



GLOBAL FINANCIAL INTEGRITY



# Unmasking Beneficial Ownership : Strengthening Transparency and Accountability in Tanzania's Extractive Industries

» Adam Anthony, Francis Mkasiwa (Policy Brief/ November 2023)

## Summary of Key Messages

1. Knowing who has the right to oil, gas, and minerals sector is key to better addressing corruption risks and conflicts of interest in the extractive industries.
2. Publishing details of company ownership helps close channels for corruption, enhance taxation, encourage responsible investment, and manage business risk.
3. The TEITA Act (2015) Section 16(1) obligates Companies in the Extractive Industry to publish information, including but not limited to names of individuals who own interests in the extractive industry companies.
4. The primary reason for disclosing a beneficial owner of an asset or interest in an entity is to curtail offences such as money laundering, tax evasion, and other illegal practices.
5. Publicly identifying the owners of private entities (e.g., companies, foundations, and trusts) is essential for combatting corruption, money laundering, and tax evasion.

## Background and context

The real owners of extractive companies, known as the beneficial owners, are often hidden through a chain of shell companies. Knowing who has the right to extract oil, gas, and minerals is key to better-addressing corruption risks and conflicts of interest in the extractive industries. The EITI, which Tanzania is part of, has delivered results by including beneficial ownership information in licensing, company registration and EITI reporting. Publishing details of company ownership helps close channels for corruption, enhance taxation, encourage responsible investment, and manage business risk. Addressing these issues will remain critical as we move towards an energy transition that will see a rush in critical minerals extraction.

## BO Legal Framework in Tanzania

The TEITA Act (2015) obligates Companies in the Extractive Industry to publish information, including but not limited to names of individuals who own interests in the extractive industry companies. (see section 16(1)(b) of the Act). In 2020, to enhance transparency and address a long-overdue disclosure of beneficial ownership in Tanzania, Tanzania passed various legislations that govern the meaning, reporting, and regulation of beneficial ownership information. The government passed the Finance Act Number 8 of 2020, which introduced rules on disclosure of beneficial owners to the Companies Act Number 12 of 2002. In addition, the Finance Act 2020 amended the Anti-Money Laundering Act, Chapter 423, Revised Edition of 2019, the Trustees' Incorporation Act, Chapter 318, Revised Edition of 2002 and the Income Tax Act, Chapter 332, Revised Edition of 2019 by establishing provisions relating to beneficial ownership rules.

As a result of these amendments, in 2021, the government issued the Companies (Beneficial Ownership) Regulations, 2021, which regulate the application and enforcement of beneficial ownership in Tanzania. According to the amendments of the Companies Act as well as the new regulations, the Companies (Beneficial Ownership) Regulations, 2021, the term Beneficial Owner has been defined as a natural person:

1. Who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement.
2. Who has a substantial economic interest in or receives substantial economic benefit

from an entity or an arrangement directly or indirectly, whether acting alone or with others.

3. On whose behalf an arrangement is conducted; or
4. Who exercises significant control or influence over a person or arrangement through a formal or informal agreement.

The word "arrangement" is a legal term defined under the Income Tax Act, Cap. 332 includes an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person. Therefore, for anti-money laundering purposes, the beneficial owner encompasses not only a person on whose behalf an arrangement is conducted but also a person who exercises significant control over an arrangement, whether formal or informal.

In 2023, Tanzania issued new Regulations on the beneficial ownership, Companies (Beneficial Ownership) Regulations, 2023 through the Government Notice No. 473 of 2023 and revoked the earlier Companies (Beneficial Ownership) Regulations of 2021.

The Companies (Beneficial Ownership) Regulations, 2023 amongst other things, distinguishes between a direct and indirect beneficial owner. A direct beneficial owner is a natural person who holds or acquires a beneficial interest in the company and is registered in his name. An indirect beneficial owner holds or acquires beneficial interests in the company not registered in his name.

In addition, the definition of the Beneficial Owner under the Companies (Beneficial Ownership) Regulations 2023 is expanded and introduces new definitions as follows:

1. "Direct Beneficial Owner" means a natural person who holds or acquires a beneficial interest in the company and is registered in his name.
2. "Indirect Beneficial Owner" means a natural person who holds or acquires a beneficial interest in the company not registered in his name.
3. "Registered owner" means any person whose name appears in the register of members.

## Why is beneficial ownership disclosure necessary?

It has become a norm for many countries worldwide to implement rules and regulations on disclosing beneficial owners, including Tanzania. The primary reason for disclosing a beneficial owner of an asset or interest in an entity is to curtail offences such as money laundering, tax evasion, and other illegal practices. It is also meant to increase transparency in business activities within a particular jurisdiction or sector, for instance, the extractive industry.

## Register of Beneficial Owners

Companies in Tanzania are now required to have a register for beneficial owners and to notify the Registrar of Companies (hereinafter referred to as “the Registrar”), who shall also establish and maintain a register of beneficial owners at the Companies Registry as stated in section 16 of the Finance Act of 2020.

## State of Beneficial Ownership Disclosure in the Tanzania Extractive Sector

In the 2016/2017 TEITI reporting period, 22 extractive companies were required to disclose beneficial ownership information, but only 8 complied (36.36% compliance). Compliance improved in subsequent years: in 2017/2018, 16 out of 34 companies complied (47.06%); in 2018/2019, 27 out of 41 companies complied (65.85%); in 2019/2020, 26 out of 40 companies complied (65%); and in 2020/2021, the most recent TEITI reporting period, 25 out of 45 companies complied (55.56%). This shows a positive trend of increasing compliance and transparency in Tanzania’s extractive sector over a five-year period. However, the compliance rate has shown improvement, revealing a growing commitment

to transparency; nevertheless, there is still work to be done to ensure greater industry-wide adherence to beneficial ownership disclosure requirements.<sup>1</sup>

Recently on, October 12, 2023, BRELA and TEITI held a meeting aiming to discuss the progress of beneficial ownership disclosure in the extractive

sector. As per an EITI assessment, a significant challenge exists in ensuring comprehensive disclosure. TEITI proposes

collaboration with BRELA to be recognized as a competent authority to access this information directly from the registration system. Key resolutions of the meeting included formal recognition of TEITI as a competent authority under the Companies Act, Chapter 212, and exploring direct data access from the Beneficial Owners’ Registration System to streamline verification and improve transparency in the sector.

Furthermore, TEITI has recently introduced a revised roadmap, which involves reviewing the legal framework for contract disclosure, soliciting input from various stakeholders, establishing an online portal for contract disclosure, and targeting full compliance by June 2024. This roadmap aligns with broader efforts to enhance transparency and accountability in the extractive sector, including beneficial ownership disclosure.<sup>2</sup>

## Existing gaps and challenges

1. Under regulation 3 of the Companies (Beneficial Ownership) Regulations, 2023, foreign Companies are not required to submit particulars of beneficial owners. Previously, all companies incorporated inside or outside of Tanzania were required to submit the details of beneficial owners. Most of the companies within the extractive industry are foreign companies with subsidiaries registered in Tanzania. Exempting foreign companies beats the purpose for which this requirement was established.
2. Access to the registry of beneficial owners. The Registrar is required under Regulation 7(2) of the 2023 Regulations to provide information on particulars of beneficial owners to the authorities provided under Section 451B of the Companies Act, Cap. 212. These authorities include the Tanzania Revenue Authority, Financial Intelligence Unit, authorities responsible for investigation and authorities responsible for combating money laundering and terrorist financing, amongst others. TEITI is not explicitly named as one of the authorities. As an institution mandated to publish such data publicly, BRELA must furnish TEITI with BO data as required by 451B of the Companies Act, Cap.

1 Tanzania Extractive Industry Transparency Initiative 13<sup>th</sup> Report (July 2020 – June 2021)

2 [Home | Tanzania Extractive Industries Transparency Initiatives \(teiti.go.tz\)](https://teiti.go.tz)

212, and let TEITI publish BO data for companies that fall within its purview, extractive industry. Not disclosing beneficial ownership information in Tanzania to the public is contrary to the Extractive Industries Transparency Initiative's (EITI) requirement 2.5, which requires beneficial owners to be disclosed and the public to have access to that information.

3. According to the Companies (Beneficial Ownership) Regulations, 2021, Tanzania's requirement for providing beneficial ownership information is based on the company approach. This approach leaves the responsibility to the company to collect and as a custodian of the information. The company furnish this information to the authorities when requested/required by law. However, the industry standards and evidence from the Financial Action Task Force (FATF) show that countries that use this model face challenges in ensuring that beneficial ownership information collected directly from companies is accurate and up to date<sup>3</sup>. This is because corrupt beneficial owners are unlikely to self-report interest to authorities. This model requires third-party due diligence to make it effective, which does not exist in Tanzania.

## Recommendations

The Tanzanian parliament must advance propositions to enhance transparency and improve Tanzania's development agenda and earnings growth from the extractive industry. Such an agenda should focus on the following areas:

1. Protect tax revenues and reduce corruption by public disclosure of beneficial ownership. This will shed light on the parties that own, control and benefit companies in Tanzania. Publicly identifying the owners of private entities (e.g., companies, foundations, and trusts) is essential for combatting corruption, money laundering, and tax evasion. Unless ownership information is publicly available, citizens cannot establish whether mineral rights sales or public procurement contracts have been corruptly organised to benefit a company owned by a public official.

### 2. A multi-pronged approach to beneficial

ownership information disclosure and access to the registry by competent authorities, including TEITI.

3. Transparency makes cross-border payments less susceptible to corruption and waste and helps reduce the resource curse. Suppose payments for mineral concessions can be publicly scrutinised. In that case, it is more likely that citizens can hold their governments accountable for how those revenues are ultimately used and less likely that the revenues can be siphoned off into private accounts.
4. TEITI and other relevant agencies should engage in awareness campaigns and training programs for companies and government officials involved in the extractive sector. This can help improve understanding of beneficial ownership concepts and the importance of compliance.
5. TEITI and BRELA should work closely to streamline the data exchange process, ensuring that beneficial ownership information is accurate and up to date. This can be achieved through IT collaboration and clear communication channels.
6. Continue to work on the implementation of the revised roadmap for contract disclosure, with a focus on ensuring that mining, oil, and gas contracts are disclosed in a transparent and accountable manner.
7. The government, in collaboration with TEITI, should establish a system for regular monitoring and reporting on beneficial ownership compliance. This can include publishing annual reports on the status of disclosure and measures taken to address non-compliance.