

Beneficial Ownership Disclosures

A Civil Society Perspective



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“Gangsters and crooks regularly set up a series of companies that own each other. Stacked up like Russian dolls, and often crossing borders, they make it harder to figure out who is ultimately behind the company. These companies often serve no legitimate purpose, but to cover things up.”

***The Great Rip Off,
Global Witness, 2014***



Public office is a public trust

1987 Philippine Constitution



Article XI Accountability of Public Officers

Section 1. Public office is a public trust.

Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.



Public office is a public trust

1987 Philippine Constitution



Article XI Accountability of Public Officers

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, **submit a declaration under oath of his assets, liabilities, and net worth**. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, **the declaration shall be disclosed to the public** in the manner provided by law.



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1987 Philippine Constitution



Article III Bill of Rights

Section 7. **The right of the people to information on matters of public concern shall be recognized.** Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.



Public office is a public trust



RA 6713 Code of Conduct and Ethical Standards

Section 3 Definition of Terms

(i) "Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a **substantial stockholder** of a private corporation or **owner** or has a **substantial interest** in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.



Public office is a public trust



RA 6713 Code of Conduct and Ethical Standards

Section 4 Norms of Conduct of Public Officials and Employees

(a) *Commitment to public interest.* - Public officials and employees shall always **uphold the public interest over and above personal interest**. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.



Public office is a public trust



RA 6713 Code of Conduct and Ethical Standards

Section 7 Prohibited Acts and Transactions

(a) Financial and material interest. - Public officials and employees **shall not, directly or indirectly, have any financial or material interest** in any transaction requiring the approval of their office.



Public office is a public trust



RA 6713 Code of Conduct and Ethical Standards

Section 8 Statements and Disclosure

Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and **financial and business interests** including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.



Why is BOT Important?



Deter corruption



**Find/establish
corruption**



**Identify conflicts of
interest**



**Prevent regulatory/
elite capture**



Prevent money laundering



Prevent tax evasion



Why is BOT Important?



**Prevent regulatory/
elite capture**



**Identify conflicts of
interest**



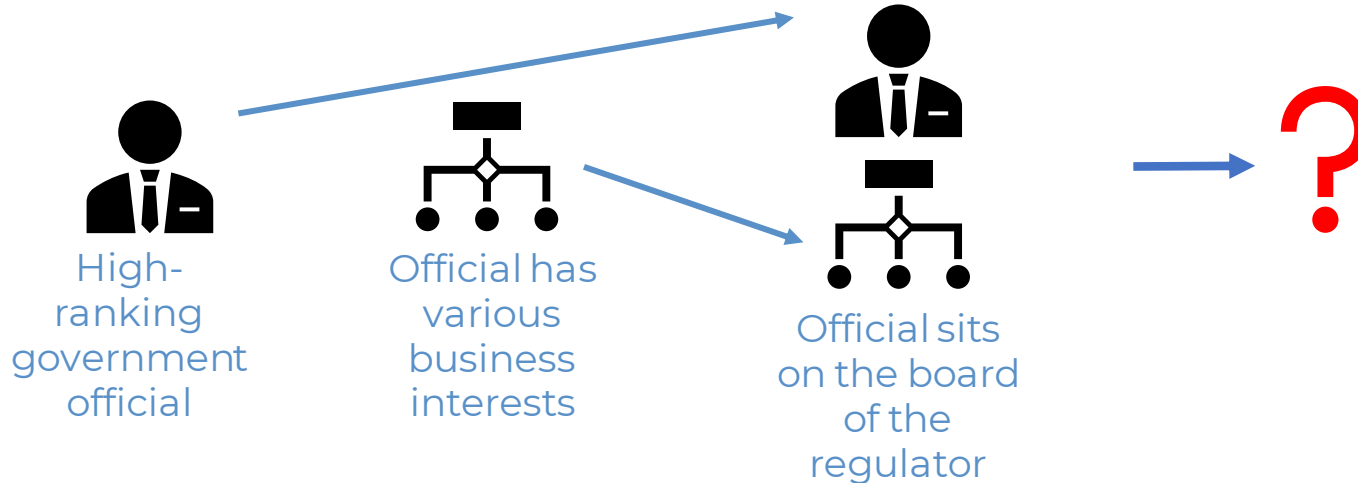
Prevent regulatory/
elite capture



Identify conflicts of
interest



Example 1



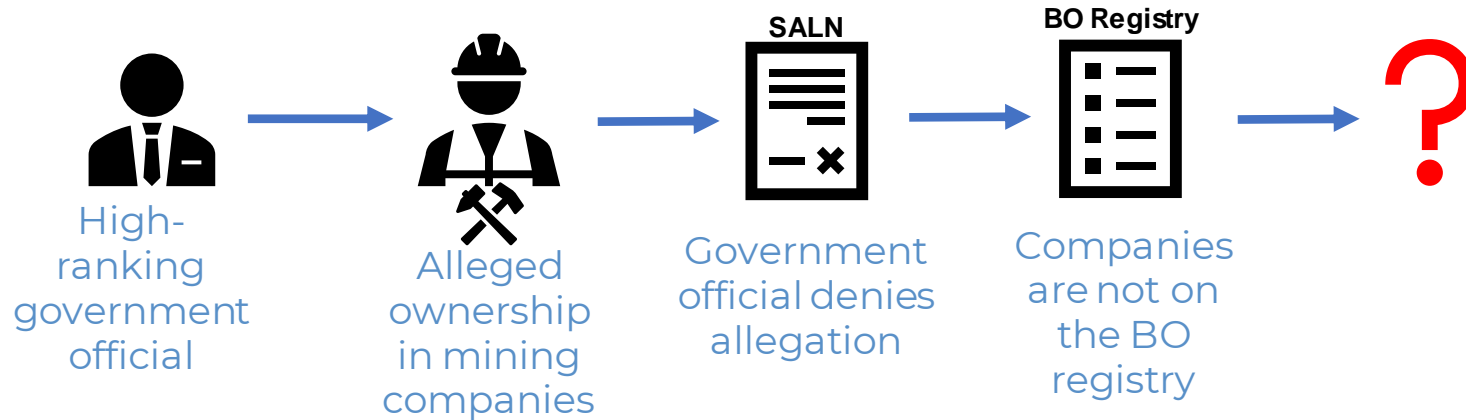
Prevent regulatory/
elite capture



Identify conflicts of
interest



Example 2



Prevent regulatory/
elite capture



Identify conflicts of
interest



Campaign Finance

Omnibus Election Code (BP 881)

ARTICLE XI. ELECTORAL CONTRIBUTIONS AND EXPENDITURES

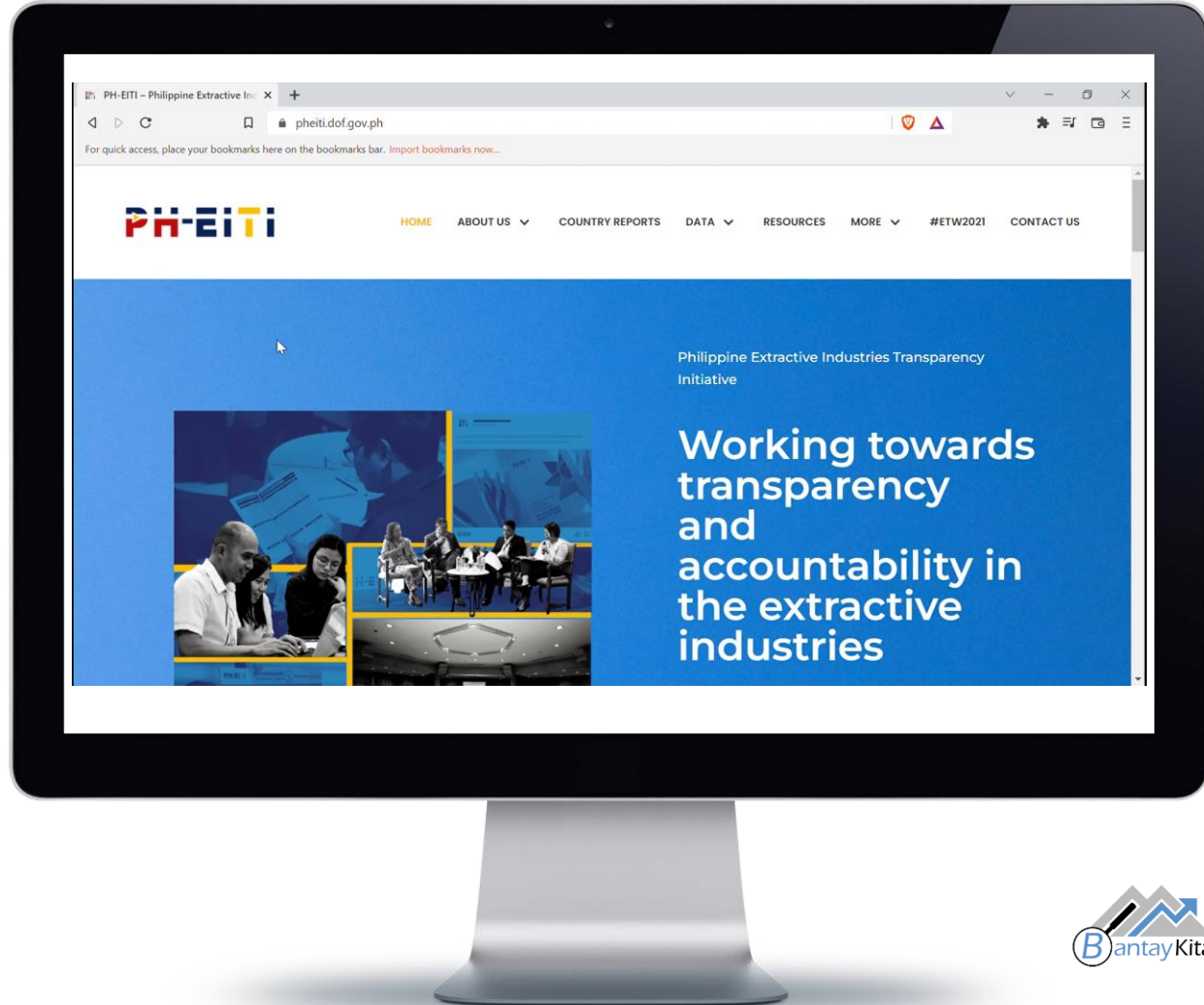
Sec. 95. Prohibited contributions. - No contribution for purposes of partisan political activity shall be made directly or indirectly by any of the following:

(b) Natural and juridical persons operating a public utility or **in possession of or exploiting any natural resources of the nation**



Beneficial Ownership and PH-EITI

PH-EITI Beneficial Ownership Registry





Philippine Extractive Industries Transparency Initiative

Working towards
transparency
and
accountability in
the extractive
industries





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Challenges facing BO disclosure

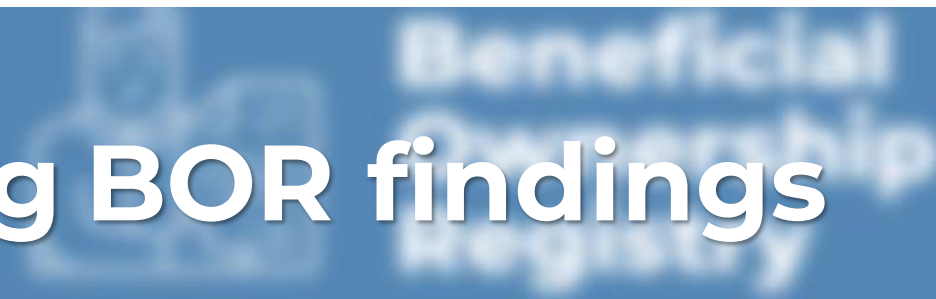
- ✗ Purely volunteer basis
- ✗ SEC MC 15 Series of 2019
- ✗ Balance is required with Data Privacy Act
- ✗ Other challenges

Challenges facing BO disclosure

X Purely volunteer basis

- Coverage is **incomplete**. Only roughly half of the companies have volunteered BO information based on their Securities and Exchange Commission submission.
- Mostly directors and officers with nominal shareholdings





Interesting BOR findings

- Except for Century Peak Corporation, none of the listings add up to 100% ownership
- Century Peak Corporation is 100% owned by Century Peak Holdings Corporation
- FCF Minerals Corporation is 88.0% owned by an Australian national
- AAM-Phil Natural Resources (95.0%), Johnson Gold Mining (94.5%), FCF Minerals Corporation (88.0%), Pacific Nickel Philippines (86.0%), and Adnama Mining Resources (60.0%)



Challenges facing BO disclosure

X Securities and Exchange Commission Memorandum Circular 15 Series of 2019 **Section 3 Disclosure of Beneficial Ownership Information**

“Such information, however, shall **not be uploaded to the Commission’s publicly accessible electronic database**. Said information shall, nonetheless, be made accessible or available in a timely manner to **competent authorities for law enforcement and other lawful purposes.**”



Challenges facing BO disclosure

X Balance is required with Data Privacy Act
National Privacy Commission, Advisory Opinion 2020-047

“Personal information may be processed pursuant to Section 12 (c) of the DPA, which allows processing that is necessary for compliance with a legal obligation...”



Challenges facing BO disclosure

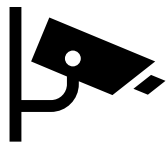
X Balance is required with Data Privacy Act
National Privacy Commission, Advisory Opinion 2020-047

“...the processing of personal and sensitive personal information... must still adhere to the **general data privacy principles**. Specifically for the **principle of proportionality**, this requires that the processing of personal data shall be adequate, relevant suitable, necessary, and not excessive in relation to a declared and specified purpose ...”



Challenges facing BO disclosure

X Other challenges



Overcome the security and safety concerns of BO



The need to verify the data



Capacity building for BO data users



Need to improve PEP disclosures



Ways forward

Open Extractives Country Engagement Plan, 2021-2023

- 🎯 Enable governments and industry to disclose high quality open beneficial ownership
- 🎯 Build data-usage capacity of government and local stakeholders
- 🎯 Mobilize global support for beneficial ownership transparency (global)





Thank you.