist financing (CFT).

While the report focuses on the mining sector, it also considers the implications of BO transparency for the wider economy. Mining is a significant contributor to the Mongolian economy, accounting for around 23% of GDP in 2018.[3] Consideration of the wider economy therefore will capture the companies involved in the supply chain for the mining sector.

The report also provides an assessment of Mongolia's existing register of asset declarations of public officials. Identifying PEPs who have ownership interests in companies is an important element of beneficial ownership transparency. The integration of BO transparency with existing processes is therefore needed to ensure completeness, avoid duplication/fragmentation of disclosure and ensure universal application of best practices for design and implementation.

1.3 METHODOLOGY

The authors deployed a combination of desk research and interviews with stakeholders to assess the legal framework, supply of BO data and the public officials' asset register. The research included review of relevant Mongolian laws and other key documents both directly related to Mongolia and those relevant to the international architecture and examples of good practice in other countries. A full list of documents reviewed as part of this project is given in the bibliography.

Interviews were conducted with stakeholders representing civil society, the private sector, government and parliamentarians. The interviews were based on a structured set of questions but with the flexibility to pursue specific topics depending on the expertise and experience of the particular stakeholder. A full list of organizations interviewed, and structured list of questions is contained in Appendix 1. All interviews were conducted on a non-attributable basis, so no stakeholder is directly quoted or has views attributed to them in this report.

[2] https://eiti.org/document/eiti-standard-2019
[3] https://eiti.org/mongolia

2. Current situation in Mongolia

Mongolia is in the early stages of implementing a legal obligation on all legal entities to disclose their beneficial owners to the General Authority for State Registration (GASR). This legal obligation applies to both corporate and not-for-profit legal entities. In 2018, Mongolia amended its law on the registration of legal entities, followed by amendments in March 2019 to incorporate BO in the list of documents legal entities file. Accordingly, the Law on Procedures to Implement the General Taxation Law was adopted on the same day in March, to introduce the legal obligation to disclose BOs for the legal entities incorporated prior to 1 January 2020. Legal entities had a deadline of 31 December 2020 to provide the information to the GASR. A total of 29,948 companies and other legal entities provided BO information on a hardcopy form to the GASR as of December 23, 2020. The registration law refers to the anti-money laundering law for the beneficial owner definition. The GASR does not make the BO information public and this information is currently only available to government agencies such as regulators and law enforcement authorities.

As well as the state registration and anti-money laundering laws, there are also several other current laws that reference beneficial ownership. These include the General Law of Taxation (Tax Law) and the Banking Law. These laws use separate definitions for beneficial owner, including different thresholds for the reportable level of BO. In addition, there are at least two other draft laws that could have an impact on BOT. These are the draft law on Extractive Sector Transparency (EST Law, also referred to as the mining transparency law) and the amendments to the Information Transparency & Right to Information Law. One of the objectives of the EST Law is expected to create a legal basis for Mongolia's implementation of EITI Standard and make compliance with the EITI mandatory. (It is currently voluntary.) The implications of EITI implementation for BOT in Mongolia are considered in more depth below (see section 2.3).

The authors' understanding is that the draft EST Law is unlikely to reach the statute book during the current parliamentary session, despite being scheduled for discussion before the July 2021 recess. The draft law has been under consideration for several years and has yet to make progress in parliament. The government does not view the law as a priority as it tackles both the health and economic impact of the Covid-19 pandemic. Also, the draft law lacks a parliamentary champion to drive progress. The amendments to the right to information law are part of the government's drive to create an e-government infrastructure (sometimes referred to as e-Mongolia). This is a priority for the government and is therefore receiving strong support.

The amendments to the right to information law, if enacted, will grant a right to access to a wider range of information held by the government than is currently the case under the existing law. This will include a right to access BO information held by the GASR. BO information is one of the types of information explicitly referenced in the draft law. Parliament will consider this draft law in its current session, which ends in July. The bill is expected to become law later this year. The creation of a legal right to BO information will mark significant progress towards BOT in Mongolia. However, obstacles will persist that will prevent citizens gaining access to BO information. As noted above, the collection of BO information remains a paper-based system. The GASR is in the process of digitizing the information. Until all BO information is available in digital form, access is likely to be time consuming and limit the use of the information, e.g., to identify suspicious ownership patterns.

2.1 COMPARISON FOR BENEFICIAL OWNERSHIP DEFINITIONS

TABLE 1: *Comparison of beneficial ownership definitions in use in Mongolia*

Name of the Law	Impact on BO	BO Definition	Scope	Threshold	Registering Authority
Law on Combating Money Laundering and Terrorism Financing, 2013 (AML Law)	BO definition was amended in 2018	**Article 3.1.6** "Ultimate/Beneficial owner" means: **3.1.6.a.** if a customer is a legal entity, then a person who owns the majority of the assets of the legal entity solely or jointly with others, or holds a management function of the legal entity, or represented his/her authority by other persons or ultimately owns the legal entity earning benefit and profit by managing any transaction to be made from such legal entity and implement its activates; **3.1.6.b.** if a customer is an individual, a person who controls customers' action and activity or a person who earning benefit and profit on behalf of those who are representing his/her action; **3.1.6.c.** As for an asset management transaction, a person who earns benefits and profits on the basis of such assets proxy management transaction	Nine sectors required to report. Other laws only refer to this law in terms of definition, not applicability	No threshold indicated	N/A
Law on State Registration of Legal Entities, 2018 (SRLE Law)	Some articles related to BO were amended in 2019	**Article 4.1.11** Uses definition from the Law on Combating Money Laundering and Terrorism Financing	All legal entities	Although the law does not state a threshold, the BO information registration form BO indicates 33%	GASR
Banking Law, 2010	BO definition was amended in 2018 and 2021	**Article 3.1.17** "beneficial owner" means an owner that holds a management function of the bank, or represented his/her authority by other persons, or owns bank shares through a legal entity that has one or more continued ties, established that legal entity and has the right to benefit from shares or operations of the bank.	Banks	No direct reference to a BO threshold, but law states that BO definition applies to all legal persons who hold 5% or more	Mongol Bank

Name of the Law	Impact on BO	BO Definition	Scope	Threshold	Registering Authority
General Law on Taxation, 2019 (GLT)		**Article 6.1.48** "Ultimate holder" is a legal person who is holding 30% or more shares or vote rights of a holder of a mineral, oil, or radioactive mineral license or land possession or use right, directly or through one or more interconnected legal entities, or legal person who has right to receive dividends.	Legal entities holding a mining or land license	30%	The General Department of Taxation
Law on the Securities Market, 2013	BO definition related article hasn't been updated since 2013. Therefore, there is slight difference in the terminology used.	**Article 4.1.26** "beneficial owner" means the actual owner of securities that has registered securities in its ownership in the name of the nominee in accordance with the provisions of this Law and that has the right to enjoy the benefits attaching to the concerned securities	Listed companies and securities owners.	No threshold indicated. BO definition extends to all legal persons who hold securities through nominal holder/owner.	Mongolian Central Securities Depository
Draft Law on Extractive Sector Transparency (EST Law)		**Article 4.1.20** Applied the definition from the General Law on Taxation	Legal entities operating in extractive industry	30% as it uses the definition from the General Law on Taxation	Extractive Sector Database held by the National Secretariat[4]
Amendments to Law on Public information		No definition, or reference to the definition in other laws is mentioned. The draft law classifies the BO information as public information and requires it to be publicly accessible	N/A	N/A	N/A

2.2 IMPLICATIONS OF FATF EVALUATION

In 2016, Mongolia underwent a FATF mutual evaluation of its AML and CFT measures and their effectiveness. This included the ability of competent authorities (e.g., law enforcement agencies) to access accurate BO information on legal entities in a timely manner as demanded under FATF's Recommendation 24 (R24). Mongolia was assessed as "largely compliant" with R24 in terms of technical compliance, meaning that it had adequate measures in place for competent authorities to access BO information. However, the effectiveness of these measures was assessed as "low" under the criteria of FATF's Immediate Outcome 5 (IO5). FATF assessed the effectiveness of most of Mongolia's AML/CFT measures as low under its 11 immediate

4 In the current draft, BO information is designed primarily to be compiled in the Extractive Sector Database, which will be held by the National Secretariat. GASR will be able to verify and cross-check with their own database, but these will be separate databases.

outcomes. As a result of these ratings and other findings during the evaluation, Mongolia was placed on FATF's list of "jurisdictions under increased monitoring", informally known as the "grey list". Mongolia agreed an action plan with FATF to address the weaknesses in the effectiveness of its AML/CFT measures. In 2020, FATF removed Mongolia from the grey list.

While addressing the weaknesses in the effectiveness of BO information availability did not form part of the action plan, the desire to exit the grey list contributed to the government's drive to amend the General Law on State Registration and create the legal obligation to disclose beneficial ownership information. Since FATF's removal of Mongolia from the grey list, there appears to have been a loss of momentum in the government's focus on beneficial ownership transparency. Several stakeholders noted this loss of momentum (see below, section 4 on stakeholder engagement). This loss of momentum was attributed in the main to the lack of a champion either in government or in parliament to drive further progress.

2.3 EITI MONGOLIA

Prior to Mongolia creating a legal obligation for companies to disclose their beneficial owners, the drive for BOT came from the country's implementation of EITI. Mongolia was one of the first EITI implementing countries to introduce BO reporting as part of producing its EITI annual report in 2013 as part of its efforts to show leadership in EITI. While that initial effort brought a strong response with 215 of 250 reporting companies providing ownership details, the level of reporting has declined in subsequent years, in part, as there was no legal obligation for companies to comply. In the 2019 EITI report, 291 out of 2093 companies provided at least some beneficial ownership information.Mongolia set a 5% threshold for reporting ownership. However, in many cases the companies provided legal ownership rather than BO details. EITI Mongolia (EITIM) continues to collect and publish BO information as part of its annual EITI reporting process. However, its ability to collect accurate and comprehensive BO information remains constrained by the lack of legal imperative on companies in scope to comply. EITIM also has limited capacity in terms of staff and resources. Beneficial ownership information is just one aspect of the data that needs to be collected under the EITI Standard. At the heart of the EITI process is the collection, reconciliation and publication of payment and revenue data. EITIM faces the challenge of placing its finances and organizational structure on a more sustainable basis.

The legal obligation for all Mongolian-registered companies to disclose their beneficial owners to the GASR and the expected legal right to access that information creates an opportunity for EITIM to mainstream the reporting of beneficial owners of extractive companies in Mongolia. That is, rather than separately collect and publish beneficial ownership information, it can in the future rely instead on the availability of this information through the GASR. EITIM can then provide guidance on how to access this information and focus on compliance with other aspects of the EITI Standard.

2.4 COMPANY REGISTRATION PROCESS

All companies that want to undertake activities in Mongolia, in any sector including the mining industry, must have a registered entity. The GASR is responsible for registering all entities and maintaining Mongolia's company register. Figure 1 below sets out the company registration process.

FIGURE 1: *General process of state registry of newly established Legal Entity (LE)*

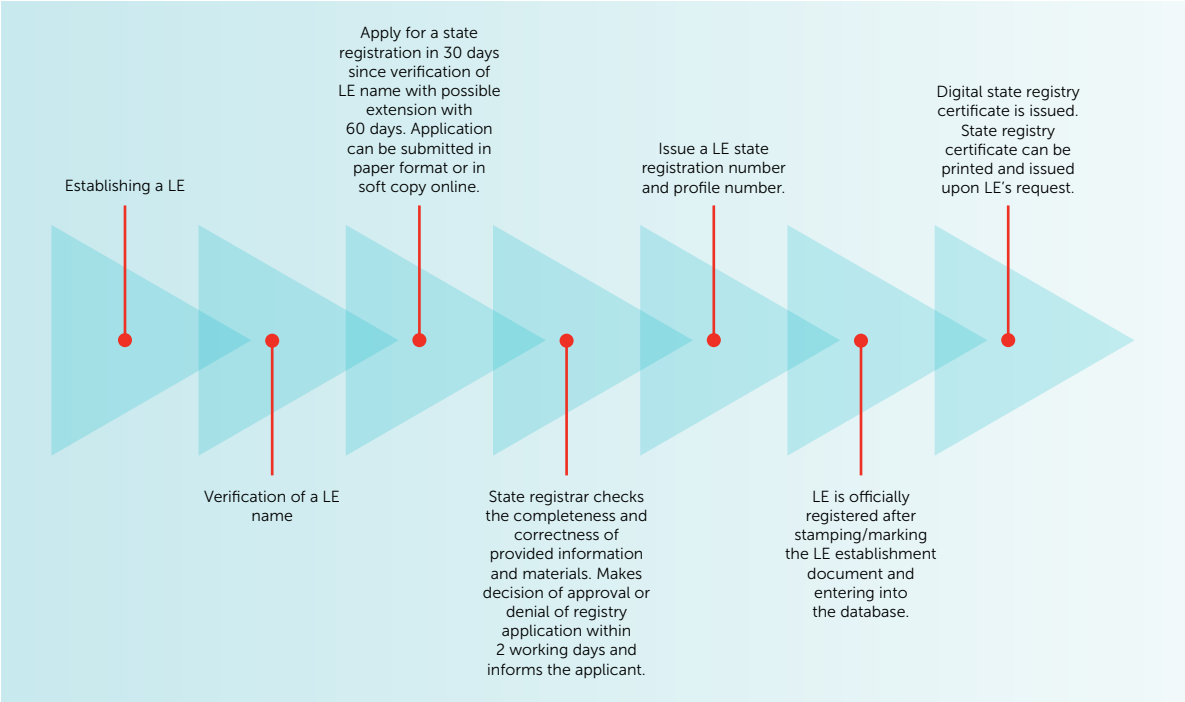
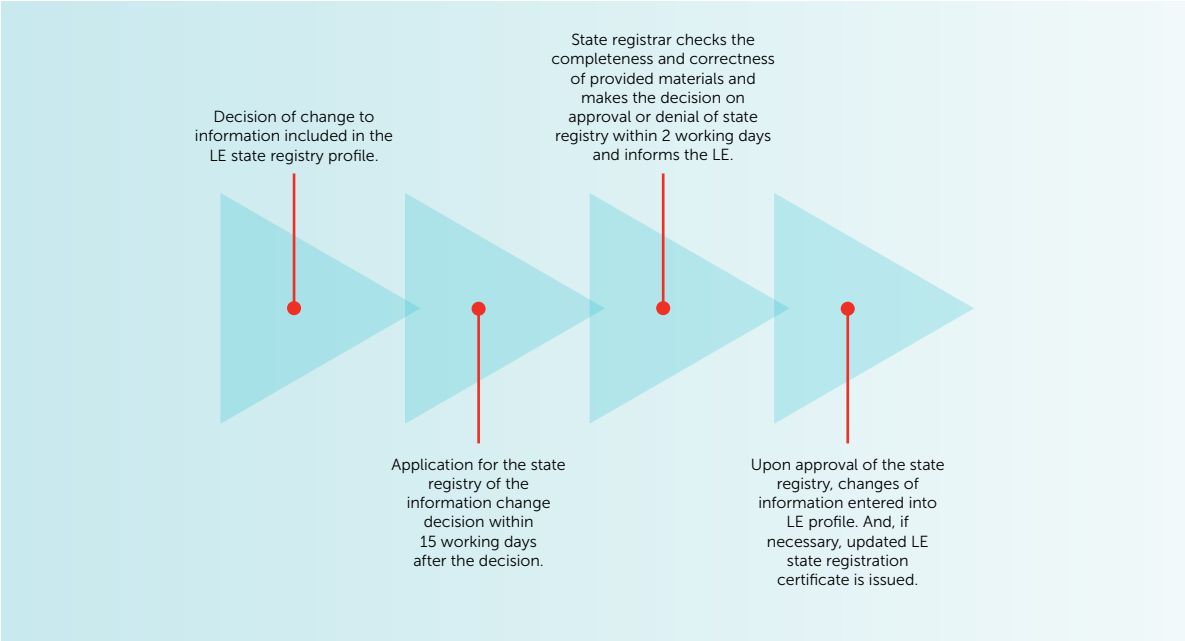


FIGURE 2: *General process on state registration of changes in information included in Legal Entity (LE) state registry profile*



In order to search information about the company, the correct name or registration number of the company should be typed into Open Data Mongolia.

This includes information on the company name, business address, type of business, date of registration, names of directors and legal owners.

INFORMATION ON OPENDATA:

General information

Registration number	Name of the legal entity	Registered date	Form of the legal entity	Type of the legal entity	Number of share holders	Business address of the legal entity

Information on officials or persons who have representative right /authorization not required/

Number	Official position	Country	Surname	Given name	Registered date

Information on shareholders

Number	Official position	Country	Surname	Given name	Registered date

Information on business operation

Number	Given code for operation	Type of operation	Registered date

2.5 PUBLIC OFFICIAL ASSET DECLARATIONS

The Independent Authority Against Corruption (IAAC) administers the register of public officials' asset declarations. Around 40,000 senior public officials are legally obliged to make an annual submission on details of their business interests, property and other assets (e.g., livestock). Any changes during a reporting year must be disclosed within 30 days. A limited amount of the information held in the register is available to the public, in more simplified and integrated manner than the declaration form itself. Further information can be requested in writing from the IAAC. While there is a high level of compliance in terms of officials submitting reports, there are doubts about the level of verification of those reports in terms of accuracy and completeness. TI has assessed the level of enforcement as low, noted that public officials enjoy high levels of immunity and the potential penalties and sanctions are not dissuasive.

The public officials' asset register has the potential to play an important role in addressing a crucial aspect of BOT: identifying PEPs who are the ultimate owners of Mongolian-registered companies. The current GASR BO disclosure system does not have a provision for beneficial owners to declare whether they are PEPs, but this may not be necessary as Mongolia has an existing system for PEPs to declare business ownership. However, both the asset register and the BO register should interact and can be used for verification. The business ownership details declared in the public officials' asset register should be cross-checked against the BO register and vice versa. The authors understand that the IAAC and GASR do exchange information. GASR has also indicated in public statements that its priority is ensuring compliance with the BO reporting

obligations and identifying dormant entities and removing them from the register where relevant. Recent data indicates that a large share of entities registered with the GASR are in fact dormant.

The current lack of public access to BO information in Mongolia limits the ability for citizens, civil society organizations and other potential users to act as verifiers and use both registers to cross check the accuracy of data on PEPs. The ability for citizens, civil society organizations and businesses to act as "many eyes" on the data and spot potential discrepancies, understand who really owns companies and avoid apparent or real conflicts of interest is an important use for both a BO register and an asset declaration register. For example, businesses can use BO information and information on PEPs to ensure that procurement processes are not subject to undue influence or conflicts of interests.

3. International architecture of beneficial ownership

3.1 EITI REQUIREMENTS

Since its launch in 2003, EITI has become a benchmark for transparency in the extractives sector, and the EITI Standard has provided a clear framework for that transparency. The EITI Standard 2013 introduced a recommendation on disclosure of beneficial ownership information, and after two years of pilot studies, the EITI Standard 2016 introduced a beneficial ownership reporting requirement. Currently, Requirement 2.5 of the EITI Standard 2019 requires all EITI implementing countries to collect and publish the beneficial ownership of all companies holding, operating or bidding for extractives licenses.

Although the EITI Standard does not prescribe a detailed BO definition for use by countries, the Standard along with its supporting guidance sets out some clear criteria which the definition should meet:

- A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
- This applies to corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.
- The definition should also specify reporting obligations for politically exposed persons.
- 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.
- 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.
- EITI also recommends the adoption of a reporting threshold for BO and has identified 5% to 25% as the appropriate range of thresholds.

EITI requires the multi-stakeholder group (MSG) in an implementing country to consider the local context, existing reporting requirements and the nature of the extractives sector in adopting an appropriate scope and definition of BO.

The EITI Standard requires implementing countries to report on an annual basis, and for these reports to include BO information. However, more recently there has been a move toward the systematic disclosure, or "mainstreaming" of EITI information, meaning that countries are increasing the amount of data automatically made available on a real-time basis. But in general, BO information remains an annual data collection and publication process at present within the EITI world.

3.2 FINANCIAL ACTION TASK FORCE REQUIREMENTS

FATF was established in 1989 by the G7 as part of efforts to combat money laundering and the financing of terrorism (AML/CFT), and this remains FATF's primary area of focus. FATF sets standards, develops policies and provides advice. It does not have law-making or law-enforcing powers, and like EITI, it is not underpinned by an international treaty or similar agreement but is open to membership from countries and regional organizations.

At its core sits FATF's 40 Recommendations setting out standards for anti-money laundering and combatting terrorism financing. The prevailing Recommendations initially date from 2012 and have since been updated periodically, most recently in February 2018. None of these updates have materially changed the Recommendations related to beneficial ownership.

FATF's recommendations have become the international benchmark in the areas of anti-money laundering and combatting terrorism financing. Its policy recommendations have been adopted by many countries — including those beyond its immediate membership — and have formed the basis for policy in other bodies.

FATF or its regional bodies regularly evaluate the compliance of countries with the FATF Recommendations and rate countries as non-compliant, partially compliant, largely compliant or compliant with each Recommendation. Counties are also assessed as to the effectiveness of those measures in combating AML/CFT.

Recommendations 24 and 25 (R24 and R25) cover BO of legal entities, trusts and other legal arrangements. The effectiveness of a country's measures to address these Recommendations will also be evaluated under Immediate Outcome 5 (IO5).

Countries can achieve technical compliance on R24 and R25 but achieve a low rating for effectiveness under IO5, so it important to consider measures to demonstrate effectiveness.

According to FATF countries should:

- Ensure that there is adequate, accurate and current information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities;
- Where they have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, they should take effective measures to ensure that they are not misused for money laundering or terrorism financing;
- Consider measures to facilitate access to beneficial ownership and control information by financial institutions and designated non-financial businesses and professions;
- Ensure that either information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority.

In order to meet such recommendations, countries should use one or more of the following mechanisms:

- Requiring company registries to obtain and hold up-to-date information on the companies' beneficial ownership (the Registry Approach);
- Requiring companies to obtain and hold up-to-date information on the companies' beneficial ownership or requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership (the Company Approach);
- Using existing information (the Existing Information Approach). In practice, this means relying on information obtained by financial institutions or other regulated entities as part of their customer due diligence, information held by other competent authorities or stock exchanges.

FATF does not specify the application of a reporting threshold, but it does suggest that a threshold of 25% or lower would be indicative of a compliant regime.

3.3 INTERNATIONAL BEST PRACTICE

CASE STUDY: GHANA

EITI is well established in Africa, and Ghana is an EITI implementing country. Ghana was also one of the first African countries to legislate for an economy wide BO regime through the *Companies (Amendment) Act, 2019 (Act 990)* and the *Companies Bill 2018*. This was prompted at least in part by efforts to meet the FATF Recommendations.

Responsibility for implementing this legislation sits with the Registrar General's Department (RGD). Although not formally designated as such, the Registrar General personally acted as Champion, and continues to do so during the roll out of the regime.

During 2020 Ghana received external technical assistance from a team of international and Ghanaian experts, of which two of the authors of this report were part.

Ghana introduced BO regulations as part of its effort to implement the BO regime and meet FATF Recommendations. It set the general threshold for reporting of BO at 20%. Ghana went further, and set different thresholds for certain categories of reporting entities and owners. Legal entities in sectors deemed to be "high risk" (including the extractives and financial sectors) have a reporting threshold of 10%, as do foreign PEPs. Furthermore, there is no threshold for domestic Ghanaian PEPs. They must disclose *any* level of ownership or control.

Ghana's successes on BO so far have resulted from a systematic approach to the design and implementation process.

- Formation of a core team of individuals to work on BO, with the support of the Champion (in this case the Registrar General).
- Three parallel activities:
  - **Technical** - Identification of the key elements of the definitions and scope of the BO regime not already captured in legislation. Clear decisions about these key elements and capturing those decisions for approval. Developing those positions into Regulations and Guidance
  - **Training** – Explaining the principles and details of BO reporting to all stakeholders, including the private sector. This was achieved through workshops, open days and a series of online training modules supported by informational videos.
  - **Systems** – Designing new forms to collect exactly the data set out in the legislation, regulations and guidance, and in a format able to be converted to an online tool. Development of a temporary register to hold BO data, and work to create an online reporting mechanism for the future.
- All of these activities have been underpinned by clear communications. In particular, the Registrar General has made clear public announcements across all media platforms supporting the implementation.

Design and Implementation

There are three different measures of international best practice depending on the context and objectives of the implementing country. There are examples of countries which have demonstrated each of these.

The first route to international best practice is linked to the successful adoption of the EITI Standard and is reflected in the publication of detailed and accurate beneficial ownership information for all companies operating within that sector. Although it has the natural limitation of being limited to extractives companies, EITI BO remains at the forefront of innovation in this area. An example of international best practice in EITI BO would be Armenia.

The second route to international best practice is represented by those countries with the objective of being compliant with the FATF recommendations. Although these countries may not allow public access, they have a central register of beneficial ownership capturing verified information with a threshold of 25% or less.

The final route to international best practice is the implementation of an economy wide public register of beneficial ownership. This approach captures the best elements of the EITI Standard and the FATF Recommendations and could therefore be considered to be the most all-encompassing example of international best practice. Countries which have taken this route include the EU's member states (through the Fourth EU Anti Money Laundering Directive), the UK and Ukraine.

Across these three forms of international best practice, there are some common themes providing a guide as to specific design elements of a BO regime.

- **Natural person.** All examples of international best practice are built upon the concept of a beneficial owner being a natural person;
- **Ownership and control.** International best practice captures beneficial owners whose interest in the reporting entity is linked to their ownership of a sufficient proportion of, or being in a position to exercise control over a sufficient proportion of the reporting entity;
- **Direct and indirect.** International best practice points towards beneficial owners being those who have a direct ownership or control of the reporting entity but also those with a sufficient indirect interest in the company.
- **Threshold.** Among BO implementing countries the most commonly adopted threshold is 25%. This represents the top end of the EITI range of thresholds and meets the expectations of the FATF Recommendations. However, there are examples of countries adopting lower thresholds than 25%, and there is increasing pressure on countries to reduce thresholds in order to increase the amount of information being collected on beneficial owners and reduce the risk of money laundering and other financial crime. Therefore although 25% remains the most frequently adopted threshold international best practice is moving towards lower thresholds.

Indirect control

Indirect control is one of the most challenging aspects of BO to define as there are a multitude of means for a natural person to exert control over a legal entity. Some of these are informal and may not be documented or readily apparent. International best practice includes the need to consider both direct and indirect control by beneficial owners over legal entities.

Individuals wishing to disguise their beneficial ownership are likely to be highly motivated and to show a level of ingenuity in order to circumvent any requirement to disclose their interest. The definition of "indirect control" therefore needs to be sufficiently broad and flexible to ensure that it captures novel approaches to disguising beneficial ownership that may otherwise be developed at a future date. However, there is no widely accepted international definition of indirect control but there is guidance. For example, FATF provides several examples, including:

- Through tiered structures;
- Contracts such as shareholder agreements;
- "Dominant influence", which is not further defined;
- Ability to appoint and dismiss senior management;
- Personal connections;
- Financing the legal entity;
- Acting as senior management.

The challenge in defining "indirect control" is the ambiguous nature of some means of control such as "dominant influence" and personal connections. These types of control may be exercised informally and might not be documented. While some forms of personal connection are clearer, e.g., close family members, other personal connections may be more difficult to discern, such as connections that originate in education, military service or previous business ventures.

Use Case

There is a direct link between international best practice in the design of an effective BO regime and the use case for BO information. Users of BO information include government agencies and law enforcement, financial institutions and other regulated bodies, overseas competent authorities and the private sector. There is a strong use case argument for each of these user groups ranging from the investigation of criminal activity and money laundering by law enforcement agencies to customer and supplier due diligence carried out by small and medium size enterprises in the private sector.

The ability of an implementing country to capture all of the positive aspects of these use cases, and therefore achieve international best practice in the use of BO information, relies upon those users having access to comprehensive and reliable BO information. For most of these users, this means governmental access to an effective central register of BO. However, in order to capture the benefits of the use case for the private sector, the register must allow public access in order that private sector users can investigate the BO of suppliers, partners, customers and competitors.

Therefore, in the context of the broadest use case of BO data, a freely accessible public register represents international best practice.

Communication

The effective design and implementation of a BO regime require communication with a wide range of stakeholders throughout the process, from political engagement during the policy and design decision stage through legislation, awareness raising and technical implementation, and rollout. International best practice includes communication at all these stages in the process with a range of stakeholders which include government agencies (including those who would be using beneficial ownership information after it has been collected), policymakers and parliamentarians, other competent authorities, financial institutions and other regulated bodies, the private sector more broadly (as both suppliers and users of data), and civil society.

This communication is important not only to support smooth design and implementation, but also to improve the quality of data collected and to support the benefits of the use of BO information by all users who have access.

4. Stakeholder mapping and engagement

Government, parliamentarians, civil society, and business stakeholders all play vital roles in implementing an effective BOT system and in using BO information to address corruption, other financial crimes and manage other risks (e.g., conflicts of interest). Government enacts and enforces legislation and regulations as well as administering the BO register. Government agencies also use BO information to prevent and investigate corruption and other crimes. Where BO information is publicly available, civil society and businesses are also significant users of BO information. Civil society uses BO data to identify potential conflicts of interest, apparent corruption and other suspicious activity. They can also use the information to hold both government and business to account. The experience of jurisdictions where BO information is publicly available is that businesses, especially small and medium enterprises (SMEs), are some of the largest users of BO information to conduct due diligence on their customers, business partners and competitors. They use the information to manage risks to their business, e.g., unethical procurement practices or suppliers who are not who they say they are.

The research for this project included interviews with representatives of government, civil society and the business community. A full list of organizations interviewed is set out in Appendix 1.

The key findings from these interviews are:

- Wide awareness that a legal obligation now exists in Mongolia for all companies to disclose their beneficial ownership to the GASR. The vast majority of interviewees welcomed this development. Also, most interviewees expressed support for BO information to be made publicly available. However, government agencies were more skeptical on making BO information publicly available. They rather prefer to improve inter-governmental agency disclosure of BO for the efficiency of their functions/roles.
- Government efforts to drive further progress on BOT have lost momentum. This is in part due to the need to focus on addressing the Covid-19 pandemic but also it is not seen as central to meeting FATF requirements or combatting corruption.
- The drive for BOT in Mongolia lacks a champion to ensure the issue remains on the political agenda. Such a champion is needed to drive further reforms and increase awareness of the importance of BOT and the role it plays in combatting corruption.
- Concern about the lack of transparency in the mining sector and especially who owns mining licenses and the right to access land for mining. This concern also included the role of public officials in the mining sector due to the potential for conflicts of interest between their public role and private business interests.
- Acknowledgement that there is a low level of understanding in the mining sector and in the government of the potential benefits of having BO information available. Moreover, some interviewees asserted that the personal business interests of individual parliament members and other PEPs may hinder the advancement of legislation supporting wider BO disclosure.

- Doubts that several draft laws will reach the statute books in the near future. A number of interviewees expressed doubt that the draft mining transparency law would be enacted in the foreseeable future. In contrast, there was greater optimism that the amendments to the right to information law would pass during either the current or next parliamentary session.
- The need for the government to maintain or accelerate its drive towards digitization of government services. Many interviewees acknowledged that the government is committed to digitization of its services. Frustration was also expressed at the slow pace of implementation. In relation to BOT, digitization could make one of the most significant contributions as it would allow the online collection of BO and PEP information and make it available in machine-readable format.
- BOT is in the early stages of implementation. While there is a progress on the registration of entities, there appears to be less focus on verification measures and building awareness of the benefits of using BO information. For example, verified information would reduce the resources required by law enforcement to confirm ownership details or conduct further investigations in order to undertake their own verification.

4.1 FUTURE STAKEHOLDER MAPPING AND ENGAGEMENT

The same range of stakeholders, government, parliamentarians, civil society, and business stakeholders will continue to play a role through the implementation of the current BO regulations in Mongolia and the potential creation of a public BO register. Table 2 below sets out an approach to stakeholder mapping for BO implementation, which has been previously employed in BO stakeholder mapping exercises in other countries. An organization or individual can appear in more than one column as they may play more than one role in terms of BO reporting. The role of each stakeholder may also change as progress is made in the implementation of BOT.

TABLE 2: *Stakeholder Mapping Example*

Shape the environment	Benefit from success	Communicators
These are organizations and individuals that shape the environment in which BO access is being designed and implemented. This includes stakeholders that will have most impact on the final design and implementation of a public BO register and which play a role in the legislative process and enforcing compliance.	These are organizations and individuals that will benefit from the timely access to accurate BO information, including when it is publicly available.	These are organizations and individuals that can be used to communicate a common understanding of BO and its benefits as well as those that can reinforce communications with other stakeholders.
Ministry of Justice & Home Affairs	EITI	EITI
GASR	Ministry of Mining	GASR
Parliament	IAAC	IAAC
IAAC	GASR	Civil society organizations
Ministry of Finance	Mining companies	Press
Ministry of Mining	Foreign investors	
	Banks	

5. Gap analysis

The table below identifies the gaps between the current situation in Mongolia in relation to BOT and international best practice.

TABLE 3: *Gap analysis of current situation in Mongolia and international best practice*

BO element	Current situation in Mongolia	International best practice	Possible actions to close the gap
Beneficial owner definition	At least 3 separate definitions incorporated into law	A single definition applicable to all legal entities	Use one of the existing definitions, or Legislate for a new single definition that replaces all current definitions
Threshold	Each definition has a different threshold, from 5% in the banking law to 33% in the AML law and 30% in the GLT. Also, EITI uses a threshold of 5%	The most common threshold is 25% (based on FATF guidance and EU directives) but several countries have legislated recently for lower thresholds. EITI Standard calls for threshold in range of 5-25%.	Reform existing definitions that have a threshold of +25% to reduce to 25%, or Introduce across the board threshold of 25% or lower.
Information collected	The GASR's form to collect BO information demands sufficient information on each beneficial owner to uniquely identify them, understand the nature and extent of their ownership or control and contact them	International best practice calls for sufficient information on each beneficial owner to uniquely identify them, understand the nature and extent of their ownership or control and contact them	Mongolia currently meets international best practice but BO information collected differently by agencies. Need to unify information collected. GASR can serve as central register for BO information from all sectors.
Information publicly disclosed	Basic information on each legal entity is available but BO is not publicly available	BO information is publicly available e.g., EU AML Directives	Enact right to information law containing provisions that specifically reference right to BO information and ensure provisions are enforced, and design, build and administer public BO register. Identify and amend any conflicting provisions in other laws that could restrict access to BO information.
Reporting requirements for companies listed on a stock exchange	No separate reporting requirements for stock exchange listed companies	Specific reporting requirements for stock exchange listed companies to recognize the practical issues with listed companies	Introduce specific reporting requirements for stock exchange listed companies

BO element	Current situation in Mongolia	International best practice	Possible actions to close the gap
Reporting requirements for government owned companies	No separate reporting requirements for government owned companies	Specific reporting requirements for government owned companies to recognize lack of ownership by individual natural persons	Introduce specific reporting requirements for government owned companies
Reporting requirements for PEPs	Senior Mongolian public officials are obliged to submit asset declarations annually. No process for identifying foreign PEPs who are ultimate beneficial owners of Mongolian-registered companies	Specific reporting requirements for both domestic and foreign PEPs who are ultimate beneficial owners.	Ensure public officials asset register and BO register can interact and be used for mutual verification, and Introduce specific reporting requirements for foreign PEP beneficial owners.
Verification	Unclear what verification measures are in place	Multiple verification measures and different stages of the BO reporting, storage and disclosure process to ensure information is accurate and up to date	Ensure appropriate verification measures are in place.
Redaction of information[5]	No process required currently as BO information is not publicly available	For public BO registers, a process in place to allow individuals who face a verifiable threat to personal safety as a result of public disclosure of BO information to request redaction of that information from public register	Design redaction process for implementation prior to BO information becoming publicly available, but with clear guidelines on what constitutes a verifiable threat, in line with the criminal code.
Stakeholder engagement	Limited interdepartmental government engagement and government engagement with the private sector on the importance of BO information	Ongoing engagement with companies to explain the need for BO register, how to comply, implications of non-compliance and how to use publicly available information	Design and implement strategic engagement campaign with the private sector and relevant government stakeholders

[5] One of the peer reviewers expressed reservations about a process to allow redaction of information due to the advantage it could give to beneficial owners in Mongolia. However, such processes are important to design and follow if the threat to the individual's safety is credible. In the UK, a credible threat requires confirmation from the police, for example.

6. Recommendations

Based on research, stakeholder interviews and the authors' understanding of international best practice, the authors recommend:

1. **Identify a BOT champion:** A champion is needed to drive progress on BOT. This person should have sufficient stature and credibility in order to advocate for BOT within government and secure resources (including parliamentary time) to implement necessary reforms (e.g., enhancements to the BO regulations) and practical measures such as the digitization of BO information. This person could be from government (e.g., a senior minister or former minister), an experienced parliamentarian, a civil society leader or a business leader (e.g., from the mining sector). Civil society organizations, parliamentarians, EITI MSG members and business leaders should collaborate to identify this champion and provide support to their efforts to drive progress in BOT.
2. **Secure technical assistance funding and support:** The same coalition of civil society, parliamentarians, EITI MSG members and business leaders identifies providers of technical assistance (TA) to Mongolia to fund and support the digitization of the GASR's BO register, including the information collection process. The same coalition should also advocate for the Government of Mongolia to request such TA. Potential TA providers include regional development banks (e.g., ADB or EBRD), an international organization (e.g., the EU), an individual country bilateral donor (or group of donors) or combination of any of these. Such practical support could also include the funding and support of the design and implementation of a public BO register. This practical support could have a significant positive impact on the integrity of the Mongolia business environment, including for mining and make a significant contribution to reducing the scope for corruption.
3. **Establish a cross-agency taskforce:** The government of Mongolia should establish a taskforce to oversee the design and implementation of a public BO register. This task force should include representatives of all relevant government agencies that will be involved in the development, administration, enforcement and use of the BO register. The task force should have a mandate to recommend both the strategic direction of the register and the detailed decisions needed for its design and implementation. The task force should also have a mandate to undertake engagement with other stakeholders such as private sector representatives and civil society. Such a task force can also play a key role in collecting evidence to demonstrate the effectiveness of its BO regime.
4. **CSOs to monitor "Right to Information" legislation:** Civil society organizations should monitor passage of the amendments to the public right to information law through the parliamentary process and its implementation to ensure a positive impact on BOT. This monitoring should include ensuring that the public right to beneficial ownership information remains enshrined in the law and is implemented in such a way as to facilitate public access to the information. Civil society organizations should provide relevant support to government to implement the measures.
5. **Adopt a default BO definition:** The Government of Mongolia should adopt one of the current BO definitions as the default definition. This should probably be the definition contained in the AML Law as this is used by the GASR as the basis for the registration of BO information. Adoption of the AML

Law BO definition does not preclude the continued use of other definitions for specific sectors such as banking. In the longer term, the Government of Mongolia should legislate to introduce a single BO definition that meets international best practice and has a threshold no higher than 25%. In the meantime, the Government of Mongolia (GoM) should consider introducing regulations to lower the threshold in existing definitions to 25%. An example of a BO definition that meets international best practice is set out in Appendix 2.

6. **Specify measures for reporting requirements and redaction requests:** As well as legislating for the public access to BO information, the GoM should introduce measures to create specific BO reporting requirements for stock exchange listed companies, government owned companies and foreign PEPs. If possible, these measures should be introduced through regulations unless primary legislation is required. Also, the GoM should legislate for and design a process to allow individuals to request the redaction of personal information from any future public BO register where such an individual can prove an immediate and verifiable threat to their personal safety solely due to information becoming available in the BO register. The grounds for requesting a redaction should be narrowly drawn and should also include an appeals process.

7. **Coordinate between registers:** The IAAC and GASR should ensure a high level of interaction between the public officials' asset declarations register and the BO register. The two authorities should maximize the opportunities to use the data held in each register for verification purposes. In addition, they should establish a process for investigating discrepancies and requesting clarification from the relevant legal entities or natural persons. The two authorities should also ensure there is alignment in the format that information is made public once the BO register becomes public.

8. **Adopt strategic approach to verification for the BO register:** The GASR should adopt a strategic approach to verification to ensure the accuracy and reliability of information held within the BO register. A summary of a strategic approach to verification is set out in Appendix 4.

9. **Adopt strategic approach to verification for the Public Officials Asset register:** The IAAC should also adopt a strategic approach to verification (see Appendix 4) of the data in the public officials asset register to ensure the accuracy and reliability of information held within the register.

10. **Implement strategic communication campaign:** The GASR should design and implement a strategic communication campaign with key messages on the importance of BO information and benefits of public access to this information. The identification and assessment of all relevant stakeholders will form an important early stage of designing this campaign. This campaign would be aimed at companies and other legal entities who need to comply with the BO reporting obligations and potential users of this information, including in due course, the general public. The campaign can be implemented in stages with the first stage explaining the reasons for collecting BO information, provide guidance on compliance and set out the implications of non-compliance. Once the BO register is accessible to the public, later stages can explain how to access the information, report any discrepancies and the benefits of access to the information. The GASR should also provide guidance to specific users such as mining companies or those seeking information on who is investing in their community.

7. Appendices

APPENDIX 1: STAKEHOLDER INTERVIEW LIST & QUESTIONNAIRE

The authors interviewed representatives of the following organizations for this report:

American Chamber of Commerce (AmCham)

Asian Development Bank (ADB)

European Bank for Reconstruction & Development (EBRD)

Extractive Industries Transparency Initiative Mongolia (EITIM)

Independent Authority Against Corruption of Mongolia (IAAC)

Ministry of Finance

Mongol Bank

Natural Resource Governance Institute (NRGI)

Open Society Forum (OSF)

OT Watch

Results for Development (R4D)

Transparency International Mongolia (TI)

UK Embassy

US Embassy

For these interviews, the authors used the following questionnaire as a structure for the interviews:

STAKEHOLDER INTERVIEW QUESTIONS

1. What has been your engagement with BO issues in Mongolia to date?
2. What is your understanding of the registration process for companies in Mongolia? Is it possible to register a new company online? Is the company register publicly available? Is there a regular (e.g., annual) process for reconfirming the accuracy of information?
3. What is your understanding of the current legal obligations on Mongolian-registered companies to disclose ownership details to a central register?
4. What draft laws are you aware of that could impose legal obligations on companies to disclose their beneficial owners?
5. What is your understanding of the legislative process in Mongolia? What steps do draft laws have to go through to become law?
6. What is your understanding of the current beneficial owner definition in Mongolian law?
7. What initiatives are you aware of to introduce legal obligations for companies to disclose their beneficial ownership? What lessons do you consider can be learnt from these initiatives?
8. What progress do you consider has been made to date?
9. What do you see as the obstacles to introducing legal obligations on companies to disclose beneficial ownership?
10. What organizations and government agencies do you believe support beneficial ownership transparency? What organizations and agencies do you think are skeptical or oppose? What are the reasons for opposition?
11. What positions on beneficial ownership transparency have private sector companies expressed?
12. Do you think there should be special reporting requirements for the following categories:
    a. companies ultimately owned by a company listed on a public stock exchange (e.g., the London Stock Exchange),
    b. government-owned companies,
    c. politically exposed persons,
    d. any other categories?
13. What benefits do you believe that beneficial ownership transparency will bring? What types of organizations do you think will be the largest users?
14. What is your understanding of the current legal obligation on senior public officials (e.g., parliamentarians, ministers, senior civil servants) to declare their assets including property and business interests?
15. What other factors do you think are important in considering beneficial ownership transparency in Mongolia?

APPENDIX 2: EXAMPLE BO DEFINITION

A "beneficial owner" of a legal entity or legal arrangement is the natural person(s) who ultimately own(s) or control(s) the legal entity or legal arrangement, whether such ownership or control is direct or indirect.

For the purposes of this definition, if a natural person directly or indirectly:

- **a.** owns or controls 25% or more of the shares or voting rights in a legal entity; or
- **b.** in the case where the natural person is a Politically Exposed Person, that natural person owns or controls 5% or more of the shares or voting rights in a legal entity; or
- **c.** has the right to appoint, veto the appointment or remove a majority of the board of directors or equivalent body of a legal entity or legally binding arrangement; or
- **d.** in circumstances where a) - c) do not apply, has the right to exercise, or actually exercises, significant influence or control over or derives significant economic benefit from,
  - **a.** a legal entity or legally binding arrangement; or
  - **b.** a trust or firm which is not a legal entity but would itself satisfy any of criteria a) to c) if it were;

then that natural person shall be deemed to "own or control" the legal entity or legally binding arrangement.

- **e.** For the avoidance of doubt agents, nominees, trustees and other intermediaries shall not be deemed to be a beneficial owner.
- **f.** In the case of a joint venture, each entity within the venture should disclose its beneficial owner(s).

Exceptions to the "natural person" requirement:

If a government or governmental body would, if it were a natural person, be deemed to be a beneficial owner pursuant to clause 1 above then that government or governmental body shall be a beneficial owner.

APPENDIX 3: EXAMPLE OF PEP DEFINITION

- **a.** The term 'politically exposed person' means a natural person who is or who has been entrusted with prominent public functions and includes but is not limited to the following, and their family members and persons known to be their close associates:
  - **a.** heads of State, heads of government, ministers and deputy or assistant ministers;
  - **b.** members of parliament or of similar legislative bodies;
  - **c.** members of the governing bodies of political parties;
  - **d.** members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
  - **e.** members of courts of auditors or of the boards of central banks;
  - **f.** ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
  - **g.** members of the administrative, management or supervisory bodies of State-owned enterprises;
  - **h.** directors, deputy directors and members of the board or equivalent function of an international organization.

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

- **b.** For the purpose of this clause 3:

  'family members' includes the following:
  - the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;
  - the siblings, children, grandchildren and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person, whether such relationship be natural, adoptive or otherwise;
  - the parents and grandparents of a politically exposed person;

'persons known to be close associates' means:

- natural persons who have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;
- natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.

APPENDIX 4: STRATEGIC APPROACH TO VERIFICATION

The strategic approach should include:

- Verification through data submission,
- Verification through data administration,
- Verification through data accessibility,
- Verification through data exchange.

For instance, the data submission layer encompasses the initial submission of BO details, notification of any changes and any regular reconfirmation process. Specific measures may include:

- Pre-populated drop-down menus,
- Mandatory data entry fields,
- Standard transliteration method,
- Date range checks,
- Supporting documents.

The second part of the verification process happens after data has been submitted. This can include:

- Identification of red flags,
- Screening of BO information against Mongolian government databases and international databases such as sanctions lists, disbarred directors, and other databases,
- Spot checks conducted on a representative sample or randomly,
- Investigation of apparent discrepancies or suspicious patterns of information or ownership.

As for the verification mechanisms linked to the accessibility and exchange of the BO data, they relate to amongst others, the reporting of discrepancies by users, and other cooperation that is implemented between the BO Register and third parties to identify and correct erroneous or partial BO information.

Criteria that can be used for verification include:

- Overly complex ownership/control structures,
- Ownership/control that includes foreign registered legal persons or foreign natural persons and especially if it includes countries on a FATF or EU watchlist or other jurisdictions that Mongolia assesses as high risk,
- Record of criminal activity either by the legal person or natural person especially where it involves money laundering, terrorist financing, tax evasion, fraud, or corruption,
- Inclusion on international or domestic sanctions list or other relevant databases,
- Suspicious patterns of setting up legal entities or changing ownership/control of entities.

8. References

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