

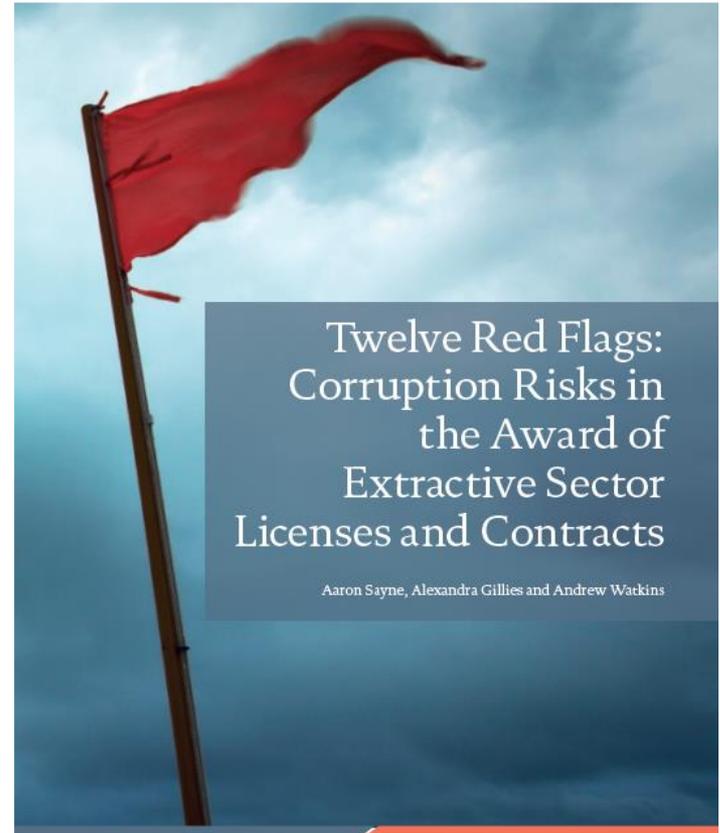
Reporting of PEPs in Beneficial Ownership registers

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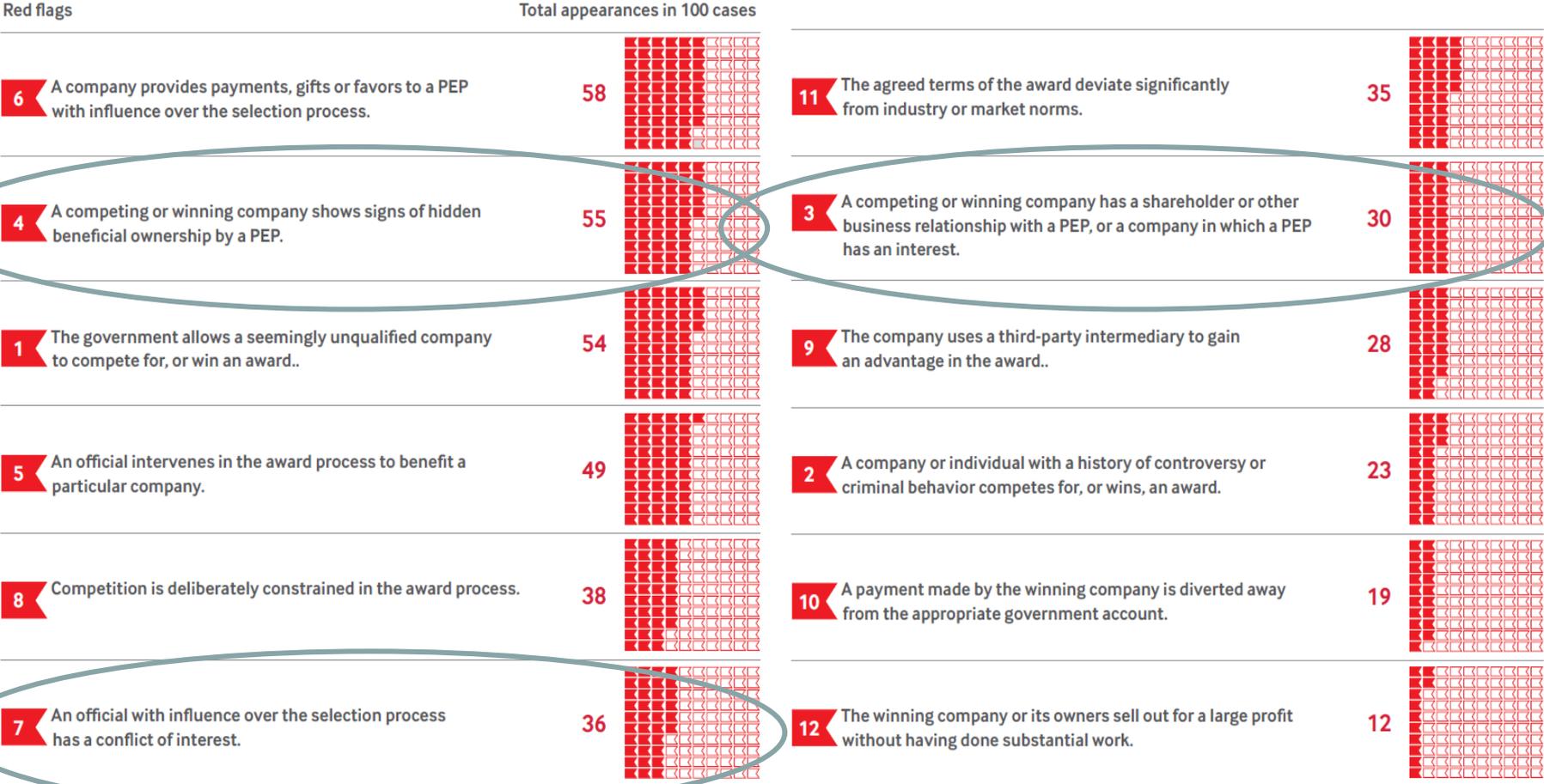
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Why disclosing PEPs is important?

Beneficial ownership of extractives companies by PEPs, while not always problematic, can be linked to **corrupt self-dealing** and **conflicts of interest** during extractives licensing. It can also create avenues for **bribery, money laundering, contract fraud** and other types of **financial crime**



Identified main red flags of corruption



How do extractives companies conceal BO/PEPs?

- **Substituting natural persons:** family members, “fronts” (an individual who stands in for and is controlled by a hidden owner), aliases (false names)
- **Inserting opaque entities as shareholders:** political associations, community development corporations, and state- or municipality-owned investment companies
- **Holding assets and sending payments offshore:** moving money to trusts, shell companies, or private investment companies in banking secrecy or tax havens
- **Suspect commercial relationships:** paying for services without performance, selling discounted assets to another entity that a hidden owner controls

Definition of PEPs

- Financial Action Task Force (FATF): “***An individual who is or has been entrusted with a prominent public function.***” (recs 12 and 22)
- FATF’s definition extended in 2003 to foreign PEPs and in 2012 to domestic PEPs and PEPs of international organizations – in line with art 52 of UNCAC which define PEPs as “*individuals who are, or have been, entrusted with prominent public functions and their family members and close associates*” (includes both domestic and foreign PEPs).
- Covered family members can be related by blood, marriage, or other forms of civil partnership, and can stretch beyond the immediate family. Close associates are individuals who are closely connected to a PEP, either socially or professionally.

Definition of PEPs

- For NRGI, basic language for defining “PEP” should include:
 - (a) an individual who is, or has been, entrusted with a foreign or domestic public function and includes — (i) a head of state or government; (ii) a minister; (iii) a deputy minister; (iv) an agent involved in sector administration, (v) a politician; (vi) a political party official; (vii) a judicial official or other senior official of a quasi-judicial body; (viii) a military official; or (ix) a SOE official;
 - (b) an immediate family member of a person referred to in paragraph (a), including but not limited to a spouse, child, or parent; or
 - (c) a close associate of a person referred to in paragraph (a).
- Distinguish clearly between “Domestic PEPs,” “Foreign PEPs,” and “International Organization PEPs,” per the recommendations of the FATF

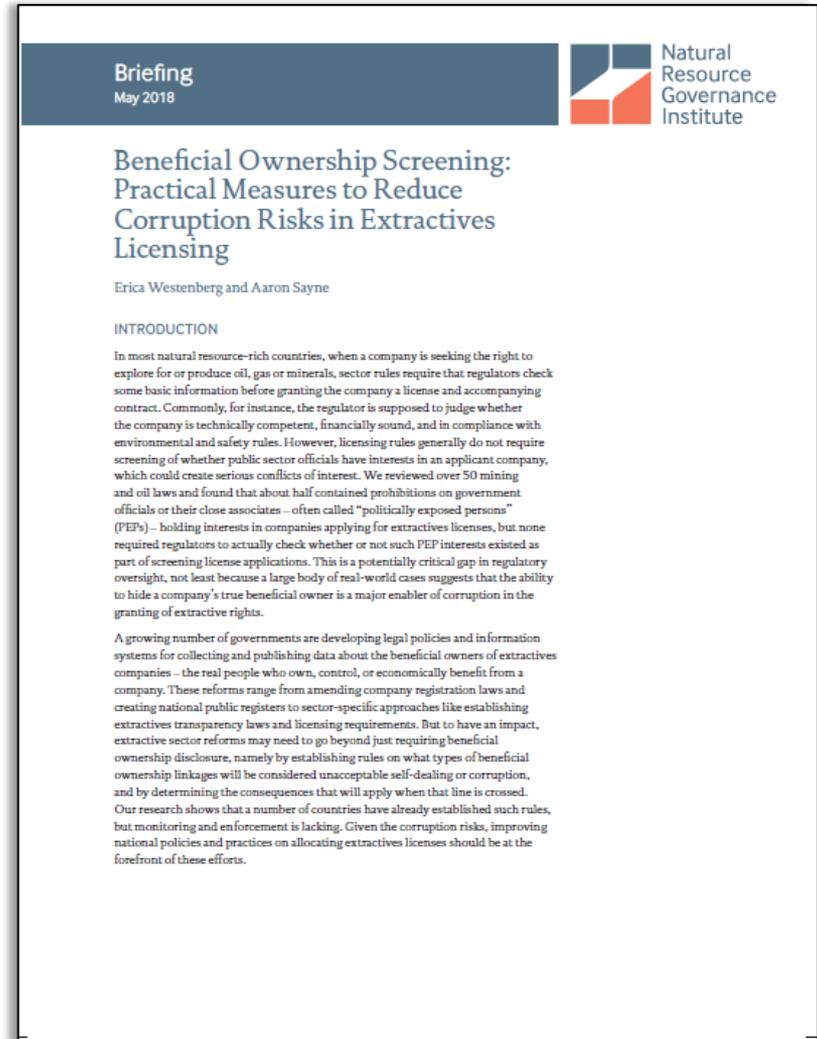
Disclosing PEPs ownership

- What information to disclose (EITI, requirement 2.5):
 - Required: name, nationality, country of residence, levels of ownership, details about ownership or control is exerted
 - Recommended: national identity number, date of birth, residential or service address, means of contact
- How to disclose:
 - Different options: one register, multiple registers, private entity (FATF)
 - Integrating with other registers, sources of information
- Issues to consider:
 - Threshold (no or lowest threshold approach)
 - Sector specific registry
 - Incorporating BO information alongside other information – license registries, contract disclosure platforms and cadasters



How to reduce corruption risks linked to hidden BO/PEPs in extractive licensing?

- **Beneficial ownership transparency is only the *starting point***
- Beneficial ownership information will only be impactful if it is actually used to help **deter, detect, and penalize** problematic conduct
- **Complementary measures** will be needed to backstop beneficial ownership transparency in extractive licensing processes



Key complementary measures

1. Incorporating **anticorruption provisions** into extractive sector rules

Article 10. ...No public servant or public servant employed in the Public Administration, no agent of State-owned enterprises and no agent of a majority public financial holding company may hold a direct or indirect interest in a mining activity, a mining title or beneficiary of an authorization.

Article 11. Members of the Government, officials of the Mines Administration, and all officials and agents of the State having a role in the management of the mining sector may not take direct or indirect financial interests in mining enterprises and their direct or indirect subcontractors, within five (5) years after the termination of their duties.

– Côte d'Ivoire 2014 Mining Code

- Reviewed over 50 mining & oil laws
- About **half contained prohibitions on PEPs holding interests** in companies applying for extractive licenses

Key complementary measures

15. Pre-qualification of applicants

15.1 A company wishing to apply for a petroleum agreement in a bidding round shall apply for pre-qualification in accordance with the pre-qualification guidelines prepared by the Authority and approved by the Board.

15.2 The pre-qualification guidelines shall provide, at a minimum:...

(d) the required legal documentation evidencing the good standing of the company, and the identity of its directors, shareholders and beneficial owners.

15.7 A company which holds a pre-qualification notice shall give written notice to the Director General within forty-five days of any material change, including changes in beneficial ownership from that originally reported...

15.10 The Authority shall keep a register of the companies qualified as operators and participants and shall record, in respect of each such company, the grounds for the issue of a pre-qualification notice and reasons for its cancellation. The register shall include all documentation submitted to the Authority in support of an application for a prequalification notice or received under subsection 15.7 of this Act.

14. Availability of information to the public

64.2 The Authority shall make available to the public on the Authority website and by any other appropriate means, and shall provide to the LEITI Secretariat for publication on the LEITI website in accordance with LEITI policy all announcements of public hearing issued under this Act, as well as full copies of the following documents within twenty days from the date of signature, issue, approval or receipt:...

(f) the pre-qualification guidelines and the registry of pre-qualified applicants, the tender protocol, the bid assessment report and the winning bidder announcement, in relation to each licensing round...

— Liberia 2014 Petroleum Act

2. Establishing rules on collecting & publishing beneficial ownership information as part of extractive license applications

- Already collecting/evaluating info about applicant companies
- Sets foundation for (in)effectiveness of project
- Moment of great host country leverage
- Moment of strong public interest
- In EITI requirement

Key complementary measures

3. Screening applications for manifest accuracy and corruption problems in BO/PEPs information

- The company's BO or PEP disclosures are uncertified or never submitted
- The company claims it has no BO, or that its beneficial owner cannot be identified
- The company identifies another company as its BO, but doesn't follow up chain
- Cross-checks of the company's certifications and disclosures against supporting documents reveal contradictions
 - e.g. an application claims there are no PEP beneficial owners, but public official asset disclosures indicate that a PEP is a beneficial owner of the applicant company
- Disclosures strongly suggest the company has engaged in collusive or anticompetitive behavior
 - e.g. multiple companies with the same beneficial owner apply for the same license or contract

Key complementary measures

Article 93. ...Without prejudice to the specific provisions in the area of anticorruption, individuals and legal entities, national or foreign, who participate in the contracting procedures or permits regulated by this Law, will be sanctioned when they carry out any of the following actions:

- I. Offering or providing money or any other type of benefit to a public official or to a third party that in any manner intervenes in any of the actions within the contracting procedure, with the intention that the public official carries out or refrains from carrying out an action in relation to his duties or those of another public official, in order to obtain or maintain an advantage, whether or not money is actually received or benefits are obtained;
- II. Engaging in any conduct or omission which has the purpose or effect of evading the requirements or rules established to obtain any type of contract or simulating compliance with these;
- III. Acting in his own name but in the interest of another or others who are prevented from participating in public contracts, with the purpose of obtaining, in whole or in part, the benefits resulting from the contracting procedure; or
- IV. Influencing or exercising political power over any public official, for the purpose of obtaining for himself or for a third party a benefit or advantage, regardless of the willingness of the public official(s) or of the result obtained.

Article 94. The sanctions in relation to the conduct referred to in the previous Article will be determined by the competent authorities, in accordance with regulations in the area of anticorruption and can lead to the termination of the respective allocations, contracts, permits, or authorizations.

- Mexico 2014 Hydrocarbons Law

4. Scrutinizing corruption risks in selected awardees & pursuing sanctions

Advice to companies regarding political exposure



- Publicly commit to restrictions against working with :
 - entities that will not report their BO
 - entities whose key personnel or BO include:
 - a public official with a conflict of interest
 - a former official who recently left such a position of influence
 - individuals in violation of the producer country's prohibitions on public officials acquiring commercial interests
- Require all third parties to submit BO information.
- Move toward publicly reporting BO information for JV partners, large suppliers and high-risk suppliers.
- Evaluate politically-exposed third parties for their risk of *enabling* corruption, and avoid engagements that carry those risks.

Conclusion: evaluation of PEPs

- Reporting is not enough
- Key is screening
 - Most countries have legal framework, issue is *implementation*
 - Cross-checking and integrating PEPs extractive ownership information with other sources (taxes, assets, properties...)
 - Public access to PEPs extractive ownership information
- Fundamental question: does this PEP create a conflict of interest?