



**TRANSPARENCY
INTERNATIONAL**
the global coalition against corruption

PROMOTING BENEFICIAL OWNERSHIP AND INTEGRITY SCREENING IN THE MINING SECTOR

A guide for civil society organisations working to combat corruption in mining

Transparency International's Accountable Mining Programme is working across TI's global network to look at where and how corruption can get a foothold in the mining sector. Using the Mining Awards Corruption Risk Assessment (MACRA) Tool, TI national chapters across 6 continents have identified and assessed corruption risks in mining approvals. By working collaboratively with governments, companies, civil society organisations and communities, we want to build a fairer, clearer and cleaner process for obtaining a mining permit. By building a better system and a fairer process we can prevent corruption before ground is even broken.

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INTRODUCTION

Screening the beneficial owners and integrity of companies applying for extractive rights is key to tackling corruption in the oil, gas and mining sectors.

The oil, gas and mining industries are known to be the most corruption-prone sectors worldwide.¹ Corruption in these sectors takes many forms. The most common image of corruption is a monetary bribe in exchange for an unfair deal or the embezzlement of royalties and taxes by corrupt individuals who rob citizens of revenue that could fund public infrastructure, schools and hospitals.

There is an equally insidious and harmful form of corruption – the abuse of power to hide or obtain a financial or ownership interest in a company that gets hold of lucrative rights to exploit natural resources. It is no surprise, then, that one in four cases of corruption in these extractive industries takes place during the licensing and contracting phase – the moment when governments grant rights to explore and extract the natural resources of the country.²

Host communities, citizens, journalists and civil society organisations can only effectively hold government and companies to account if they know the identity of the people behind the companies operating or seeking to start mining projects in their country. By calling for ‘beneficial ownership transparency’, civil society has been pushing for disclosure of the identity of the real people owning and controlling companies with extractive projects and operations.

Transparency and disclosure are just the first step. Government authorities responsible for licensing decisions need to use this information to screen the beneficial owners and integrity track record of companies applying or bidding for extractive rights. This will make it harder for corrupt individuals in politics and industry to benefit from valuable exploration and extraction licences and contracts – and to detect those attempting to do so.

This guide helps civil society organisations working to understand and win support for robust **beneficial ownership (BO) and integrity screening** in their country. Using this guide will help you speak with confidence to government officials and lawmakers about the need for action and to present convincing, evidence-based recommendations to introduce or strengthen beneficial ownership and integrity screening in the licensing process in your chosen jurisdiction.

This guide is organised in three parts:

- 1. The case for BO and integrity screening.**
This section will help you make a strong argument in favour of government action. It answers the questions: Why should governments screen the beneficial owners and integrity of companies applying or bidding for extractive licences and contracts? What does BO and integrity screening involve?
- 2. BO and Integrity Screening Assessment Tool.**
This section helps you assess the licensing process in your jurisdiction to answer the questions: How adequate are current measures for BO and integrity screening? What measures need to be introduced or strengthened?
- 3. Formulating strategic policy recommendations.**
This section guides you to identify strategic opportunities for reform and to develop convincing policy recommendations from the results of the assessment. It helps you answer the question: Which specific changes are the most strategic to recommend?

Finally, while the focus of this guide is on the mining sector, most of the guidance and content are applicable to other natural resource concessions, such as oil, gas, forestry and agribusiness. Civil society organisations are welcome to adapt the tool for use in these sectors.

THE CASE FOR BENEFICIAL OWNERSHIP AND INTEGRITY SCREENING

Government action is needed to introduce and strengthen BO and integrity screening of companies applying for mining rights. To win support from government, you need to make a strong case for action. This section sets out the reasons why governments should conduct BO and integrity screening and how it works.

LICENSING DECISIONS SHOULD KEEP OUT CORRUPT COMPANIES

Governments are the gatekeepers to their country's mineral resources and are responsible for managing those resources in a way that benefits the people of the country. Governments therefore have a duty to protect their mining sector from dishonest investors and irresponsible operators. BO and integrity screening is a way to identify and keep high-risk companies out of the country.

When a company applies or bids for exploration or mining rights, government regulators make an assessment about whether the company should be granted those rights. In some jurisdictions, government officials assess whether the company has the financial resources or technical capacity to productively carry out mining activities. However, on the whole, most countries do not conduct integrity checks on the company or its owners.³ In fact, Transparency International's assessment of 18 resource-rich countries found that inadequate integrity due diligence on licence applicants was a common weakness creating corruption risks.⁴

Without screening the integrity, political connections and legal record of companies applying for a licence and of their beneficial owners, governments may inadvertently hand over rights to the country's valuable natural resources to companies that:

- are owned or controlled by government officials or their family members, representing a conflict of interest and potentially abuse of office
- have used or whose directors have used bribery and corruption to pursue their business interests in the past, including to secure licences and win contracts
- have a history or whose directors have a history of illegal activity or corporate misconduct, including tax evasion, money laundering or significant environmental or human rights breaches

Hidden company owners create corruption risks. Indeed, the OECD has stated that a lack of access to information about corporate structure of extractive companies, including their beneficial ownership 'ranks among the greatest corruption risks in the sector'.⁵

When the owners and beneficiaries of companies applying for mining rights are hidden behind opaque corporate structures, it is difficult for governments to conduct adequate due diligence or verify statements about the company's political connections, integrity and reputation.

This creates corruption risks. A review of over 100 oil, gas and mining licensing corruption cases found that over half involved companies who were secretly owned by a person with political connections.⁶

Beneficial owners – the real, natural persons who directly or indirectly own, control or benefit from the company.

Hidden beneficial owners have long been recognised as a risk for money laundering and terrorism

financing by the Financial Action Task Force (FATF). In the mining sector, corruption risks significantly increase when the identity of the real people who own, control or benefit from companies applying for mining rights is concealed from the public.



For BO transparency to make an effective and meaningful contribution to reducing corruption, government officials must actively use BO data as part of background checks on companies applying or bidding for extractive rights.

Momentum for reform is building

There are some welcome first steps with international endorsement of beneficial ownership transparency⁷, reform in many countries to establish public beneficial ownership registers and progress under the Extractive Industries Transparency Initiative (EITI). Indeed, the 50+ member countries of the EITI will require extractive companies holding or applying for extractive rights to publicly disclose their beneficial owners and identify which of these are politically exposed persons.⁸

However, for BO transparency to make an effective and meaningful contribution to reducing corruption in the mining sector, BO disclosures need to be coupled with strong integrity screening procedures. In other words, government licensing officials must

actively use the BO data as part of background checks on companies applying or bidding for extractive rights. This is the only way that governments, as the gatekeepers, managers and custodians of the country's mineral resources, can uncover and keep out corrupt companies, companies with unlawful political connections and screen in companies that will operate with integrity and responsibly.

BO and integrity screening is good for governments

Screening the owners and integrity of companies applying for mining rights, strengthens government efforts to **eliminate corruption and conflicts of interest in the mining sector**.

Are publicly listed companies a risk for hidden beneficial owners?

Many mining companies from countries like Australia, Canada and the United States, are public companies listed on a stock exchange. These companies are often required by the rules of the stock exchange to publicly disclose information about their owners. For this reason, it could be argued that public companies should be considered lower risk than private, unlisted companies when it comes to hidden beneficial owners.⁹

While they may be lower risk, publicly listed companies are not zero-risk for hidden beneficial owners. There are several reasons why governments should still scrutinise the structure and ownership of listed companies:

- Publicly listed companies may apply for a licence as a joint venture with a private company that has problematic, hidden beneficial owners

- Stock exchange rules often allow companies to disclose the legal owners, rather than the real, natural persons (ultimate beneficial owners)
- Not all stock exchanges require the same level of transparency and disclosure about shareholders and ownership and a company may intentionally seek to be listed as a public company to provide a veil of legitimacy, and potentially mask integrity risks from both government regulators and investors

Moreover, aside from hidden beneficial owners, publicly listed companies still need to be screened for integrity risks, including for any political connections, and any record of corruption or serious corporate misconduct such as tax evasion, money laundering, fraud, and significant human rights violations and environmental breaches.

BO and integrity screening requirements can also **improve the quality of companies** interested in doing business in the country by giving those companies confidence that the government is serious about attracting responsible and ethical operators and will not tolerate corruption.

This can **improve the investment attractiveness** of the country to companies that may otherwise be concerned about the risks of competing against dishonest competitors or about the integrity standards in the country.

BO and integrity screening therefore creates incentives for **a race to the top** – and avoid a race to the bottom – in company conduct and standards, levelling the playing field for those companies that are committed to transparency and integrity.

BO and integrity screening **helps governments save money** by identifying and keeping out high-risk companies that could otherwise cause significant harm and expense through corruption, tax evasion and non-compliance with environmental and social regulations if they were allowed to operate.

Finally, BO and integrity screening is just **good risk management** and shows that the government is serious about making informed and responsible decisions about mining projects, choosing responsible operators. This increases the **trust and confidence of citizens** in the government's management of the sector.

If companies do it, governments should too

Integrity due diligence on business partners is standard practice for companies and investors.¹⁰ It enables them to understand the risks of investing in or partnering with another company and to make an informed decision about whether it is worthwhile doing business with the company.

While companies must manage corruption and integrity risks to protect the interests of their shareholders and investors, governments, acting on behalf of their citizens as custodians of the country's mineral resources, arguably have an even greater duty to manage the corruption risks associated with granting rights. BO and integrity screening helps governments make an informed decision about whether a company is suitable to hold rights to explore and operate a mine in the country.

WHAT DOES BO AND INTEGRITY SCREENING INVOLVE?

Integrity screening involves companies disclosing, and governments checking, the owners, political connections and integrity record and reputation of the company as part of evaluating its licence application or bid.

Government officials need to look at three key characteristics of licence applicants as part of integrity screening:

- Beneficial owners – the natural persons who directly or indirectly ultimately own, control or benefit from the company
- Politically exposed persons (PEP) – the connection of the company's directors, senior management and beneficial owners to, or their involvement in, prominent public functions in the country, including as family members or close associates

- Legal and integrity history – the record and reputation of the company and its beneficial owners for unlawful or unethical conduct, including corruption, fraud and significant environmental breaches and human rights abuses

What measures need to be in place?

Robust and effective integrity screening of licence applicants can be understood as having four key components. An overview of each of these components is contained in the table below and more detailed indicators can be found in the assessment tool in Part 2 of this guide.

Table 1: Key components of BO and integrity screening

<p>1. Legal prohibitions on unsuitable individuals obtaining a licence</p>	<p>Decision-makers need to have a legal mandate to be able to refuse to grant a mining licence to applicants who present significant corruption risks.</p> <p>The law must clearly state which individuals and companies are prohibited from obtaining or holding a licence either directly or as a beneficial owner of a company, such as:</p> <ul style="list-style-type: none"> • Specific categories of government officials, for example, those involved in licensing decisions and those holding senior positions, as well as their immediate family and close associates • Companies and individuals that have a record of unlawful conduct for example certain offences such as fraud, bribery and corruption, money laundering and tax evasion, and significant environment breaches and human rights abuses • Companies and individuals that do not comply with the licence application requirements, including BO and integrity disclosures
<p>2. Integrity screening procedure – data collection, verification and decision-making</p>	<p>Laws and regulations need to require companies applying or bidding for a licence to disclose certified information about their beneficial owners, PEP status and legal and compliance history as early as possible in the licensing process.</p> <p>Officials in the licensing authority should have the power to collect, review and verify this information and use it as a basis for their decision about whether to grant the licence.</p>
<p>3. Transparent rules and data – clear and transparent rules and the publication of applicant integrity disclosures</p>	<p>To be credible, effective and fair, the BO and integrity screening process must be transparent.</p> <p>There must be clear and transparent rules that set out the steps in the process, the information and documents licence applicants must submit and the criteria that result in disqualification or an application being rejected. This helps to ensure that the law is applied equally to all companies.</p> <p>For accountability, relevant integrity information about licence applicants obtained through the process should be published so that the public and accountability bodies can see to whom the government has granted or is planning to grant licences and raise any concerns.</p>
<p>4. Integrity safeguards within government – to detect and manage conflicts of interests and internal integrity risks</p>	<p>To ensure that the screening process is properly implemented, there must be integrity safeguards within government to prevent government officials from abusing their position for personal benefit or advantage.</p> <p>This includes</p> <ul style="list-style-type: none"> • publication of the reasons for rejecting a licence application or disqualifying a company • mandatory income and asset declarations for all senior government officials and government officials involved in the licensing process • a protocol for identifying and dealing with conflicts of interest involving government officials with influence over the licensing process or involvement in the mining sector • strong and independent accountability bodies (anti-corruption agency, supreme audit institution, etc) • whistleblower channels and enforcement measures

How can governments use their resources efficiently?

Risk-based approaches are efficient and effective

Not all companies applying for licences pose the same level of integrity risk.

An efficient and cost-effective integrity screening process will run background checks that are only as extensive as is necessary for the level of risk involved. A risk-based approach to screening licence applicants, as explained in the example below, helps determine whether more extensive checks and verification are necessary. This means the licensing authority focuses its resources on reviewing licence applications that are higher risk.

Risk-based approaches can save money

The resources involved in running an efficient, risk-based BO and integrity screening process can save governments money by keeping out costly, high-risk companies that could cause great expense through corruption, environmental damage and harm to communities.

The timing of integrity screening in the licensing process also improves efficiency. The sooner in the awards process that a basic screen is done, the sooner low-risk applications will be processed, and exploration and mining can commence (and revenues can be collected by government), and the sooner

problematic and concerning cases will be uncovered for further checks and resolution.

The following diagram (Figure 1) presents an example of a simple, two-tiered screening process.¹¹ As it shows, a risk-based approach is efficient and ensures government authorities spend time and resources wisely and where they are most needed – where the risks are greatest.

As illustrated, the first tier of screening would apply to all applicants and involve determining the risk profile of the licence and the risk profile of the company. Governments will need to develop metrics to systematise this process and ensure a consistent approach. Table 2 on the next page sets out some of the factors influencing the risk profile of the licence and the company that could be used as the basis for developing metrics. More detailed information is in the assessment tool in Part 2.

As indicated in the table, the risk profile of the company could be determined via basic verification of the information disclosed as part of the application. This could simply involve checking whether any company integrity disclosures are missing or are inaccurate when compared with documents supplied by the applicant and cross-checked against government databases. Whether and in what circumstances licensing officials should also review other sources of information such as media reports and court proceedings at this stage will need to be specified in the applicable laws and regulations.

Figure 1. Example of a risk-based approach

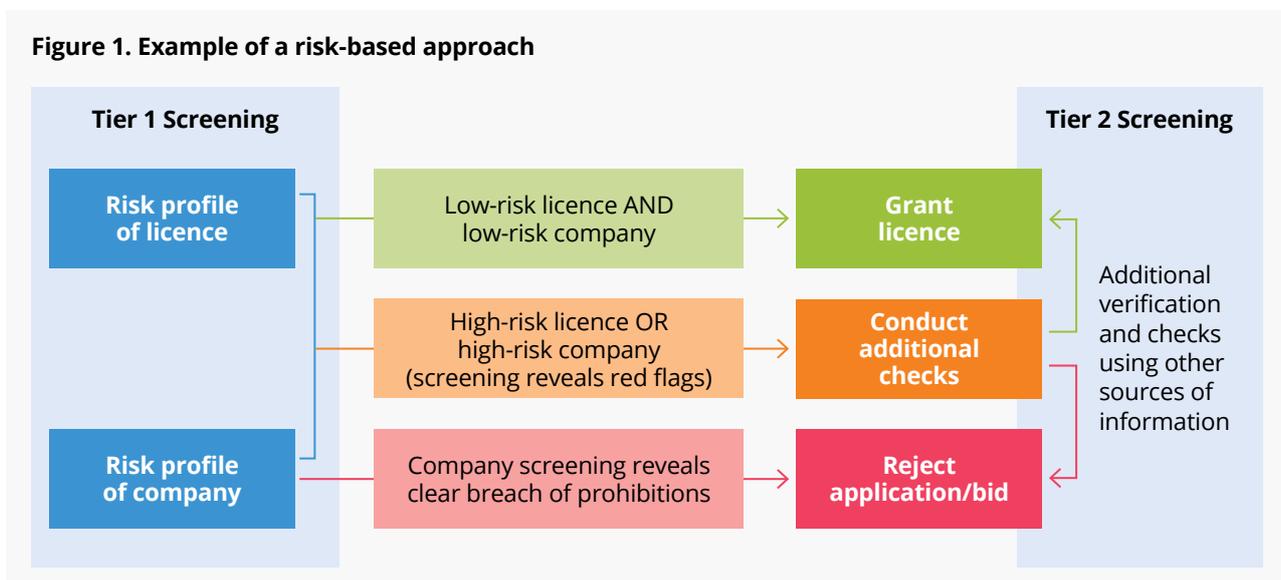


Table 2: Factors determining the risk profile of the licence and company (tier-one screening)

Licence	<p>Is the licence for a high value or strategic commodity?</p> <p>Does the licence cover a large area?</p> <p>Does the licence affect areas of cultural or environmental sensitivity or significance?</p> <p>Does the licence area impact on livelihoods or require resettlement of communities?</p> <p>Is the mine projected to make a significant contribution to government revenue (royalties and taxes)?</p> <p>Is the licence for a long period of time?</p>	<p>If yes, then the licence is high risk as the consequences and costs of the licence falling into the wrong hands may be severe.</p> <p>→ Conduct tier-two screening</p>
Company	<p>Do initial screening and verification of the company's disclosures reveal red flags about the company?</p> <p>For example,</p> <ul style="list-style-type: none"> • missing information, uncertified documents, unclear or unidentified beneficial owners • discrepancies or other inaccuracies in the disclosures identified through cross-checking with government databases and documents supplied by the company • the presence of PEPs and apparent conflicts of interests • a concerning legal history and integrity record • listed on a stock exchange with inadequate ownership disclosure requirements 	<p>If yes, then the company presents high risks and may be unsuitable to hold a licence.</p> <p>→ Conduct tier-two screening</p>

When to conduct tier-two screening

In some cases, there will be sufficient information from this initial screening to decide whether the licence should be granted or not, as the diagram shows. However, for high-risk licences or where initial screening and verification reveal red flags about the company, the licensing authority should conduct more thorough due diligence using other sources of information to determine whether the company is suitable to hold a licence (tier-two screening).

Tier-two screening could include: reviewing media reports, court databases or stock market filings, more thorough cross-checking against other government databases, audit reports, additional verification and checks on links with PEPs and past conduct. The applicable laws and regulations will need to specify what further due diligence, background checks and action licensing officials should take in response to different types of red flags at this stage.

WHICH COUNTRIES PROVIDE GOOD EXAMPLES?

Showing progress in other countries, learning from their experience and building on existing good practices can encourage government action and help inform policy recommendations. At the time

of writing, 110 countries had committed to creating centralised registers of beneficial ownership – a valuable first step to improving transparency and making information available for integrity screening.

Table 3. Publications with country examples

Topic	Countries	Publication
Beneficial ownership disclosure laws	Afghanistan, Cameroon, Colombia, France, Ghana, Indonesia, Kazakhstan, Kyrgyz Republic, Malawi, Liberia, Peru, Republic of Congo, Ukraine, United Kingdom, Zambia	EITI (2019) <i>Legal Approaches to Beneficial Ownership Transparency in EITI Countries</i> . Oslo: Extractive Industries Transparency Initiative.
Beneficial ownership registers	United Kingdom, Slovakia	Open Ownership Case Studies webpage .
	EU countries	A. Fraiha and M. Martini (2021) <i>Access Denied: Availability and Accessibility of Beneficial Ownership Data in the European Union</i> . Berlin: Transparency International.
Verification of beneficial ownership disclosures	China, Denmark, Japan, Slovakia, Ukraine	T. Kiepe (2020) <i>Verification of Beneficial Ownership Data</i> . London: Open Ownership.
	Armenia	EITI Armenia, Armenia EITI website .
Prohibition on certain individuals holding or benefiting from extractive rights	Ivory Coast, Mexico	E. Westenberg and A. Sayne (2018) <i>Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractives Licensing</i> . New York: Natural Resource Governance Institute.
Efforts to promote the introduction of BO and integrity screening	Australia, Indonesia, Mongolia and Sierra Leone	Transparency International Accountable Mining blog series (2021) Who benefits? A series on beneficial ownership and integrity screening in the mining sector .

BO AND INTEGRITY SCREENING ASSESSMENT TOOL

This tool will help you to understand the key features of effective BO and integrity screening and to identify the changes needed to strengthen the licensing process in your country.

The primary purpose of the assessment is to help you identify three critical pieces of information needed for developing strategic policy recommendations in your target jurisdiction:

- What measures are currently in place for BO and integrity screening?
- How adequate are these current measures?
- What measures need to be introduced or strengthened?

For organisations with limited time and resources, Annex 2 provides a shorter, less detailed option for identifying this information, organised around key questions drawn from the tool.

How to use the tool

The tool contains indicators organised around the four key components of integrity screening:

1. Prohibitions on unsuitable individuals obtaining a licence
2. Procedure for BO and integrity screening
3. Transparent rules and data
4. Integrity safeguards within government

Where do the indicators come from?

Transparency International has drawn on leading good practice guides to develop these indicators.

In particular, the indicators in this tool are drawn from:

- E. Westenberg and A. Sayne (2018) *Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractives Licensing*. New York: Natural Resource Governance Institute.

- C. Votava, J. M. Hauch, and F. Clementucci (2018) *License to Drill: A Manual on Integrity Due Diligence for Licensing in Extractive Sectors*. Washington D.C.: World Bank.

The sources are cited throughout the tool and a full reference list is contained at the end of this guide. Readers are encouraged to consult the original publications for further detail and valuable resources such as examples from different countries, model legislation and checklists.

For each indicator, you will need to research the licensing rules, procedures and practices to see whether they meet the criteria in the indicator. To conduct a thorough assessment, you might have to hire an expert or work with organisations with the relevant expertise.

It can be useful to also speak to experts to obtain additional information and insights through one-on-one interviews or workshops/focus group discussions. They may be academics, civil society specialists or even government officials.

Involving government officials in the assessment process could increase the likelihood that they will support your recommendations. Alternatively, where it is not possible to involve government officials or you think an independent approach would be more strategic, you can choose to conduct the assessment using only information that is publicly available and interviewing only non-government experts.

Annex 3 provides guidance on how to present the results from the assessment.

Good practice for interviews

When inviting someone to participate in an interview or workshop, you will need to explain:

- the purpose of the interview/workshop
- what you will do with the responses
- whether the person's participation will be made public or kept confidential

Checklist before you get started

Before you are ready to assess the licensing process in your jurisdiction, you need to understand some key information. Use the checklist below to make sure you have this information before you get started.

What is the process for granting licences and which government departments or authorities are responsible?

- Are rights awarded on a first-come, first-serve basis, or via competitive bidding?
- What are the steps in the process and what information and documents are companies required to provide in their application or bid?
- Which government departments, agencies or authorities are responsible for assessing and making decisions on licence applications/bids? You may also want to identify government authorities responsible for mining-related licences, such as environmental licences.

To answer this question, you could conduct a desk review of the relevant laws, regulations and third-party reports (such as EITI reports), as well as consult the website of the relevant government authority.

What information is available about applicant screening?

- Are the relevant government authorities required to conduct any form of screening/ due diligence/background checks on licence applicants to assess their suitability to hold exploration or mining rights?
- If so, what matters do they assess – for example, financial resources, technical capacity, integrity? To what extent and what kind of integrity criteria are included, if at all?
- Does this screening apply to bids/applications for both exploration and mining rights?

To answer this question, you could conduct a desk review of the relevant laws, regulations and departmental guidelines.

Continued overleaf >

Checklist before you get started – continued

What information is available about licence applicants/bidders?

- Does the government publish a list of all applicants, including unsuccessful applicants?
- Does the government publish the details of licences granted, including the location, duration and holder of the licence?

To answer this question, you could review the website of the relevant government authority. If your country/subnational jurisdiction has a licence register or cadastre, you could consult that. See also NRG I Resource Governance Index country reports on the licensing process and register (1.1.3- 1.1.6)
<https://www.resourcegovernanceindex.org>

What company ownership information is available?

- Is beneficial ownership information collected by the government?
- If so, which government department/s is/are responsible for collection?
- Is the information recorded in a beneficial ownership register? Is the register publicly available?

To answer this question, you could consult organisations working on this topic, your country's EITI report or inquire with the official companies registry.

What information is available about integrity safeguards in government?

- Are individuals in public positions required to declare their assets and income?
- Is there a process for declaring and managing conflicts of interest?
- How are integrity safeguards enforced?

To answer this question, look for publicly available information about internal ethics and integrity safeguards. This information could be contained in the licensing agency/departmental/ministerial code of conduct, guidelines or regulations that apply to all government officials, including those in mining state-owned enterprises (SOEs).

What do independent reviewers say?

There are a range of external and independent sources that could provide an indication about the strength of applicant screening mechanisms and internal government integrity systems, for example:

- Resource Governance Index country reports on financial interest disclosure practice (1.1.7 and 1.1.8)
<https://www.resourcegovernanceindex.org>
- Reports by the supreme audit institution or anti-corruption agency about the administration of the mining sector
- EITI validation reports on your country's compliance with EITI Standard – Requirement 2.2 (licence allocation process) and Requirement 2.5 (beneficial ownership disclosure)
<https://eiti.org/validation-decisions-schedule>

1. LEGAL PROHIBITIONS

PROHIBITIONS

PROCEDURE

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Persons prohibited from holding a mining licence

Decision-makers need to have a legal mandate to be able to refuse to grant a mining licence to applicants who present significant corruption risks. The law must clearly state which types of individuals and entities are prohibited from obtaining or holding a licence, including via their beneficial ownership of a company.

1.1 Companies and individuals with a record of corruption or unlawful conduct

Does the law prohibit the licensing authority from granting a licence to companies or individuals with a record of corruption or serious unlawful or unethical conduct (including companies with beneficial owners who have a record of serious unlawful or unethical conduct)?

Formulating the prohibition in terms of the granting of the licence provides a legal basis both for cancellation of a licence where it has been granted to a prohibited person and also for holding the licensing official accountable for the act.

Government regulations should clearly and unambiguously define what type of past conduct or behaviour would result in an automatic disqualification from the licensing process.

The World Bank (2018: 39–40) states that a company that itself or whose senior management, directors or beneficial owners have been convicted of or debarred/blacklisted for dishonesty offences such as fraud, bribery and corruption, money laundering or tax evasion is unlikely to be suitable to hold a licence. Similarly, serious instances of civil breaches, non-compliance with environmental or labour regulations or professional misconduct that result in debarment or serious penalties in other jurisdictions, for example, may also be grounds for exclusion from the licensing process. In drafting regulations, governments will need consider whether there should be exceptions for individuals or companies that have since taken meaningful remedial action and what that would comprise.

1.2 Public officials

Does the law expressly prohibit specific categories of public officials and their immediate family members or close associates from holding or acquiring an exploration or mining licence either directly or as a beneficial owner of a company that is applying for or holding a licence?

In addition to public officials in the licensing authority, the other categories of public officials who should be prohibited from obtaining a licence are best defined by each country, considering positions of power and influence and offices that are at high risk of corruption in the country.

NRGI (2018: 6) recommends that this prohibition apply to senior-most government officials (such as the head of state and ministers), officials involved in mining sector administration and in state-owned mining enterprises.

For simplicity, countries may choose to prohibit all 'politically exposed persons' (see 2.2 below) from obtaining a licence as well as public officials of any rank involved in the licensing decisions.

PROHIBITIONS

1.3 Applicants acting for prohibited persons

Does the law prohibit the licensing authority from granting a licence to a company or individual acting on behalf of or for the benefit of a person or company who is prohibited from obtaining or holding a licence?

This is important to ensure that prohibited persons do not use a proxy to circumvent the prohibitions in the law. See NRG1 (2018: 6).

1.4 Non-compliant applicants

Does the law prohibit the licensing authority from granting a licence to a company or individual that has not complied with the disclosures required as part of the beneficial ownership and integrity screening procedure?

This helps to enforce the procedure set out in the next section and provides grounds for cancelling a licence where credible evidence later emerges that the applicant's disclosures were incomplete or contained inaccurate, false or misleading information. See NRG1 (2018: 15, 21).

2. PROCEDURE FOR BO AND INTEGRITY SCREENING

PROHIBITIONS

PROCEDURE

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INTEGRITY SAFEGUARDS

An effective procedure for BO and integrity screening section is made up of the following elements defined in the indicators below:

Legal framework for disclosures (2.1-2.9): Companies applying or bidding for a licence must be required to disclose relevant integrity information about their beneficial owners, PEP status and legal and integrity history. The law needs to clearly define these terms and the requirements for disclosure of this information.

Verification and decision-making (2.10-2.12): Officials in the licensing authority need to have a legal mandate to verify this information to ensure that it is not incorrect or dishonest. They also need a legal mandate to be able to reject an application or bid where there are significant integrity concerns.

Post-licence disclosure requirements (2.13-2.15): To avoid companies circumventing the integrity screening requirements, licence-holders should be required to keep their BO and PEP disclosures up to date, and to seek approval before transferring their licence to another company.

Enforcement (2.16-2.19): There need to be legal consequences for applicants who do not comply with the disclosure requirements or who engage in corrupt conduct.

Legal framework for disclosures

2.1 Clear definition of key terms: beneficial owners

Does the law clearly and objectively define who is a 'beneficial owner'?

It is important that this term is defined as objectively as possible to minimise discretion – both by companies selectively disclosing only some of their beneficial owners as well as by government officials only enforcing the disclosure requirement in relation to selected companies.

A beneficial owner is the natural person who directly or indirectly owns, controls or benefits from the legal entity or company that is applying for the mining licence.

- Categories of ownership or control that can be used to determine beneficial ownership include: shareholding, voting rights and the power to appoint board members – directly or indirectly.
- The legal definition of a beneficial owner needs to be drafted carefully to capture natural persons with a substantial or material interest. Thresholds are commonly used in definitions of 'beneficial ownership', but they need to be appropriate for the sector. For example, even holding a 5 percent interest of large mining project may yield benefits worth millions of dollars. A mining sector-specific threshold of beneficial ownership may be necessary if a country is planning to use a threshold-based definition. See Open Ownership (2020d: 11–17).

2.1 continued overleaf >

PROCEDURE

2.1 Continued

- Threshold-based definitions should reflect the level of corruption risk. So, a high-risk country should adopt a lower threshold. Assessment of corruption risks within the country and also specifically in the country's mining sector should be accounted for. Externally produced corruption risk ratings and assessments such as Transparency International's Corruption Perceptions Index are relevant to consider.
- As control is often exercised in less formal ways, the law setting out the disclosure obligations should also include a category of 'other influence or control' to enable such informal and indirect control to be investigated by the licensing authority (Open Ownership 2020a).

Guidance on defining 'beneficial ownership'

- Transparency International (2021) *A New Global Standard on Beneficial Ownership Transparency*. Berlin: Transparency International, p. 7.
- Open Ownership (2020) *Beneficial Ownership in Law: Definitions and Thresholds*. London: Open Ownership.
- Open Ownership (2020), 'Legal' in *Guide to Implementing Beneficial Ownership Transparency* (web) available at www.openownership.org/guide.
- EITI, *Legal Approaches to Beneficial Ownership Transparency in EITI Countries*. Oslo: Extractive Industries Transparency Initiative, 2019.
- C. Votava, J. M. Hauch, and F. Clementucci (2018), *License to Drill: A Manual on Integrity Due Diligence for Licensing in Extractive Sectors*. Washington D.C.: World Bank, pp. 11–12.
- A. Sayne, E. Westenberg and A. Shafaie (2015) *Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies*. New York: Natural Resource Governance Institute.

2.2 Clear definition of key terms: politically exposed persons

Does the law clearly and objectively define who is a 'politically exposed person'?

A politically exposed person (PEP) refers to a person who holds (or held) a prominent public function.

- The definition should list the relevant functions, which should include: a head of state or government, a minister, a politician, a senior government, judicial or military official, senior executives of state-owned enterprises, a senior political party official, or their immediate family member or close associate. See, NRG (2018: 14-15); EITI (2016: 7-9); Transparency International (2018: 7).
- For domestic PEPs, the definition needs to objectively specify the rank, title or category of officials in various branches of government that are covered (World Bank 2018: 81).
- It is important that this term is defined as objectively as possible to minimise discretion by applicants in the selective disclosure of PEPs as well as selective enforcement of the disclosure obligations by government officials.
- Where a clear definition already exists, it should be applied here. 'PEP' is a term often used in other areas including in anti-money laundering regulations. (World Bank 2018: 14).

PROCEDURE

2.3 Disclosure requirement: Timing of disclosures

Does the law specify at what stage of the licensing process the applicant must provide information about its beneficial owners, PEPs and integrity and legal record?

Information should be disclosed as early as possible in the licensing process, ideally with the initial application, but the timing may differ depending on the method by which licences are awarded, for example if companies must pass through prequalification in order to participate in a competitive process. See NRGi (2018).

2.4 Disclosure requirement: Beneficial owners, senior management, directors and corporate structure

As part of the licence application or bid, are companies required to disclose and certify the identity of all beneficial owners, senior management and directors as well as their corporate structure and chain of ownership?

Countries that are members of the EITI have committed to requiring oil, gas and mining licence applicants and licence-holders to disclose their beneficial owners from 1 January 2020 (EITI Standard Requirement 2.5(d)).

BO identifiers in declaration forms should include the name of the beneficial owner, date of birth, identification number, address, place of residence, nationality (Transparency International 2021: 8). Critically, applicants should be required to disclose details of how ownership, control or interest is exerted, including the percentage of shares and votes held directly or indirectly, and date when the beneficial interest was acquired. Governments need to provide clear guidance to applicants on what information and supporting documents they need to provide. The EITI (2020) has developed a model template form for collecting this information. See: www.eiti.org/document/beneficial-ownership-model-declaration-form

The full corporate structure/ownership chain should ideally be disclosed to help identify and verify where beneficial ownership is held indirectly i.e. through intermediary owners or companies. So, a subsidiary should have to disclose the corporate chain up to the parent company, and where the company is a joint venture, the company should have to disclose the other legal owners, including their respective shareholding: Open Ownership (2020a). NRGi (2018: 13) has recommended that companies include a diagram or corporate organogram to describe how the beneficial owner holds his/her interest and the relationship between different entities in the corporate structure.

Senior managers and directors are in a position of control over the company and need to be identified in order to assist with PEP and integrity screening.

Publicly listed companies should provide details of the market or stock exchange the company is listed on, including the name, the stock exchange code and a link to the listing. The exemption from the beneficial ownership disclosure requirement should only apply to companies listed on exchanges with acceptable disclosure requirements, as specified by the government. This guards against companies being able to avoid disclosing their beneficial owners by listing on a stock exchange with low disclosure and transparency requirements. For guidance, see Open Ownership (2020c).

2.4 continued overleaf >

PROCEDURE

2.4 Continued

State-owned enterprises: Companies that are directly or indirectly owned or controlled by a state body whose ownership or control meets the definition and threshold to qualify as a beneficial owner should be legally required to disclose identifying information for the state as well the nature of ownership or control. The identifying information should include the legal name of the state entity or agency that controls the SOE, the jurisdiction for the state body, the chain of ownership leading to that state entity, as well as one or more unique identifiers for the state entity. As with other companies, any senior management or board members of the SOE who would qualify as beneficial owners because of their control over the SOE should also be identified: Open Ownership (2021b).

USE OF BENEFICIAL OWNERSHIP REGISTERS WHERE THEY EXIST

Licensing authorities should be able to use information about a company's beneficial owners that is recorded in a BO register rather than require a separate disclosure from applicant. However, the licensing authority needs to take steps to ensure the data in the register is reliable. If the information is not accurate, complete or up to date, the licensing authority cannot reasonably rely on the BO register. In these cases, the licensing authority needs to have the power to require a new disclosure of BOs from the company and to verify that information.

Two questions need to be answered to determine whether data in a BO register can be used:

1. Does the licensing authority have the legal authority to access information in the beneficial ownership register? In countries where beneficial ownership registers are not open to the public, it is sometimes the case that not all government entities are authorised to access information in the register. For example, in some countries only the taxation office can access that information.

2. Is the data in the beneficial ownership register reliable? Where the register contains the following data, it is possible to make a judgement about whether the information is reliable:

- The date the BO data was entered
- Whether the company has certified the accuracy of the BO data
- Whether the BO data was entered by registry staff or the company directly
- Whether the BO data has been verified and if so, what process was followed, including which other government and non-government datasets it was cross-referenced with (e.g. tax or company records and sanctions lists)
- Where a nominee director/shareholder is registered, whether the identity of the person on whose behalf they are acting is disclosed

PROCEDURE

2.5 Disclosure requirement: Politically Exposed Persons (PEPs)

As part of the licence application or bid, are companies required to disclose and certify information about the politically exposed person (PEP) status of their beneficial owners, senior management and directors?

The World Bank (2018: 61-62) explains why PEP screening is so important: 'When the licence applicant is a PEP... there is a heightened risk that public duties and private interests may result in an official using his or her position or authority for private gain.'

The EITI (2016: 22) recommends that PEP disclosure information include the title of the position, any necessary contextual details about the role and the dates that the PEP has held the position in government. Where the person is a family member or associate, the relationship to the PEP should be specified.

2.6 Disclosure requirement: Connections to licensing authority

As part of the licence application or bid, are companies required to disclose and certify a statement about whether any of their beneficial owners, senior management or directors are or are related to or associates of any public official involved in or with influence over the licensing process?

This additional disclosure is important because some officials in the licensing authority may not be senior enough to count as politically exposed persons and so would not be disclosed under indicator 2.5. This disclosure helps to detect conflicts of interest involving licensing officials.

2.7 Disclosure requirement: Integrity and legal history

As part of the licence application or bid, are companies required to disclose and certify a statement about their corruption and legal history (regarding matters such as bribery and corruption, fraud, money laundering, tax evasion and major environmental or human rights breaches) and that of their beneficial owners, senior management and directors?

Senior managers and directors are in a position of control over the company and need to be screened to determine whether the company is suitable to hold a licence (World Bank 2018: 110).

The World Bank (2018: 39-40) lists some of the matters that applicants should be required to make declarations about. This includes whether, in any jurisdiction, the company as a legal person or any of its beneficial owners, senior management and directors, have been:

- investigated for or charged with a criminal offence
- found guilty and convicted of a criminal offence
- suspended, debarred by a government or multilateral organisation such as the World Bank
- had its licence or public contract terminated by a court or government agency
- investigated for tax evasion
- the subject of a relevant civil claim or regulatory or administrative matter

2.7 continued overleaf >

PROCEDURE

2.7 Continued

Other relevant matters that could be requested include:

- whether they are subject to sanctions, as specified by the country
- official findings about breaches of responsible business conduct and professional standards, including human rights abuses, environmental breaches and labour conditions
- any relevant complaints or ongoing investigations

The applicable regulations should specify which types of offences or matters are relevant to disclose, but care must be taken not to draft these too narrowly. If the definition is too narrow or specific, applicants could easily avoid disclosing relevant information.

As the World Bank (2018: 40) points out, 'A positive answer to any of these queries would not necessarily lead to automatic disqualification in all sectors, but it would call for additional information to be evaluated on a case-by-case basis.' This would occur as part of the licensing authority's risk-based verification and due diligence, see 2.10 below. However, as stated above at 1.1, the most relevant offences – and those that should lead to automatic disqualification – are those that relate to bribery and corruption, tax evasion, fraud and money laundering.

2.8 Disclosure requirement: Local project partners

As part of the licence application or bid, are companies required to disclose any local project partners and their beneficial owners, including their PEP status?

Project partners are individuals or companies that have a right to the benefits from activities carried out under the licence. To prevent local content requirements from being abused to favour local companies with political connections, licence applicants must be required to disclose their local project partners, including when these are state-owned enterprises. It is important that the beneficial owners and PEP status of local project partners are disclosed and screened.

The local partner may already need to be disclosed because:

- they are a joint venture partner for the project and therefore must be named in the application or bid
- they hold shares or other interests in the legal entity created for the project and therefore are a legal owner or a beneficial owner where their interest is held indirectly (assuming they meet any applicable thresholds)
- the foreign company is required to disclose such details as part of its local content plan to demonstrate compliance with local content requirements

As a 'catch all', licensing authorities should require applicants to identify all natural persons with a beneficial interest or control over the local project partner – regardless of any threshold definition of beneficial ownership. This will help to ensure that local partners controlled by corrupt or undesirable individuals are not able to evade the integrity screening regime.

PROCEDURE

2.9 Disclosure requirement: Anti-corruption policies

As part of the licence application or bid, are companies required to disclose their anti-corruption policies, including their policies and procedures for due diligence and integrity checks on third parties and suppliers?

This information helps licensing authorities to gather more information about the character of the company and how seriously it takes anti-corruption matters. Such policies could include, the Code of Conduct, Anti-bribery and Corruption Policy, including its application to third parties, and Gifts and Benefits Policy.

In addition to disclosing relevant policies, companies could also be asked to make a declaration about their commitment to anti-corruption and compliance with applicable local and foreign anti-bribery laws. These disclosures enable licensing authorities to 'screen in' responsible companies that are committed to operating with integrity.

Verification and decision-making

The licensing authority needs to review and verify the statements disclosed by companies to ensure they are honest and correct. The extent of verification and additional background checks should correspond to the level of risk associated with the company and the rights they are seeking to secure. The licensing authority needs to have the power to make a decision about granting the licence on the basis of the results from this process.

2.10 A mandate to verify the data

Does the licensing authority have the legal mandate and duty to review and verify the information provided by the licence applicant and a mandate to investigate 'red flags' or suspicious disclosures by requesting or independently seeking out further information?

Effective integrity screening and due diligence depends on accurate and truthful information about the licence applicant. Verifying the information provided by applicants is therefore a critical part of the process.

Verification should be risk-based (see next page). As a tiered process, verification should first establish whether any information is missing or inaccurate when compared with the documents supplied and existing government databases and whether there are any prohibited persons associated with the application. This will determine whether it is necessary for the licensing authority to conduct additional background checks, including on the company's legal and integrity history.

Cross-checking the BO disclosure against government databases (such as personal identification, tax, sanction listings and business registers) and the evidentiary documents submitted by the applicant helps to identify discrepancies, incorrect information and integrity red flags. Open Ownership (2020b) and the Tax Justice Network (2019) suggest that automated cross-referencing between government databases may be an option in countries with reliable databases and the requisite technological resources. Income and asset declarations by government officials could be used for verifying declarations about the PEP status of beneficial owners, directors and senior managers.

PROCEDURE

RISK-BASED VERIFICATION AND SCREENING

The licensing authority should use a risk-based approach to determine the level of verification that is required and how extensive any additional background checks need to be.

A risk-based approach ensures that the licensing authority is smart about how it allocates its resources. It enables the licensing process to be administered efficiently, as additional background checks are only conducted if they are needed – where there are high integrity risks.

To implement a risk-based approach, the licensing authority needs to define metrics or criteria for the risk profile associated with different types of licences and classes of applicant. For example, the consequences of failing to conduct thorough verification on an applicant seeking a small-scale mining licence may be far less significant than a case involving a licence to develop a major mine in culturally or environmentally sensitive area (World Bank 2018:22–26).

To ensure consistency, the licensing authority should develop clear guidelines that set out (i) the metrics/criteria that licensing officials should use to determine the risk profile of the licence and applicant in tier-one screening, (ii) the type of verification to be conducted in tier-one screening and (iii) the additional background checks and action that should be taken in response to different types of red flags as part of tier-two screening. See, World Bank (2018: 25–28) and NRG1 (2018: 17–19).

Recommended sequencing for a two-tiered screening process

Tier-one screening for all applicants

1. Identify the risk profile of the licence

If the answer to one or more of these questions is yes, then it is a high-risk licence and the consequences of the licence falling into the wrong hands may be severe. Tier-two screening of the applicant is needed.

- Is the licence for a high value or strategic mineral?
- Is the mine projected to make a significant contribution to government revenue (royalties and taxes)?
- Does the licence cover a large area?
- Does the licence area impact on livelihoods or require resettlement of communities?
- Does the licence cover areas of environmental, cultural or social sensitivity or significance?
- Is the duration of the licence for a long time?

2. Identify the risk profile of the applicant

Conduct a simple verification of the information provided by the applicant by reviewing the documents and disclosures provided and cross-checking against government databases such as tax databases and business registers.

If any of the following red flags are present, the applicant is high risk and tier-two screening of the applicant is needed.

- Does the initial verification reveal (i) missing or inaccurate information, (ii) uncertified documents, (iii) the presence of PEPs, or (iv) apparent conflicts of interests?
- Do the disclosures raise questions about the beneficial owners? NRG1 (2015: 9) provides a list of some red flags that indicate a company may have problematic, concealed beneficial owners.

PROCEDURE

- Has the applicant disclosed any findings of criminal or civil liability against it, its senior management or director that raise questions about its integrity and character?

In the case of low-risk licences where the information is largely accurate and there are no red flags in the initial screening of the applicant, then no further action is necessary.

Tier-two screening for high-risk licences and applicants

3. In the case of higher risk licences or where integrity screening of the applicant reveals red flags, conduct further integrity screening on the applicant using a broader range of information.

Regulations need to specify what kind of additional verification and screening is required, but as an indication, this could include reviewing media reports, court databases or stock market filings, more thorough cross-checking against government databases, audit reports, additional verification and checks on links with PEPs and past conduct, including exchanging information with the relevant

financial intelligence unit or the anti-corruption agency about the company's legal and integrity track record. See the appendices in World Bank (2018) for suggested databases and searches.

In the case of historical or current legal proceedings, matters that the licensing authority should consider include: the nature and seriousness of the offence or matter, how recently it occurred, the outcome of any investigation and prosecution, any penalties or sanctions imposed, and any efforts the individual/company has made to correct or remedy the situation, such as taking disciplinary action against offending employees or making meaningful improvements to the company's anti-corruption systems (World Bank 2018: 91).

4. Based on an analysis of the information obtained and the applicable laws, make a determination about whether the applicant should be disqualified from the licensing process and denied the licence or whether the risks can be managed.

Adapted from World Bank (2018: 86–90)

PROCEDURE

2.11 A mandate to reject applications on integrity grounds

Does the licensing authority have the power to reject applications where serious corruption or integrity red flags emerge in the verification and screening process?

The circumstances in which company's application or bid can be rejected on integrity grounds needs to be narrowly and clearly defined to limit decision-maker discretion and the potential for abuse of power.

Some circumstances that would warrant disqualification of companies or rejection of their application/bid include:

- Where granting the licence would violate the prohibitions at 1.1–1.3 above (i.e. the licence applicant or one of its beneficial owners, senior managers or directors is a prohibited person)
- Where the mandatory integrity disclosures are not submitted or they are not certified (NRGI 2018: 15)
- Where the licensing authority has serious concerns about the accuracy of the statements made by the applicant and has evidence that the applicant has submitted false or misleading information (NRGI 2018: 21)
- Where the licensing authority has reasonable grounds to believe that the licence applicant has engaged in any form conduct legally recognised as bribery or corruption, including collusive or anti-competitive behaviour, in order to obtain an advantage in the licensing process (NRGI 2018: 16)

The decision, the reasons for decision and supporting evidence must be properly documented and appropriately communicated – see indicator 4.1. As an added accountability safeguard, the decision to disqualify an applicant or reject their licence application on integrity grounds should require senior approval or sign-off, and there must be a credible appeals process available to applicants to challenge the decision.

2.12 A mandate to manage high-risk licence holders

Does the licensing authority/ relevant government authority have the power and duty to more closely monitor the activities and regulatory compliance of medium-high risk licence holders?

Where the licensing authority decides to issue a licence to an applicant that presents some level of integrity risk, the licensing authority must put in place measures to monitor the company's ongoing compliance with the licence and take action should the company's risk profile change and become unacceptable. Again, the licensing authority needs to consider the importance of the licence to determine how much time and resources to dedicate to ongoing monitoring.

Reasons to place a licence-holder on a watchlist include circumstances where:

- the applicant's disclosures reveal some red flags but these are not serious enough to warrant disqualification or rejection of the application
- additional due diligence has uncovered adverse evidence about the applicant's integrity and conduct such as allegations reported in the media, formal complaints, pending investigations or prosecutions underway, but no formal findings of criminal or civil liability have yet been made (making disqualification inappropriate from the perspective of due process)
- the applicant or its senior management, directors or beneficial owners have a history of unlawful conduct but the nature or seriousness of the offences/ breaches of the law do not meet the criteria defined for disqualification

The significance of any prior legal offences or misconduct conduct on the part of the company or senior management must be assessed in light of the risks associated with the licence.

PROCEDURE

Post-licence disclosure requirements

Once the licence is granted, licence-holders should have an obligation to disclose any changes to their beneficial ownership and PEP status as well as to seek approval to transfer their licence to another company. These obligations are important to prevent companies from circumventing the integrity screening mechanisms by, for example, initially presenting 'clean' beneficial owners only to make changes to ownership after securing the licence or to sell the licence to a corrupt associate. See: NRG1 (2018: 10) and Open Ownership (2019b: 16).

2.13 Change in BO or PEP status

Does the law require licence holders to notify the licensing authority (or other relevant government body) if there is a change in beneficial ownership or their PEP status?

Open Ownership (2021a) recommends that licence-holders be required to disclose any change in the nature or level of beneficial ownership or the personal details of a beneficial owner within a set period of time after the change in ownership. This helps ensure that any problematic beneficial owners that come to be associated with the licence-holding company will be detected.

Historical records showing changes in ownership of time should be kept and made public. According to Open Ownership (2020a and 2021a), historical records can assist as part of integrity due diligence by showing the types of individuals the company has been associated with in the past and also prevent a company from hiding its beneficial owners by changing its name or reincorporating.

2.14 Screening of new beneficial owners

Is the licensing authority required to verify and screen the new beneficial owners and their PEP status?

This is necessary to determine whether the new beneficial owners are prohibited persons and therefore whether the company can continue to hold the licence.

2.15 Licence transfer

Does the law require licence holders to seek approval from the licensing authority to transfer their licence to another company?

In order to determine whether to approve the transfer, the licensing authority needs to conduct BO and integrity screening on the proposed new licence holder.

PROCEDURE

Enforcement

For the integrity screening and due diligence procedure to be effective, there need to be legal consequences for applicants who do not comply with the disclosure requirements or engage in corrupt conduct. The consequences should be proportionate to the severity of the breach – with fines for more minor acts of non-compliance through to more severe penalties for criminal offences. See NRG (2018: 7 and 23) and World Bank (2018:31).

2.16 Sanctions for bribery and corrupt influence

Does the legal framework criminalise and set out sanctions applicable to companies and natural persons for offering to pay or for paying a benefit to a public official or for otherwise seeking to influence a public official in order to obtain an undue advantage in the licensing process?

Corrupt conduct can undermine the licensing process, including the independence and effectiveness of BO and integrity screening. For example, a company may seek to bribe a licensing official to turn a blind eye missing disclosures or documents that would otherwise jeopardise the application or bid.

There may be a specific offence for bribery and corruption in the licensing process or alternatively, the country's general anti-bribery and corruption laws might apply to this conduct. The penalties should be serious, including the cancellation of the licence and potentially blacklisting the company from obtaining a licence in the future.

2.17 Sanctions for fraudulent, misleading or incomplete information

Does the legal framework set out penalties applicable to companies and their beneficial owners for making false declarations or submitting incomplete information as part of the licence application?

In the UK, beneficial owners, companies and company officers may be sanctioned for failing to truthfully disclose beneficial ownership information. The penalties include imprisonment for up to 12 months (or two years if convicted on indictment) a fine, or both. Companies may also be de-registered if they fail to report to the beneficial ownership register. See Open Ownership (2020a). In the context of licensing, such acts should be grounds for cancelling a licence if it has already been granted.

2.18 Sanctions for breach of notification obligations

Does the legal framework set out penalties for licensed companies and natural persons for failing to notify officials about changes to their beneficial ownership or PEP status with the prescribed time limit?

The penalties in the UK also apply to failing to update BO information in the central BO registry (2020a). In the context of licensing, such a breach should also be grounds for cancelling the licence.

2.19 Sanctions for violation of prohibitions

Does the legal framework set out sanctions for licence-holders who are or become a prohibited person but do not notify the licensing authority and retain their licence?

This added enforcement helps to prevent companies from evading the BO and integrity screening process.

3. TRANSPARENT RULES AND DATA

PROHIBITIONS

PROCEDURE

TRANSPARENCY

INTEGRITY SAFEGUARDS

Why

The primary purpose of integrity screening and due diligence is to ensure that only honest and responsible mining companies with a strong business integrity track record are granted exploration and mining licences.

However, to be credible and effective, the integrity screening process must be transparent. Two of the most important areas for transparency are:

Rules (3.1) – Clear and transparent rules that set out the BO and integrity due diligence process to make sure that applicants know what is required of them and to ensure that the law is applied equally and fairly.

Data (3.2-3.7) – Publication of relevant integrity information about licence applicants to enable the public to see to whom the government has granted or is planning to grant licences and raise any concerns.

3.1 Transparent and clear rules

Does the law clearly set out key information about the licensing process?

The same rules must apply to all licence applicants.

Clarity and transparency about what is required of applicants in the licensing process, how their information will be treated, and the basis for decision-making are important to prevent discretion in the application of the rules.

Where transparency is lacking, particularly in relation to the grounds for disqualifying an applicant, the rules could be manipulated or abused to advantage or disadvantage certain applicants; creating its own kind of corruption risks. See NRG1 (2018: 17)

The law needs to set out the following:

- The information and supporting documentation that licence applicants must disclose in relation to beneficial ownership and integrity
- When in the licensing process decision-makers will consider integrity disclosures
- The timeframe for decision-making and notification
- The specific circumstances in which applicants will be disqualified from the licensing process or denied a licence
- A credible appeals process to challenge inappropriate licensing decisions

TRANSPARENCY

3.2 Publication of information about licence applicants

Does the licensing authority publish information disclosed by licence applicants about their beneficial owners and the PEP status of their beneficial owners, senior management and directors and their affiliation with any official in the licensing authority?

The media and civil society play an important role as accountability actors. By monitoring government decision-making and company conduct, they are important players in anti-corruption efforts. They have a right to know who is behind the company that may be awarded rights to explore or mine the country's mineral assets. Publishing beneficial ownership and other data related to the licence applicants is a critical part of open government and can help strengthen the integrity screening process by increasing the pool of actors scrutinising company disclosures and raising concerns (NRGI 2018: 10).

Publishing this information is consistent with the EITI Standard which requires member countries from 1 January 2020 to publicly disclose the beneficial owners of all licence applicants and licence-holders and to identify any politically exposed persons among those beneficial owners (requirement 2.5(d)). The EITI Standard recommends that beneficial ownership information is published in a public register and include details about the owner's level of ownership and how control is exerted (requirement 2.5(a)).

In the interests of privacy, not all the identity details provided by the applicant need to be made publicly available. Open Ownership (2020a) suggest that while details such as the residential address, national identification number or passport number should be collected, these do not need to be published. Enough data should be published to allow for identification of beneficial owners of companies, proportionate to any potential harms.

It should be made clear to licence applicants which information they disclose will be made publicly available and which will not be published. The licensing authority will also need a legal mandate to publish this information.

3.3 Timing of publication

Is this information published before a decision is made about granting the licence or applicant qualification/eligibility?

The information should be published prior to the award or pre-qualification decision (whichever applies depending on the licence award process) to give accountability actors in civil society enough time to monitor the process and draw attention to problematic matters before decisions are final (NRGI 2018: 10). Although inadequate, publication after the licence has been granted would be preferable to no publication at all.

3.4 Publication of verification status

Does the licensing authority indicate whether the information it has published about the licence applicant has been independently verified?

These details are important to enable stakeholders to judge the reliability of the information about the applicant and decide whether to do their own background checks.

TRANSPARENCY

3.5 Publication of reasons for not verifying disclosures

Where the licensing authority has decided that it is not necessary to verify the information provided by the licence applicant, are the reasons for not conducting verification documented and made publicly available?

The reasons for key decisions made by licensing officials should be made public so that they can be subject to scrutiny. This is an important accountability mechanism to safeguard the legitimacy of the integrity screening regime.

3.6 Publication of information obtained through verification

Does the licensing authority publish any additional information about the applicant that it has obtained through the verification or due diligence?

The public should have access to the most up-to-date and accurate information about the licence applicant to be able to effectively monitor the licensing process and highlight concerns about applicants.

Any new and relevant material, including information that differs to what was disclosed by the applicant should be noted as such and made publicly available (NRGI 2018: 16).

3.7 Consistency with open data standards and principles

Is information about licence applicants published in accordance with open data standards i.e. is it machine readable and in a structured format?

Data has value when it can be linked and analysed with other data. This requires the data to be in a format that can be readily accessed and used. Open data formats enable users to use the data more effectively. For best practice guidance and data standards, see Open Ownership (2020a) and (2021a).

4. INTEGRITY SAFEGUARDS IN GOVERNMENT

PROHIBITIONS

PROCEDURE

TRANSPARENCY

INTEGRITY SAFEGUARDS

Why

Integrity safeguards within government help to prevent government officials involved in or with influence over the licensing process from abusing their position to obtain a personal benefit. In particular, safeguards to manage conflicts of interest help to identify government officials with a personal interest in a licence application or bid and in this way contribute to ensuring that integrity screening is properly implemented and effective.

4.1 Publication of reasons for decision

Does the licensing authority publish the reasons for decisions?

Publishing the reasons for a decision is a core principle of the rule of law and open government. Publishing reasons helps independent watchdogs, such as anti-corruption agencies and government auditors, and civil society actors to hold decision-makers to account and limits the risk of arbitrary use of power. It builds trust and confidence in the licensing process and in decision-makers.

Reasons should be published for decisions to reject an application or bid, to set aside or ignore the recommendations from technical committees or lower-level officials, or to intervene to benefit a particular company.

4.2 Independent oversight and monitoring

Are decisions of the licensing authority subject to review or audit by an independent body such as the anticorruption agency, auditor general or parliamentary committee?

Properly funded and truly independent government watchdogs are critical for ensuring good governance and accountability in decision-making.

4.3 Mandatory declarations: Income, assets and beneficial ownership

Are officials involved in the administration of the mining sector (including the licensing authority) or in any relevant SOE, and all senior government officials (ministers, members of parliament and heads of departments) required to declare their sources of income and assets – including shareholdings and beneficial ownership?

Government officials have a duty to serve the public interest and must not use their position to obtain a personal benefit. A conflict of interest occurs ‘when a public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities (OECD 2005: 7).’

Common conflicts of interest that can jeopardise the integrity of the licensing process include situations where a government official involved in or with influence over the licensing process (i) holds a commercial interest in the mining sector; (ii) is the director, officer or beneficial owner of a company that is applying or competing for a licence; (iii) consults for, provides services to or was previously employed by an applicant or competing mining company (NRGI 2018: 21).

A government official transgresses beyond a conflict of interest when they use their position or power to their personal benefit, such as by granting a licence to a company in which they hold an interest. This is corruption. Income and asset declarations assist in identifying and dealing with real, potential and perceived conflicts of interest. They are a critical measure for ensuring that integrity screening is carried out properly and that the prohibition on government officials holding mining rights is enforced.

4.4 Mandatory declarations: Prior or secondary employment

Are government officials required to declare their previous employment and clients as well as any current secondary employment, directorship or consultancy activities?

In the absence of this transparency and the controls outlined below in 4.5 and 4.6, the ‘revolving door’ between industry and government can create integrity and corruption risks. Declarations about prior and secondary employment assist in identifying and dealing with real or perceived conflicts of interest in the performance of public duties.

This should apply to all officials involved in the administration of the mining sector, any relevant SOEs and all senior government officials.

4.5 Conflict of interest protocol

Does the licensing authority have a guideline or protocol to govern how licensing officials should identify, declare and manage situations where they have a real (actual), potential or perceived conflict of interest?

A clear and binding agency/departmental guideline or protocol is needed to help officials to identify conflict of interest situations and to guide a response to resolve the conflict in order to prevent any real or perceived improper use of public power. Guidelines need to specify three key matters:

- **Unacceptable or prohibited conflicts of interest.** The World Bank (2018: 64) outlines three types of conflict-of-interest situations in licensing that warrant prohibitions: (i) involvement in a decision on a licence application that the official or their relative or associate has an interest in; (ii) receiving gifts, favours or other benefits from mining companies; and (iii) engaging in outside activities that could give rise to a conflict of interest while employed at the licensing authority.

4.5 continued overleaf >

INTEGRITY SAFEGUARDS

4.5 Continued

- **Management of different types of conflicts.** Depending on the seriousness of the conflict and the rank of the official, these responses or strategies could include divestment of the asset by the public official, recusal (non-participation) in the relevant licensing decision, restricted access to certain insider information, change of duties or responsibilities, resignation from the private capacity role or even resignation from public office (OECD 2005: 101–103).
- **Enforcement mechanisms.** Some breaches may result in internal disciplinary actions while more serious breaches may constitute corruption or misconduct offences.

4.6 Outgoing and incoming cooling-off periods for employment

Are relevant categories of senior government officials, including those with positions related to the mining sector, as well as licensing officials of any rank, subject to an enforceable 'cooling-off' period after they leave office during which time they are prohibited from taking on employment with, providing services to, or lobbying on behalf of mining companies?

Cooling-off periods help to manage the integrity risks associated with the 'revolving door' between industry and government.

They help guard against a situation where a former government official uses confidential information, insider knowledge or contacts from his or her time in office to benefit a private entity. Without appropriate checks and balances, the movement of personnel from government to industry can create risks of undue industry influence on public sector decision-making.

Countries need to define the categories of senior public office that this prohibition would apply to. NRGi (2018: 6) suggests this will be context-specific and involve understanding of the types of government offices and departments that are at high risk of corruption. The definition should include offices that have influence over the licensing process.

The length of the cooling-off period may differ depending on the rank of the government official. For example, in Canada ministers are subject to a longer cooling off period of 2 years compared to the 1-year period for public servants (OECD 2010, 69). Longer cooling-off periods should apply to public officials wanting to take on roles as a lobbyist (5 years for senior public officials and ministers in Canada) to guard against the risk of undue industry influence on public policy and decision-making.

There should also be incoming cooling-off periods that apply to employees of mining companies or individuals who have engaged in lobbying for mining, before they can take on senior positions of public office related to mining sector administration or any position in the licensing authority.

4.7 Cooling-off periods for ownership

Are relevant government officials, subject to a 'cooling off' period after leaving office during which time they are prohibited acquiring ownership or interests in mining companies?

For example, the 2014 Mining Code of Côte d'Ivoire prohibits all members of government and all officials involved in mining sector administration from taking a direct or indirect financial interest in a mining enterprise for five years after the termination of their duties (NRGI 2018).

This should apply to defined categories of senior government officials, including those with positions related to the mining sector, as well as licensing officials of any rank.

INTEGRITY SAFEGUARDS

4.8 Enforcement: Conflicts of interest

Are disciplinary measures, penalties or other sanctions imposed on government officials or former government officials who fail to follow protocols in relation to declaring and resolving conflicts of interest, including post-employment related conflicts?

There need to be consequences for failing to comply with disclosure obligations. Penalties are necessary to enforce these integrity and accountability safeguards.

4.9 Enforcement: Demand-side bribery sanctions

Does the law criminalise any attempt or act by a government official to solicit or accept a payment, gift or other benefit in exchange for giving a person or company an advantage in the licensing process?

This measure safeguards the integrity of the licensing process more generally. It also helps to prevent officials from undermining the integrity screening process (for example, by waiving disclosure requirements) in exchange for a bribe or other corrupt payment from a company.

4.10 Enforcement: Whistleblower channels and protection

Does the licensing authority provide secure and accessible channels through which officials and external actors can raise integrity concerns and report breaches (whistleblowing), without risk of reprisal?

Whistleblowers are vital to the integrity of any institution. There must be a secure channel through which individuals with reports or suspicions of corruption can raise their concerns, knowing that they are protected and that their report will be handled and investigated appropriately.

FORMULATE STRATEGIC POLICY RECOMMENDATIONS

With an understanding of the areas in need of reform, you are in a position to formulate evidence-based policy recommendations to government. The most strategic recommendations are ones that are focused, specific and take advantage of opportunities for change.

Use the results from the assessment to inform your policy recommendations, keeping the following guidance in mind.

POSITION THE RECOMMENDED REFORMS AS AN OPPORTUNITY

Although increasingly recognised as important, BO and integrity screening is not yet widely practised. Therefore, it is likely that the results in most countries will be low. If you choose to publish the assessment results, it is important to present them in a way that will win support, rather than attract opposition and resistance from government. See Annex 3 for further guidance.

When it comes to developing policy recommendations based on the results, your government might be more willing to support your recommended changes if you position them as a roadmap that presents concrete opportunities for strengthening integrity in the mining sector and making the country an attractive destination for investment.

FOCUS ON THE AREAS OF IMPACT AND OPPORTUNITY

Your policy recommendations should focus on the most important areas for improvement. If you have lots of recommendations, try to group together recommendations related to the same topic.

Can you select three to five recommendations that you think would have the most impact and where there are opportunities to win government support?

When considering opportunities, think about leveraging existing government commitments. You may be more likely to win support if you can show how your recommendations are aligned with or support existing government commitments, initiatives or potential policy developments. For example,

- Has your government made any relevant commitments under the Open Government Partnership?
- Is your country a member of the EITI with an obligation to introduce public BO disclosure?
- Has the government made any anti-corruption or integrity commitments? Does the government want to show it is improving the governance of the mining sector?
- Are elections planned for this year? Do the major political parties have any relevant policies or promises?

BE SPECIFIC ABOUT WHAT NEEDS TO CHANGE

Based on the results for each section in the assessment tool, think about the following questions to identify what changes are needed. You could use these in a workshop with stakeholders and experts to identify collective priorities and a reform agenda.

Try to be as specific as possible. Can you name the specific laws, regulations or government institutions where changes are needed? You may need to do additional research. Alternatively, you might recommend that the government look into how the changes could be achieved.

- | | |
|---|---|
| 1. Legal prohibitions | What changes in the law would be needed to prevent companies with corrupt political connections or a history of corruption or serious misconduct from obtaining a licence? |
| 2. Integrity screening procedure | What aspects of the licensing process would need to change and what part of government would need to be involved to introduce or strengthen integrity screening of licence applicants? |
| 3. Transparent rules and data | What opportunities are there for improving the transparency of information about the licensing process, licensing decisions and company disclosures? |
| 4. Integrity safeguards within government | What could be done to improve the effectiveness of integrity safeguards within the government related to mining sector licensing and which part of government would need to be involved to make these improvements? |

Set realistic objectives for your timeframe: Think about the length of time that you intend to work or have the resources to work on this topic. What is realistic to aim to achieve during that time? In the short-term, winning a statement in support or commitment from government might be the first step to any legislative or policy changes.

Presenting policy recommendations

Presenting policy recommendations

When it comes to planning how you will present the recommendations, consider the following questions to identify what approach will be most effective for your circumstances:

- What are the pros and cons of presenting the recommendations via a closed briefing to government, a public forum, media coverage, a mix of these?
- Which of the above options would most likely get the attention of government and motivate them to support and implement the recommendations?
- Are there other organisations, academics or journalists in your country or globally that support your recommendations and who you can work with to win the support of government?
- Can you ask an influential anti-corruption champion to be your spokesperson?

Refer to Annex 1. Tips for Effective Engagement with Government for further guidance.

PUTTING THIS GUIDE INTO ACTION

Every step towards introducing or strengthening integrity screening of licence applicants is a step closer to a fairer, more responsible and corruption-free mining sector.

Having worked through the guide, you should now be in a strong position to make the case in favour of BO and integrity screening. With targeted policy recommendations you can contribute to real and effective change in your country that will benefit everyone – communities, citizens, government and the private sector.

Your efforts can help to ensure that your country's natural resource wealth is used for the benefit of many and not just a few, to protect the natural environment and to protect and foster respect for human rights.

ANNEXES

ANNEX 1: TIPS FOR EFFECTIVE ENGAGEMENT WITH GOVERNMENT

With the help of this guide, you will have the knowledge you need to make a strong argument in favour of BO and integrity screening procedures and to present evidence-backed recommendations. To be successful in convincing government to take action, you will need the right people in government to listen to you.

IDENTIFY THE INDIVIDUALS WHOSE SUPPORT YOU NEED

Power holders:

Begin by identifying the government officials or offices with the power to make changes to the licensing process.

- Does your organisation have contact with these power holders or the opportunity to gain contact with them?
- Which groups within government do they listen to?
- Which groups or voices outside of government do they listen to?

Champions:

It may be difficult to speak directly to the person or people that hold the power to make changes to the licensing process. Instead, you could try to identify a champion in government who will support your efforts by endorsing your organisation or even advocating themselves for the changes you want to see.

The following questions can help you find a champion:

- Who has publicly expressed support for integrity and fighting corruption in the mining sector?
- Who has supported beneficial ownership transparency?
- What power and influence do they have within government?
- Does your organisation have contact with them or the possibility of gaining contact with them?

Allies:

It may be effective to work with other organisations or individuals that are trusted or respected by government.

- Are there other organisations, academics or journalists or even companies in your country or globally who support your goals and with whom you could work?
- Do any of your allies have experience or relationships with key people in government?

How to deal with sensitivities about 'corruption'?

Corruption is a term that can make people in government defensive and reluctant to talk to you. You can avoid this by explaining that you are identifying opportunities to strengthen integrity in the licensing process to improve the attractiveness of the country to responsible mining operators and maximise the benefit to the country from mining while minimising the risks. It may be helpful to clarify that you are not looking into specific cases or allegations of corruption and that you are not focused on individuals.

IDENTIFY HOW TO WIN THEIR SUPPORT

Whether government officials are willing to meet with you will depend on your existing relationships and experience engaging with government. Consider which approach or combination of approaches would work best in your context:

- **Using existing platforms:** Has the government committed to any good governance initiatives that your organisation or an ally is involved in, such as the EITI Multi-Stakeholder Group and Open Government Partnership? Could you work through these platforms to amplify your message or gain support?
- **Public campaign or direct engagement:** Would a large, broad-based coalition campaigning publicly for BO and integrity screening be influential? Would a smaller group of allies working behind the scenes be more effective? Or is a combination of both a good idea?
- **Meetings, workshops, events:** To build a relationship with relevant government officials, would it be useful to invite them to a meeting to discuss initiatives to strengthen integrity in the licensing process or in the mining sector more generally? You could use the meeting to build trust, raise awareness of BO and integrity screening, and identify opportunities for winning support for change. Would it be useful to hold a multi-stakeholder workshop or an event to discuss some of these issues and get them on the government's agenda?
- **Evidence-based recommendations:** In some cases, government officials may be more willing to speak with you if you can present specific policy recommendations or if your findings get broader public attention on social media or in traditional media. For this reason, you may decide that you first need to assess the licensing process.

Guidance for meetings with government officials

At the start of the meeting, ask some simple, open questions to make the government contact feel comfortable. You could ask them to describe their role, as well as any government initiatives to improve governance, transparency or integrity in the mining sector.

For example:

- Can you tell me about your role and how you are involved in the licensing process?
- What steps is the government taking to attract responsible investment in the mining sector?
- What are the biggest integrity challenges you see for the licensing process/mining sector?
- Can you name any initiatives that the government or your department is involved in to address these issues?

ANNEX 2: SHORT ASSESSMENT GUIDE

For organisations without the time to conduct a full assessment using the tool, answering these key questions is an alternative way to obtain the understanding and information that you need to develop strategic policy recommendations.

Answering the key questions below will help you build collective understanding among your allies, identify the areas in need of reform in your country and inform policy recommendations.

The following questions are at the heart of what the detailed indicators in each section of the assessment tool seek to answer. You could use these questions as the basis of desk-based research, interviews and/or workshops with different stakeholders.

Prohibitions on unsuitable individuals obtaining a licence

- Under what circumstances, if any, would an applicant be ineligible for a licence or disqualified from the application or bidding process?
- Are there any integrity criteria that the licensing authority uses to determine an applicant's suitability to hold a licence?
- How adequate are these requirements and what changes would be needed to prevent companies with corrupt political connections or a history of corruption or serious misconduct from obtaining a licence?

Integrity screening procedure

- What kind of information must the licence applicant or bidder provide about the company, its beneficial owners and senior staff as part of the licensing process?
- To what extent do licence applicants have to disclose information about their character and integrity, for example their legal record and political connections?
- How does the licensing authority determine whether the information provided by the applicant is true and accurate? Can the licensing authority request additional information? How does the licensing authority verify the information provided?

- In what circumstances does the licensing authority do additional background checks on licence applicants and what do they look for?
- What risk management measures does the licence authority take or put in place to deal with medium-high risk licence holders?
- How well does the screening process ensure that companies that are granted mining rights are suitable from an integrity perspective?
- What aspects could be improved and what part of government would need to be involved to introduce or strengthen integrity screening of licence applicants?

Transparent rules and data

- What information about the licensing and screening process is available to licence applicants and the general public?
- What information about licence applicants is made publicly available (their beneficial owners, PEP status, etc)?
- When is information about licence applicants made public? Before a decision is made or after the licence is awarded? In what form is it published?
- Is the information effectively accessible to the public for free or are fees charged to access the information?
- What opportunities are there for improving the transparency of information about the licensing process and company disclosures?

Integrity safeguards within government

- What processes are in place for managing conflicts of interest involving government officials responsible for handling or deciding on licence applications and those involved in mining sector administration more broadly, including in a mining SOE?
- What are the obligations or duties of officials to register their private interests and declare conflict of interest situations, including where they have been offered a bribe? What is the process when a conflict is declared or detected and who is involved?
- What measures are in place to safeguard against improper ministerial interference in licensing decisions?
- How does the licensing authority evaluate how well its integrity safeguards work?
- Does an independent government accountability body monitor and audit the licensing authority from time to time?
- What could be done to improve the effectiveness of integrity safeguards within the government related to mining sector licensing? Which part of government would need to be involved to make these improvements?

ANNEX 3: PRESENTING THE ASSESSMENT RESULTS

Using the assessment tool will provide you with information about the adequacy of BO and integrity screening measures in the licensing process. This annex offers some suggestions on how to present the results.

The assessment tool is designed to be used qualitatively – to identify areas that need reform and to help you and your partners decide what you will focus on in your recommendations to government.

For that reason, we recommend using a simple visual representation of the results, rather than any complicated scoring metrics. The sample scorecard below is one suggestion.

Keep a record for yourself with a brief justification for the result you have assigned for each indicator. This will help you when it comes to formulating recommendations. The notes could contain, for example, a short description of what the measure looks like along with a reference to the applicable laws, regulations or guidelines.

Sample scorecard

Section	Results for each indicator									
Legal prohibitions	1.1	1.2	1.3	1.4						
BO and integrity screening procedure	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	2.10
	2.11	2.12	2.13	2.14	2.15	2.16	2.17	2.18	2.19	
Transparent rules and data	3.1	3.2	3.3	3.4	3.5	3.6	3.7			
Integrity safeguards within government	4.1	4.2	4.3	4.4	4.5	4.6	4.7	4.8	4.9	4.10

- The licensing process fully meets the indicator and there is evidence to support this
- The licensing process partially meets the indicator or evidence is weak

- The licensing does not meet the indicator or there is no publicly available information

Guidance for presenting results

As BO and integrity screening is not yet widely practised, it is likely that the results in most countries will be low. Think carefully about the words that you use and the way you interpret and present the results.

Presenting the results as poor performance may result in opposition and resistance from government. Instead, consider the following guidance when explaining the results in each of the four sections.

Results Guidance



Highlight where government is performing well and recognise it as a leader. This will encourage greater ambition and motivate action to address areas where performance is weaker.



Explain in what ways government processes or practices fall short and recommend specific changes that government can make to address these gaps and why that is important.



Explain the importance of the measures that are currently absent and recommend specific actions that government can take to introduce them.

Where information is not publicly available, highlight the transparency gap and recommend that government make information that it holds available to the public.

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