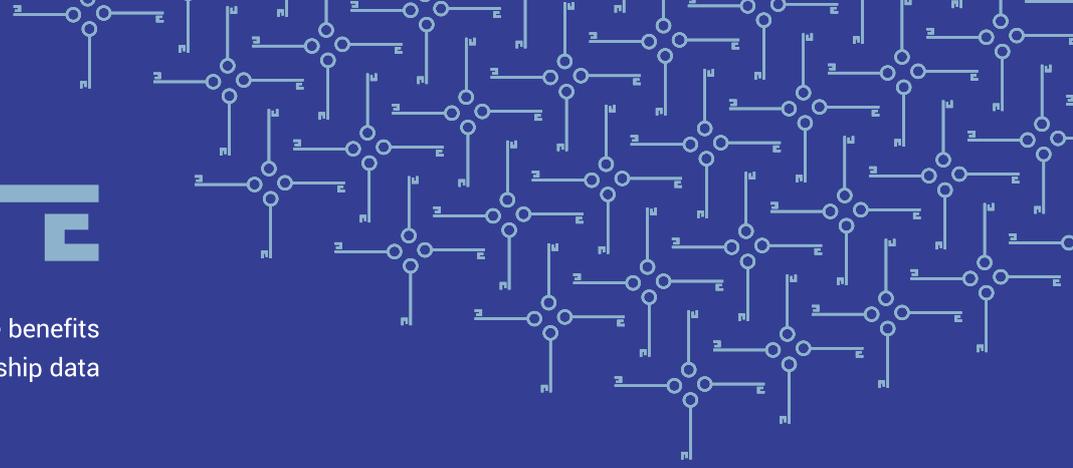




## Opening Extractives

Unlocking the benefits  
of ownership data



Scoping report

# Beneficial ownership transparency in the Philippines

Jointly implemented by the EITI and Open Ownership

April 2024



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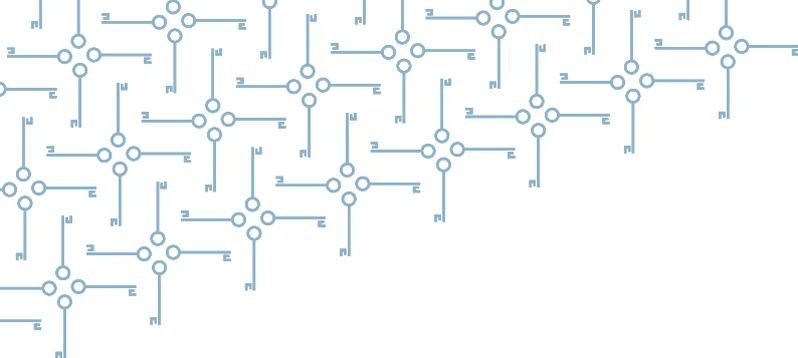
**Acknowledgements:**

The Opening Extractives programme wishes to acknowledge the following organisations for their contributions to this report:

- **Anti-Money Laundering Council (AMLC)** – the national financial intelligence unit tasked to implement the anti-money laundering laws of the Philippines. <http://www.amlc.gov.ph/>
- **National Privacy Commission (NPC)** – the national data privacy authority tasked to administer and implement the Data Privacy Act of 2012. <https://privacy.gov.ph/>
- **Philippine Extractive Industries Transparency Initiative (PH-EITI)**  
– a multi-stakeholder initiative led by the Department of Finance tasked with implementing country commitments under the Extractive Industries Transparency Initiative. <https://pheiti.dof.gov.ph/>
- **Securities and Exchange Commission (SEC)** – the national corporate registrar in charge of regulating and supervising all corporations, partnerships associations, capital market participants and the securities and investment instruments market. <https://www.sec.gov.ph/>

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## Executive summary

The Philippines is an early implementer of a beneficial ownership (BO) disclosure regime in the Asia-Pacific region. Since 2001, it has enacted anti-money laundering and combating the financing of terrorism (AML/CFT) laws and a robust set of regulations that effectively mandate BO disclosure. These efforts were driven mainly by the country's aim of following international recommendations set by the Financial Action Task Force (FATF).

Despite these regulatory initiatives, the country found itself re-included in the FATF list of "jurisdictions under increased monitoring" or "grey list" in 2021 and remains on this list at the time of writing.<sup>1</sup> As a result, there has been increased pressure to strengthen its AML/CFT programme, which includes beneficial ownership transparency (BOT). The Securities and Exchange Commission (SEC) is at the forefront of these initiatives due to its multiple roles as corporate regulator, company registry and AML/CFT supervising authority, with the SEC Chairperson as member of the Anti-Money Laundering Council (AMLC).

At the same time, the Philippines is also implementing BOT reforms as part of its commitment under the Extractive Industries Transparency Initiative (EITI). The Philippine Extractive Industries Transparency Initiative (PH-EITI) is the government-led multi-stakeholder initiative implementing the EITI Standard. It supports the implementation of BOT reforms in parallel with the SEC by ensuring extractive companies' compliance with its reporting requirements. In 2021, the Philippines became a participating country in Opening Extractives (OE), a global five-year programme delivered by the EITI and Open Ownership (OO) to support compliance with EITI Requirement 2.5 on beneficial ownership (BO).

Using the Open Ownership Principles for effective beneficial ownership disclosure (OO Principles) and Requirement 2.5 of the EITI Standard, this report analyses the country's current policy and legal environment with the aim of providing mid- to long-term recommendations to advance BOT reforms within and beyond extractives. For this reason, they are mainly targeted to the SEC. However, a separate document on short-term actions will be published later this year, setting out more specific recommendations for PH-EITI to support its efforts to strengthen compliance with Requirement 2.5.

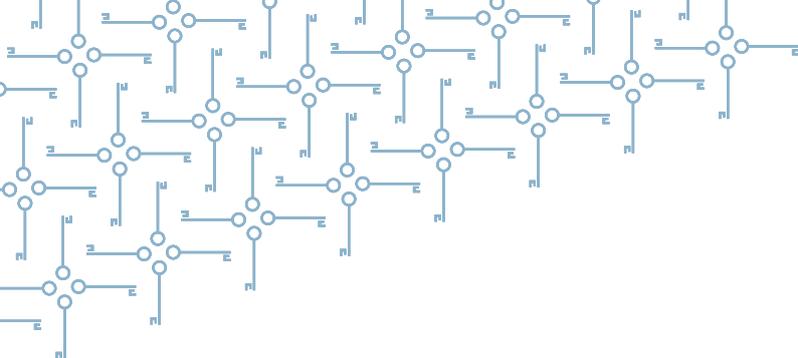
### **The main recommendations in this report are for the Philippine government to:**

- Enact a comprehensive law on BOT, aligned with international standards, that will contain a unified definition of BO; broaden the current scope to all types of corporate vehicles; and embody the policy considerations as well as purpose for processing and publishing certain BO data.
- Improve data collection to allow for more details, aligned with global best practice on the level of detail and disaggregation, especially where BO is held indirectly or ownership/control is exerted informally.

- Provide a single responsible agency, such as the SEC, with a clear legal mandate and adequate resources to establish, publish and maintain a central BO register.
- Establish a strong data verification mechanism, including providing public access to certain BO information that will enable interested parties to detect and report errors or discrepancies, thereby improving its accuracy.

**The following recommendations are specifically for the extractive sector:**

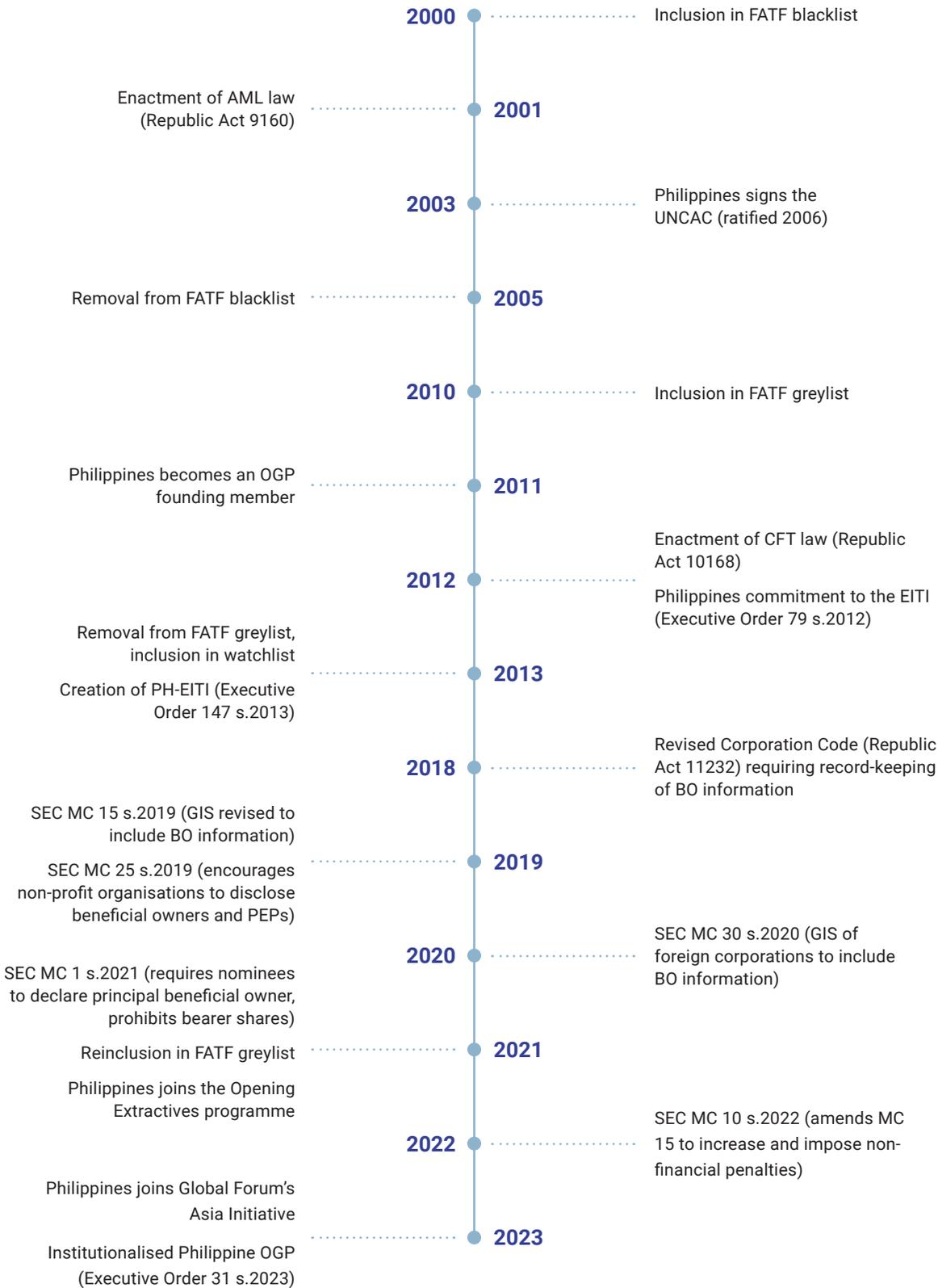
- Establish an enabling legal environment for the public disclosure of BO information for extractives, in accordance with Requirement 2.5 and the corrective actions from the 2021 EITI Validation of the Philippines, by legislative enactment or by executive policy amendment.
- Facilitate inter-agency cooperation to ensure data sharing and use across key agencies, including those that regulate and process extractive licensing and contracting, such as the Department of Environment and Natural Resources (DENR), the Department of Energy (DOE) and the Bureau of Internal Revenue.
- PH-EITI should coordinate with the SEC on the details of the BO disclosures that are expected from extractive companies under EITI Requirement 2.5, reflecting the same forms maintained by the SEC and used by PH-EITI for EITI reporting, e.g. information on politically exposed persons (PEPs).
- PH-EITI should maintain its BO extractive register in the interim, ensuring that the details of BO data required under EITI Requirement 2.5 are disclosed and updated, as well as expanded to include license applicants for: extractive projects; non-metallic and oil and gas companies; small-scale mining; extractive-industry service providers; and other segments of the extractive industries value chain.
- The EITI multi-stakeholder group (MSG) should coordinate with the SEC on BO data verification for extractive companies.
- The DENR and DOE should integrate BO data use as part of their licensing and contracting review process.
- Finally, the MSG should regularly assess the comprehensiveness of disclosures and report on extractive entities that fail to submit all or some BO information to improve BO disclosure compliance.

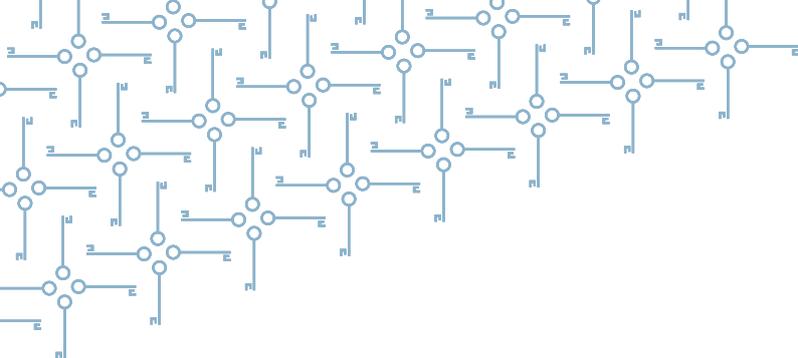


# Acronyms and abbreviations

|                  |   |
|------------------|---|
| <b>AMLA</b>      | Anti-Money Laundering Act   |
| <b>AMLC</b>      | Anti-Money Laundering Council   |
| <b>AML/CFT</b>   | Anti-money laundering/combating the financing of terrorism                                    |
| <b>APECO</b>     | Aurora Pacific Economic Zone and Freeport Authority   |
| <b>BO</b>        | Beneficial ownership  |
| <b>BOD</b>       | Beneficial Ownership Declaration (form)   |
| <b>BODS</b>      | Beneficial Ownership Data Standard  |
| <b>BOTD</b>      | Beneficial Ownership Transparency Declaration (form)  |
| <b>BOT</b>       | Beneficial ownership transparency   |
| <b>BSP</b>       | <i>Bangko Sentral ng Pilipinas</i> (Central Bank of the Philippines)                          |
| <b>CEZA</b>      | Cagayan Economic Zone Authority   |
| <b>DENR</b>      | Department of Environment and Natural Resources   |
| <b>DOE</b>       | Department of Energy  |
| <b>DSA</b>       | Data-sharing agreement  |
| <b>eFAST</b>     | Electronic Filing and Submission Tool   |
| <b>EIPD-AMLD</b> | Enforcement and Investor Protection Department-Anti Money Laundering Division (under the SEC) |
| <b>EITI</b>      | Extractive Industries Transparency Initiative   |
| <b>EO</b>        | Executive Order   |
| <b>FATF</b>      | Financial Action Task Force   |
| <b>GIS</b>       | General Information Sheet   |
| <b>GOCC</b>      | Government-owned or controlled corporations   |
| <b>IC</b>        | Insurance Commission  |
| <b>IRR</b>       | Implementing Rules and Regulations  |
| <b>LEA</b>       | Law enforcement authority/agency  |
| <b>MC</b>        | Memorandum Circular   |
| <b>MOA/MOU</b>   | Memorandum of Agreement/Memorandum of Understanding   |
| <b>MSG</b>       | Multi-stakeholder group (EITI)  |
| <b>NPC</b>       | National Privacy Commission   |
| <b>NPO</b>       | Non-profit organisation   |
| <b>OGP</b>       | Open Government Partnership   |
| <b>OO</b>        | Open Ownership  |
| <b>PAGCOR</b>    | Philippine Amusement and Gaming Corporation   |
| <b>PDF</b>       | Portable document format  |
| <b>PEP</b>       | Politically exposed person  |
| <b>PH-EITI</b>   | Philippine Extractive Industries Transparency Initiative                                      |
| <b>SEC</b>       | Securities and Exchange Commission  |
| <b>SOE</b>       | State-owned enterprise  |
| <b>TIN</b>       | Tax identification number   |

# Timeline





# 1. Introduction and background

Beneficial ownership transparency in the Philippines has its roots in the country's efforts to combat money laundering and terrorist financing. These efforts were driven mainly by the FATF<sup>2</sup> and commitments under the Asia/Pacific Group on Money Laundering,<sup>3</sup> of which the Philippines is a founding member and was co-chair from 1998 to 2000.

The Philippines enacted AML/CFT laws, such as the Anti-Money Laundering Act (AMLA) in 2001<sup>4</sup> and the Terrorism Financing Prevention and Suppression Act in 2012<sup>5</sup> since its inclusion in the FATF list of "non-cooperative countries and territories" or "blacklist" in 2000.<sup>6</sup> Under this AML/CFT regime, BO disclosure became mandatory through various regulations issued by the AMLC, the country's financial intelligence unit, or separately by supervisors, such as the *Bangko Sentral ng Pilipinas* (BSP), the Insurance Commission (IC), the SEC, the Philippine Amusement and Gaming Corporation (PAGCOR), the Cagayan Economic Zone Authority (CEZA) and the Aurora Pacific Economic Zone and Freeport Authority (APECO).

The SEC leads the implementation of BO disclosure in the Philippines. This is in line with its mandate as corporate regulator, company registry and supervising authority under the AMLA. Pursuant to this, the SEC has issued several regulations relating to BOT: **SEC Memorandum Circular (MC) 15, s. 2019**<sup>7</sup> (MC 15), as amended by **SEC MC 10, s. 2022**<sup>8</sup> (MC 10), contains comprehensive guidance on BO disclosure for domestic stock and non-stock corporations and penalties for violation, while **SEC MC 30, s. 2020**<sup>9</sup> (MC 30) extends this requirement to SEC-registered foreign corporations. **SEC MC 1, s. 2021**<sup>10</sup> (MC 1) contains additional guidelines that aim to promote BOT by explicitly prohibiting the issuance, sale or public offering of bearer shares and bearer share warrants,<sup>11</sup> and requiring nominee directors, trustees, shareholders and incorporators to declare their principals.

Apart from the SEC, stock exchanges and issuers of securities,<sup>12</sup> as well as "covered persons" under the AMLA,<sup>13</sup> are also required to collect and maintain BO information as part of their due diligence. Every corporation (whether stock or non-stock, domestic or foreign) doing business in the Philippines is likewise required to keep and preserve at its principal office all BO-related information.<sup>14</sup> This is in line with the FATF's recommended multi-pronged approach, which the Philippines adopts, in collecting, storing and sharing BO information.

There is as yet no economy-wide publicly accessible BO register in the Philippines. Access to BO information collected and held by the SEC is limited to law enforcement agencies (LEAs) and other competent authorities.

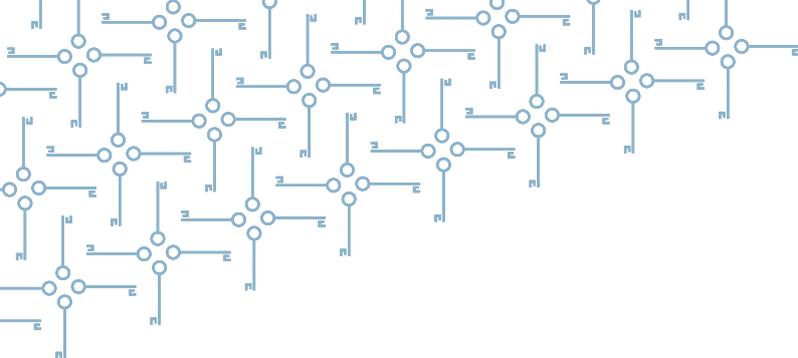
Despite this, the Philippines has adopted other international initiatives that promote BOT. For instance, it has progressively implemented EITI Requirement 2.5, which requires, among others, public disclosure of extractive companies' BO information.<sup>15</sup> Since 2021, PH-EITI has published on its website a BO database of extractive companies that consented to such publication based on company declarations submitted to the SEC and PH-EITI.<sup>16</sup> This includes information on whether the declared beneficial owner is a PEP.

The Philippines also implements BOT as a party to the United Nations Convention Against Corruption, and as part of its commitments under the Open Government Partnership (OGP) and Global Forum on Transparency and Exchange of Information for Tax Purposes. In light of its continued inclusion in the FATF grey list,<sup>17</sup> the Philippines aims to continue strengthening its AML/CFT programme – which includes BOT – in line with international standards.

## Scope and methodology

As the BO disclosure regime in the Philippines is set against the broader legal and institutional framework of the country's AML/CFT regime, this assessment focuses on the SEC and its general BO disclosure regulations, i.e. MC 15, MC 30, MC 10 and MC 1. It likewise considers alignment with the EITI Standard for extractive companies, particularly on key technical aspects of Requirement 2.5 on BOT and the corrective actions from the 2021 Validation of the Philippines.<sup>18</sup>

The research was conducted through desk review and interviews with critical stakeholders and regulators, including PH-EITI, the SEC, the AMLC and the National Privacy Commission (NPC). It uses the OO Principles<sup>19</sup> as a framework for identifying the challenges and opportunities for the Philippines to implement a robust BO disclosure system on an economy-wide basis.



## 2. Open Ownership Principles for effective beneficial ownership disclosure in the Philippines

Below is a brief analysis of how the Philippines' BO disclosure regime compares against the nine OO Principles:

### 2.1 Definition

#### Principle

Beneficial ownership should be clearly and robustly defined in law, with sufficiently low thresholds set to ensure all relevant ownership and control interests are disclosed

#### Elements of Principle

- A robust and clear definition of beneficial ownership should state that a beneficial owner should be a natural person, and should cover all relevant forms of ownership (including deriving benefit from) and control, specifying that ownership and control can be held both directly and indirectly.
- There should be a single, unified definition in law in primary legislation, with additional secondary legislation referring to this definition, specifying what the definition means when applied to certain corporate vehicles, such as legal arrangements or state-owned enterprises (SOEs).
- Legislation should include a broad, catch-all definition of what constitutes beneficial ownership, coupled with a non-exhaustive list of example ways in which beneficial ownership can be held.
- Thresholds should be set sufficiently low so that all relevant individuals with beneficial ownership and control interests are included in declarations. A risk-based approach should be considered to set lower thresholds for particular sectors, industries, or people, depending on the policy objectives set.

> continues on page 11

- Definitions should include a clear prohibition of who does not qualify as a beneficial owner, including agents, custodians, intermediaries, and nominees acting on behalf of another person qualifying as a beneficial owner.
- When the criteria to be a beneficial owner are met through two or more individuals acting jointly, each individual should be considered a beneficial owner, and each individual should be assumed to have combined ownership and control in full. Definitions should specify when joint action is assumed.
- Where no individual meets the definition of a beneficial owner, countries should require the disclosure of the name of a natural person in a senior role with managerial responsibility for the corporate vehicle in question, making clear that this person is not a beneficial owner.

The definition of BO is not found in primary legislation. Instead, it is laid down in a number of administrative rules that form part of the AML/CFT regime.

The SEC defines beneficial owners as “any natural person(s) who ultimately control(s) or exercise(s) ultimate effective control over the corporation”.<sup>20</sup> There is a slight variation in the definition by the AMLA, which refers to beneficial owners as “any natural person who ultimately owns or controls the customer and/or on whose behalf a transaction or activity is being conducted, or has ultimate effective control over a juridical person or legal arrangement”.<sup>21</sup> Meanwhile, the rules implementing the Securities Regulation Code, which has as its principal policy the development of capital market and protection of investors (rather than AML), defines beneficial owners as “any person who directly or indirectly has or shares voting power and/or investment returns or power”.<sup>22</sup>

The threshold for establishing BO on the basis of ownership and/or voting rights likewise varies: 25% of voting rights, shares or capital for all companies registered under the SEC; 20% ownership or voting rights for AML covered persons; and 5% or 10% holders of securities for publicly listed companies, depending on the type of security and the individual’s relationship to the company.<sup>23</sup> (See Table 1: Examining definition/s of BO in the Philippines.)

There is no distinct reporting threshold for the extractive industry; as such, the sector continues to follow the reporting standards of the SEC. However, the 2023 EITI Standard encourages the adoption of an ownership threshold of 10% or lower for the reporting of BO of oil, gas and mining companies.<sup>24</sup> The MSG has also previously adopted a reporting threshold of 5%.

Though not found in primary legislation, the definitions of BO in the country contain all the elements of a sufficiently robust definition.

The current body of laws expressly provides that a beneficial owner:

- Must be a natural person
- Must ultimately own, control or exercise “ultimate effective control” over the corporation or juridical person
- Can exercise ownership and control either directly or indirectly, through actual or a chain of ownership using a range of mechanisms (e.g. shares or equity interest; voting rights; ability to elect majority of the board; ability to exert dominant influence over company management or policies; through intermediaries such as nominee shareholders; among others).

The definition used by the SRC Implementing Rules and Regulations (IRR) also includes provisions that consider individuals benefiting from securities, for example when they are owned by an immediate family member. The definition also includes a catch-all clause to cover possibilities not contemplated by particular provisions, i.e. natural person(s) ultimately owning, controlling or exercising ultimate effective control over the corporation through other means not falling under any of the categories listed under MC 15. Moreover, the varying disclosure thresholds reveal a risk-sensitive approach in capturing material ownership or control, with the maximum percentage of ownership interest or control (25%) being compliant with the FATF guidance.<sup>25</sup>

However, the lack of harmonisation may create challenges in consistently implementing BO disclosures based on a robust definition. In addition, current regulations fail to provide a distinct threshold requirement for extractives, as well as a definition of PEPs in the context of BO reporting. Requirement 2.5 calls for reporting PEPs who are beneficial owners, irrespective of the shares that they own or control.

### ***Recommendations***

1. Despite meeting many criteria for robustness, the definitions of BO in the Philippines are not presently harmonised, and they are set out only in administrative issuances and not in any statute or law passed by Congress. While this has not been observed to hinder implementation, it renders the definition of BO variable. Putting the definition in primary legislation would provide a central and unified meaning of BO.
2. Primary legislation should likewise set out the purpose of BO data collection, which will serve as a firm legal basis for all implementing rules and regulations on BOT. Having a clear policy purpose and a single, substantive definition will not only simplify referencing but also clearly establish BOT as a general norm, paving the way for enhancing BOT policies, programmes, systems and procedures.

3. MC 15 does not provide for the definition and treatment of BO by PEPs, which is a special case on account of the higher risk of conflict of interest or corruption inherent in this category of beneficial owners. The Philippines could consider integrating PEPs as part of the BO declaration requirements of the SEC or include this in primary legislation. This would also help the country comply with EITI Requirement 2.5.
4. MC 15 allows a natural person holding a director/senior management position to be declared as a beneficial owner when no natural person can be identified as ultimately owning or exercising control over the corporation. In this instance, the rules must clearly state they are not beneficial owners.
5. MC 15 does not expressly specify who is prohibited from being declared as beneficial owners. The SEC should come up with guidance by way of example on who may not be declared as beneficial owners. For instance, a nominee owner must clearly not be named as a beneficial owner.
6. The SEC should amplify and closely monitor the execution of its current BO disclosure policies to assess the adequacy and effectiveness of its definition of and disclosure threshold for BO. Such assessment should surface any gaps and loopholes that weaken implementation and compliance, and should lay the basis for policy review and reform, if necessary.

**Table 1: Examining the definition(s) of beneficial ownership in the Philippines**

| Elements of the definition      | Definition in SEC MC 15 (2019) [also applies to MC 30 (2020)]*                  | Definition in 2018 IRR of AMLA  | Definition in 2015 IRR of SRC  |
|---------------------------------|---|---|--|
| Natural person                  | Yes   | Yes   | Unspecified  |
| Ownership and control interests | Yes   | Yes   | Yes  |
| Indirect and direct interests   | Yes   | Yes   | Yes  |
| Disclosure threshold            | 25% of the voting rights, voting shares or capital of the reporting corporation | 20% shares, contributions or equity interest in a juridical person or legal arrangement | 5% of any class of equity securities 10% or more of any class of security held by directors, officers and stockholders |

\*PH-EITI has adopted the same definition and categories of “beneficial owner”, as set out in SEC MC 15.

| Elements of the definition            | Definition in SEC MC 15 (2019) [also applies to MC 30 (2020)]* |  | Definition in 2018 IRR of AMLA   | Definition in 2015 IRR of SRC  |
|---------------------------------------|--|--|--|--|
|                                       | Category   | Description  |  |  |
| Forms of economic or control interest | <b>A</b>   | “Natural person(s) owning, directly or indirectly or through a chain of ownership, at least twenty-five (25%) of the voting rights, voting shares or capital of the reporting corporation. This is without prejudice to ownership thresholds that may be imposed by other regulators.” | <p>“Beneficial Owner’ refers to any natural person who:</p> <p>(1) Ultimately owns or controls the customer and/or on whose behalf a transaction or activity is being conducted;</p> <p>(2) Has ultimate effective control over a juridical person or legal arrangement; or</p> <p>(3) Owns, at least, twenty percent (20%) shares, contributions or equity interest in a juridical person or legal arrangement.</p> <p>Control includes whether the control is exerted by means of trusts, agreements, arrangements, understandings, or practices, and whether or not the individual can exercise control through making decisions about financial and operating policies.”</p> | <p>Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of or direct the disposition of such security). A person shall be deemed to have an indirect BO interest in any security which is:</p> <ul style="list-style-type: none"> <li>• held by members of their immediate family, sharing the same household;</li> <li>• held by a partnership in which they are a general partner;</li> <li>• held by a corporation in which they are a controlling shareholder; or</li> <li>• subject to any contract, arrangement or understanding which gives them voting power or investment power with respect to such securities (with proviso).</li> </ul> <p>All securities of the same class that are beneficially owned by a person, regardless of the form of the BO, shall be aggregated in calculating the number of shares that shall be considered as beneficially owned by such person.</p> <p>A person shall be deemed to be the beneficial owner of a security if that person has the right to acquire BO within 30 days from the exercise of any option, warrant or right, or conversion of any security; or pursuant to the power to revoke a trust, discretionary account or similar arrangement; or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.</p> |
|                                       | <b>B</b>   | “Natural person(s) who exercise control over the reporting corporation, alone or together with others, through any contract, understanding, relationship, intermediary or tiered entity.”  |  |  |
|                                       | <b>C</b>   | “Natural person(s) having the ability to elect a majority of the board of directors/trustees, or any similar body, of the corporation.”  |  |  |
|                                       | <b>D</b>   | “Natural person(s) having the ability to exert a dominant influence over the management or policies of the corporation.”   |  |  |

| Elements of the definition            | Definition in SEC MC 15 (2019) [also applies to MC 30 (2020)]*  |  | Definition in 2018 IRR of AMLA | Definition in 2015 IRR of SRC   |
|---------------------------------------|---|--|--------------------------------|---|
|                                       | Category  | Description  |                                |   |
| Forms of economic or control interest | <b>E</b>  | Natural person(s) whose directions, instructions or wishes in conducting the affairs of the corporation are carried out by majority of the members of the board of directors of such corporation who are accustomed or under an obligation to act in accordance with such person's directions, instructions or wishes.   | (see page 14)                  | (see page 14)   |
|                                       | <b>F</b>  | Natural person(s) acting as stewards of the properties of corporations, where such properties are under the care or administration of said natural person(s).  |                                |   |
|                                       | <b>G</b>  | Natural person(s) who actually own or control the reporting corporation through nominee shareholders or nominee directors acting for or on behalf of such natural persons.   |                                |   |
|                                       | <b>H</b>  | Natural person(s) ultimately owning, controlling or exercising ultimate effective control over the corporation through other means not falling under any of the foregoing categories.  |                                |   |
|                                       | <b>I</b>  | Natural person(s) exercising control through positions held within a corporation (i.e. responsible for strategic decisions that fundamentally affect the business practices or general direction of the corporation, such as the members of the board of directors or trustees or similar body within the corporation; or exercising executive control over the daily or regular affairs of the corporation through a senior management position). This category is only applicable in exceptional cases where no natural person is identifiable who ultimately owns or exerts control over the corporation, the reporting corporation having exhausted all reasonable means of identification and provided there are no grounds for suspicion." |                                |   |
| Mechanisms of holding interest        | <p>"Beneficial owner" refers to any natural person(s) who ultimately own(s), control(s) or exercise(s) ultimate effective control over the corporation.</p> <p>This definition covers the natural person(s) who actually own or control the corporation as distinguished from the "legal owners", as defined herein.</p> <p>"Ultimate effective control" refers to any situation in which ownership/control is exercised through actual or a chain of ownership, or by means other than direct control.</p> |  |                                | "directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" |

## 2.2 Coverage

### Principle

Disclosure requirements should comprehensively cover all relevant types of entities and arrangements

### Elements of Principle

- Disclosure requirements should apply to all types of corporate vehicles, unless reasonably exempt.
- Any exemptions from full declaration requirements should be clearly defined and justified against policy aims, and they should be reassessed on an ongoing basis.
- Exemptions from disclosing beneficial ownership may be granted when an entity or arrangement is already disclosing sufficient information and this information is accessible through alternative mechanisms (e.g. for publicly listed companies listed on exchanges with sufficient disclosure requirements).
- Entities and arrangements exempt from disclosing their beneficial ownership should still be required to make declarations, including the basis for their exemption.
- All exemptions should be interpreted narrowly.

The present AML/CFT regime of the Philippines subjects a wide range of legal persons and arrangements to BO disclosure requirements, albeit through several modes depending on the applicable regulation and the disclosing entity covered. The list of AMLA “covered persons”<sup>26</sup> has evolved since 2001, comprising entities supervised and/or regulated by the BSP, the SEC, the IC, the PAGCOR, the CEZA and the APECO.<sup>27</sup> It includes not only financial institutions but also designated non-financial businesses or professions that are required to obtain BO information as part of their customer due diligence.

SEC MC 15 and MC 30 effectively expanded the earlier scope of BOT under this AML/CFT framework by requiring all SEC-registered corporations, stock and non-stock, domestic and foreign, to obtain and hold up-to-date information on their beneficial owners and to report them as part of their annual general information sheet (GIS).

MC 15 provides nine categories under one or more of which a beneficial owner may fall. (See Table 1: Examining definition/s of BO in the Philippines.) These categories, including a catch-all class, seemingly encompass all types of entities and arrangements through which ownership and control can be exercised. MC 15 likewise provides that for trusts, estates and partnerships owning at least 25% of the reporting corporation as part of their full chain of ownership, the natural person(s) owning or controlling the entity shall be disclosed as beneficial owner(s).<sup>28</sup>

The SEC has also issued specific guidelines with respect to certain legal arrangements:

- **SEC MC 1** requires nominee directors, trustees, shareholders and incorporators to disclose their nominators/principals to the SEC, and prohibits the issuance, offering and sale of bearer shares and bearer share warrants.
- **SEC MC No. 25, series of 2019**<sup>29</sup> encourages non-profit organisations (NPOs) to make publicly accessible information about their status and finances, including their beneficial owners, and requiring NPOs at Risk<sup>30</sup> to establish and record the true and full identity of their donors/sources of funds identified as PEPs.<sup>31</sup> These guidelines also consider immediate family members and close associates “known to have joint or sole beneficial ownership of a legal entity that is known to exist for a PEP” as PEPs.<sup>32</sup>

MC 15 does not provide for any exemption in its BO declaration requirement, not even for publicly listed companies, covered persons or institutions under the AMLA. However, despite its apparent all-encompassing nature, the disclosure regime’s scope is limited to corporations falling within the SEC’s jurisdiction. This means that certain legal entities are not required to declare their beneficial owners. These include state-owned enterprises (SOEs), known in the Philippines as government-owned or controlled corporations (GOCCs), which are evaluated and monitored by the Governance Commission for GOCCs,<sup>33</sup> as well as cooperatives that are governed by the Cooperative Development Authority.<sup>34</sup>

Moreover, while partnerships are governed by the SEC, they are not required to declare or maintain records about their beneficial owners. Partnerships are created by virtue of the Civil Code, not the Revised Corporation Code; it is the latter that requires corporations to keep BO records. Finally, although the SEC under MC 1 requires nominee trustees, directors, shareholders and incorporators to declare their nominators/principals, the arrangements required to report BO information are still limited to those in the nature of business trusts. The current set of regulations requiring BO disclosures does not cover other types of trust agreements, such as purely contractual trusts, which are not legally required to be registered.<sup>35</sup>

An expansion of the current coverage can help the country better comply with FATF Recommendation 25 on trusts and other legal arrangements, as well as EITI Requirement 2.5 with respect to BO data collection for SOEs.<sup>36</sup>

## *Recommendations*

1. The current set of BO disclosure regulations issued by the SEC is limited to legal entities falling within its jurisdiction. It does not currently cover GOCCs, cooperatives or other types of legal arrangements, such as purely contractual trusts, which are beyond the SEC's regulatory mandate. The enactment of a comprehensive BO law or amendment of laws can bridge this gap by widening the coverage of the country's BO disclosure regime to cover all types of corporate vehicles as well as various forms of trusts and other legal arrangements. This would also help the country comply with the recommendations in the latest Mutual Evaluation Report of the Philippines, as adopted by the Asia/Pacific Group on Money Laundering.<sup>37</sup>
2. Alternatively, it is recommended that there be an equivalent BO disclosure requirement for GOCCs<sup>38</sup> to help safeguard national interests as well as comply with EITI Requirement 2.5. The same applies to cooperatives to ensure that they are not being used as vehicles for illicit activities. It is also recommended that the SEC consider expanding the requirement of BO declaration to partnerships.
3. The relevant government agencies could develop detailed guidance<sup>39</sup> for the aforementioned entities as well as other types of corporate vehicles that may have specific and more complex considerations when applying the definition and reporting requirements. Relevant stakeholder input on the best methods of compliance should be considered in developing these guidelines.

## 2.3 Detail

### Principle

Beneficial ownership declarations should collect sufficient detail to allow users to understand and use the data

### Elements of Principle

- Information should be collected about:
  - the beneficial owner(s);
  - their status as beneficial owner(s) (i.e. the means through which ownership or control is held); and
  - the declaring corporate vehicle and individual submitting the declaration.
- Information should be collected in a standardised way through online forms, with clear guidance that facilitates compliance.
- Sufficient information should be collected to be able to unambiguously identify people, entities, and arrangements, using clear identifiers, and to enable the accuracy of the data to be verified to a reasonable level.
- Information required to be disclosed should be enumerated in law and limited to what is necessary to achieve the policy objective, with a clearly stated purpose and legal basis.
- Where beneficial ownership is held indirectly through multiple entities or arrangements, or ownership or control are exerted formally or informally through another natural person, sufficient information should be collected to understand full ownership chains.
- Where beneficial ownership can be expressed as a percentage, for example, when held through shares, absolute values should be collected.
- Information about any state ownership or control (domestic or foreign) and individuals holding positions of control specific to state-owned enterprises (e.g. senior managing officials) should be collected.

MC 15, together with MC 30, require all SEC-registered corporations to disclose their beneficial owners in a Beneficial Ownership Declaration (BOD) form annexed to the GIS, with the following information:

- Complete name (surname, given name, middle name and, if relevant, name extension (i.e. Jr., Sr., III))
- Residential address
- Nationality
- Date of birth
- Tax Identification Number (TIN), or passport number for foreign individuals who do not have a TIN<sup>40</sup>
- Percentage of ownership (for stock corporations) or percentage of voting rights (for non-stock corporations)
- Type of beneficial owner (direct or indirect) (for stock corporations)
- Category of beneficial owner (A to I)<sup>41</sup>

Information about the declaring entity or company identifiers, like SEC registration number and TIN, are supplied in the main GIS form. (A copy of the BOD form is annexed to this report as Appendix A.)

Declarants under MC 1 for trusts and similar arrangements are required to disclose the following details about their nominees and/or principals using a Beneficial Ownership Transparency Declaration (BOTD) form:

- Natural person: complete name, country of residence, nationality and TIN/passport number
- Corporation: name of entity, country of registration and SEC registration number (if SEC-registered); complete names, nationalities, positions and TIN/passport numbers of incorporators, directors and beneficial owners (if not SEC-registered)
- Trust: complete names, nationalities, countries of residence, TIN/passport numbers of trustors (or settlors), trustees and beneficiaries
- Others, e.g. partnership: name of entity, country of registration, complete names, nationalities, positions and TIN/passport numbers of managing partners, controlling persons and beneficial owners<sup>42</sup>

(A copy of the BOTD Forms are annexed to this report as Appendices B-1 and B-2.)

The data being collected could unambiguously identify the beneficial owners and potentially also the means through which they hold and exercise ownership or control of the corporation. For instance, the collection of birth dates, addresses and TIN/passport

numbers can serve as unique identifiers to facilitate reasonable verification of identity, if cross-checked against other sources of information. Similarly, the BOD form collects actual percentages of ownership or voting shares and requires declarants to specify their BO category and type of control. This could serve as a basis for verifying what the FATF refers to as a beneficial owner's status, or the means by which they exercise ownership or control.

The amount of detail gathered seems compliant with the policy objective of MC15 to ensure "timely access to adequate, accurate and current information on the beneficial ownership and control of SEC registered corporations by competent authorities".<sup>43</sup> If provided properly and completely, the BO details could allow competent authorities to use the information for regulation, law enforcement and other lawful purposes.

However, due to the current structure of the BOD form, the information collected to understand and establish ownership chains is insufficient. The form restricts the level of detail that can be captured on individual beneficial owners.<sup>44</sup> For instance, it provides a table where one row is allotted for every beneficial owner listed by the declaring company. The amount of data that can be collected per row is limited, and there is no space to declare intermediate legal entities where ownership is indirect (see Appendix A: BOD Form). The form also only collects total BO: it does not distinguish between direct and indirect ownership, and gives no instruction on how to represent BO that is held through a mixture of direct and indirect mechanisms.

EITI Requirement 2.5 encourages companies in the extractive sector to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner. It also requires countries to request disclosure of PEPs' BO regardless of their level of ownership.<sup>45</sup> The current BOD form does not allow collection of the foregoing information, critical to complying with EITI Requirements.<sup>46</sup>

## **Recommendations**

1. It is recommended that the SEC review and improve the BOD form to allow for more details, especially where BO is held indirectly or ownership/control is exerted informally. OO conducted an analysis in 2022 of the current BOD form and submitted recommendations to the SEC on certain improvements it could make to ensure the collection of high-quality structured data. Some of the recommendations included: restructuring the form so that each beneficial owner has a form to complete rather than a table; splitting Category A into two interest types, i.e. shareholding and voting rights; and other usability improvements, such as including instructions and guidance to explain key BO terminology or to link to detailed instructions.
2. To facilitate proper, complete and accurate declaration or disclosure, the form should contain clear accompanying guidance on how to represent BO held through a chain of direct and indirect ownership.

3. It is recommended that PH-EITI coordinate with the SEC on the details of the BO disclosures that are expected from extractive companies under EITI Requirement 2.5, reflecting the same in the corresponding BOD form used for EITI reporting, e.g. information on PEPs.
4. Separate guidance or reporting mechanisms, including forms, may be needed for certain types of corporate vehicles not yet covered by BO reporting requirements, e.g. GOCCs, partnerships, cooperatives and other types of trusts and legal arrangements.

## 2.4 Central register

### Principle

Data should be collated in a central register

### Elements of Principle

- Beneficial ownership disclosures should be collated and held within a central register.
- The central register should be an authoritative source of beneficial ownership information, with a designated responsible body.

The SEC serves as the central registry for BO disclosures in the Philippines by virtue of its broad mandate and powers as corporate regulator and AML/CFT supervising authority. It collects BO information through online submission by SEC-registered corporations of BOD and BOTD forms. It also gives access to this BO data to LEAs and other competent authorities by executing data-sharing agreements (DSAs). AMLC-supervised or -regulated entities that collect BO information require their customers to submit a copy of the BOD form submitted to the SEC.<sup>47</sup> PH-EITI also collates BO information for extractives by requiring companies to submit this BOD form. Despite there being multiple BO data collection points, the SEC remains the authoritative source of BO information in the country for registered legal entities.

A central BO register<sup>48</sup> can help the Philippines meet FATF requirements,<sup>49</sup> but the SEC currently does not maintain one. It responds to requests from competent authorities manually, i.e. by sharing copies of the received BOD forms that are filed and stored by company name. While the SEC is not required by law or its current guidelines to maintain such a register, MC 1 does require the SEC Information and Communications Technology Department to maintain an updated database of corporations and their BO disclosures

and to ensure that such information is kept confidential and will not be uploaded to the SEC's publicly accessible database.<sup>50</sup>

A publicly available BO register for extractives is likewise encouraged under EITI Requirement 2.5. As such, albeit provisional in nature, PH-EITI is hosting on its website a public BO register for extractive companies that have consented to public disclosure.<sup>51</sup> The register contains the names of beneficial owners, their nationalities, countries of residence, categories of BO and percentage of ownership. It also contains information on whether the beneficial owner is a PEP. The published information is based on the SEC BOD form and the PEP declaration form submitted to PH-EITI.

The PH-EITI extractive register is the only publicly accessible BO register in the country. However, since publication is voluntary, information in the portal is limited to only about 50 companies in the metallic mining sector, followed by a few non-metallic and oil and gas companies. The 2021 EITI Validation Report notes the lack of systematic public disclosure of all extractive companies' BO data. To address the comprehensiveness, the report also recommends expansion of BO data disclosure to extractive-industry service providers and other segments of the extractive industries value chain.<sup>52</sup>

### **Recommendations**

1. It is recommended that a single responsible agency, such as the SEC, be given a clear legal mandate and adequate resources to establish and maintain a central BO register. Such a register should include BO information on corporate vehicles that are currently outside the scope of the current disclosure regime, e.g. GOCCs, cooperatives, partnerships and trust arrangements, once coverage is expanded to include these types of entities and arrangements.
2. In the interim, it is recommended that PH-EITI maintain its current BO extractive registry, ensuring that the details of BO data required under EITI Requirement 2.5 are disclosed and updated, as well as expanded to include non-metallic and oil and gas companies; small-scale mining; extractive-industry service providers; and other segments of the extractive industries value chain.
3. In the long term, it is recommended that PH-EITI and the SEC consider embedding EITI requirements for regular BO reporting obligations of extractive companies with the SEC.

## 2.5 Access

### Principle

Sufficient information should be accessible to all data users without undue restrictions

### Elements of Principle

- Sufficient information should be accessible to each data user group that can contribute to meeting intended policy aims.
- All government users and additional user groups whose access is justified to meet specific policy aims should have direct and rapid access to the data they require, on a per-record basis (searchable by both the name of the corporate vehicle and the beneficial owner) and as bulk data.
- The public should have access to a clearly defined subset of information that is sufficient for them to understand and meaningfully use the data, free of charge.
- Data should be available without barriers to access, search, use, and share the data, such as identification or registration requirements, and restrictive search functionality or licensing.
- The publication of information should be proportional to the infringements on privacy, by clearly establishing a broad purpose and legal basis, in line with privacy and data protection legislation, and by understanding and mitigating potential negative effects of the publication of data.
- Disclosure regimes should permit withholding the publication of certain data on a case-by-case basis as part of a protection regime to mitigate disproportionate risks to personal safety. The grounds for withholding the publication of any data should be clearly defined, proportionate, fairly applied, and published.
- Where information is exempt from disclosure to the register, or withheld from publication, the exemption should be clearly defined, justified, and narrowly interpreted, and the publicly available information should note the reason information has been exempted from disclosure or withheld from publication.

The Philippine Constitution sets forth the state policy of full public disclosure of all its transactions involving public interest, and guarantees the right of the people to information on matters of public concern, subject to reasonable conditions and limitations as prescribed by law.<sup>53</sup>

Executive Order No. 2 (EO 2), known as the EO on Freedom of Information, was issued in 2016 to provide guidelines for operationalising, at least in the executive branch, the people's constitutional right to information and the state policies to full public disclosure and transparency in the public service.<sup>54</sup> It provides that "access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence".<sup>55</sup>

### *General public access*

At present, BO data collated by the SEC is not accessible to the general public. This is expressly provided in MC 15, which states that the BOD form, unlike the rest of the GIS, "shall not be uploaded to the Commission's publicly accessible electronic database", although "the information shall, nonetheless, be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes".<sup>56</sup> MC 1 requires information on the BOTD form to be "kept confidential".<sup>57</sup> Information on registered companies' legal owners as indicated in the GIS<sup>58</sup> remain publicly available, with the exception of the TIN, subject to a fee. For now, the only publicly accessible BO register in the Philippines is that of PH-EITI,<sup>59</sup> where 50 out of 79 extractive companies either fully or partially participated in disclosing BO information as of 2021.<sup>60</sup>

The Data Privacy Act of 2012 (DPA)<sup>61</sup> has been mainly cited as the legal limitation to the right to access information, including on BO. The law is even included in the recitals of EO 2. The DPA protects individual personal information in information and communications systems in both the government and the private sector by setting out the policy, principles, criteria and rules for the lawful processing<sup>62</sup> of personal data. Since BO information involves the personal data of individuals, its processing falls within the DPA.<sup>63</sup> The SEC refers to the DPA as the statutory basis for the non-publication of BO disclosures.

However, the NPC Privacy Policy Office clarified that for as long as the general data privacy principles of transparency, legitimate purpose and proportionality are met, there is no conflict with the provisions of the DPA and publication of certain BO information.<sup>64</sup> It cites, for instance, the NPC's advisory opinion to PH-EITI<sup>65</sup> where it found that EO No. 79 s. 2012<sup>66</sup> (committing the country's support and participation to the EITI) and EO No. 147 s. 2013<sup>67</sup> (creating PH-EITI) provided sufficient legal bases to process and publish personal data. Considering the stated purposes of publication, i.e. transparency and accountability in the extractive industries as well as possible prevention of illicit activities, the NPC said that the publication "should contain only the information necessary to achieve this purpose". It advised PH-EITI to "carefully assess" the necessity and

proportionality of publishing sensitive personal information, such as TINs and dates of birth, and reminded PH-EITI to provide adequate notice and information to beneficial owners regarding publication and its purpose.<sup>68</sup>

Under Requirement 2.5(c), implementing countries are required to request BO information from extractive companies, and extractive companies are required to publicly disclose BO information. The Philippines, as an EITI-implementing country, has made initial progress on addressing Requirement 2.5. However, the 2021 Validation of the Philippines<sup>69</sup> noted that while the SEC has started collecting BO data from all extractive companies, there are regulatory constraints that hinder the publication of BO data given the lack of legal requirements to publish BO data and the provisions of the DPA. Because of confidentiality constraints, PH-EITI has worked with EITI reporting companies to execute waivers allowing publication of BO data. Following the 2021 Validation, the PH-EITI MSG approved a resolution creating a technical working group on BOT and proposed amendments to EO No. 147 (2013), which includes a new provision on the mandatory public disclosure of BO data in the extractive sector. The Department of Finance, as the lead agency for the EITI in the Philippines, is also looking at options for legislative advocacy that includes BOT provisions.

### *Access by competent authorities*

The SEC has issued the following guidelines on who can access BO data:

- Competent authorities in the Philippines and other countries with existing DSAs or Memorandums of Agreement/Understanding (MOAs/MOUs) on information-sharing with the SEC may be furnished copies of the BOD form in the GIS upon request.
- Competent authorities without a DSA or MOA, with the SEC intending to gain access to the BOD form in the GIS, will be asked to enter into such a DSA or MOA.
- A foreign competent authority/LEA of any country whose laws grant reciprocal assistance to the Philippines may likewise be furnished a copy of the BOD form. Similar access shall also be granted to competent authorities of foreign jurisdictions which are signatories to the International Organization of Securities Commissions' Multilateral MOU Concerning Consultation and Cooperation and the Exchange of Information.<sup>70</sup>

To date, no fewer than 18 government agencies have already entered into a DSA with the SEC.<sup>71</sup> The AMLC is one of those institutions, and it freely and frequently exchanges both legal and BO information with the SEC pursuant to a DSA.<sup>72</sup> According to the SEC Enforcement and Investor Protection Department-Anti Money Laundering Division (EIPD-AMLD), the execution of DSAs has streamlined the process of sharing BO information.<sup>73</sup>

There is even a dedicated team in the SEC handling BO data requests. However, since the SEC does not maintain a central register, the manual process of requesting and exchanging BO information takes time. This manual exchange effectively limits access to the data and deters timely and effective data use.

Efforts are currently underway to enhance the accuracy, accessibility and usability of BO data for the SEC, LEAs and other competent authorities. The SEC cites the Electronic Filing and Submission Tool (eFAST) and the Company, Investments, and Financial Statistical System as two systems that are expected to make submission of SEC reportorial requirements (including the GIS/BOD form) easier and faster; to create an electronic database that is searchable; and to support certain compliance monitoring and enforcement functions.

At the time of writing, there is also a draft DSA between the SEC and the DENR. Once signed, this would allow access to BO data by licensing authorities which could be used to determine eligibility as well as assess conflicts of interest or risks in granting licenses or permits specifically for extractives.<sup>74</sup>

### **Recommendations**

1. In pursuing its digital transformation plans, it is recommended that the SEC ensure that information on SEC-registered corporations, including BO data, will be more systematically collated and made accessible in a structured format using an open standard license in a system compliant with data protection principles.
2. The system should also be designed to enhance the usability of BO and other data, especially by LEAs and other competent authorities, including those with authority to issue licenses or contracts in the extractive sector, i.e. by providing them direct access to the BO data that is searchable and downloadable in bulk formats. Providing access for authorities issuing licenses and contracts for the extractive sector will also assist with meeting EITI Requirement 2.5.
3. The system should also accommodate access to centralised BO information on all types of corporate vehicles for relevant data users, in the case that disclosure requirements are extended to corporate vehicles currently outside the scope of the regime.
4. In establishing a central BO register, the SEC should consider allowing public access to certain BO information while complying with data privacy principles under the DPA. OO provides practical guidance on making central BO registers public by, among others, implementing a system of layered access (i.e. making a smaller subset of data available to the public, omitting data fields that are particularly sensitive and unnecessary from data collection or publication), which can mitigate potential negative effects of publication.<sup>75</sup>

5. The Philippines should consider laying down the policy and purpose for processing BO information in primary legislation. This will serve to strengthen the legal basis for providing access to BO data to a range of users beyond those who may currently secure access through a DSA or MOA/MOU.
6. Considering the extractive sector has already commenced the publication of its BO data in line with EITI Requirement 2.5, notwithstanding the current regulatory limitations, it is recommended that efforts to support the establishment of an enabling legal environment for the public disclosure of BO information for the extractive industries be maintained by legislative enactment of an EITI bill or by executive policy amendment.

## 2.6 Structured data

### Principle

Beneficial ownership information should be collected, stored, and shared as structured and interoperable data

### Elements of Principle

- Beneficial ownership data should be collected, stored, and shared as structured data in a way that can be used to identify all parties and describe the full range of relationships that can exist in a beneficial ownership declaration, using clear identifiers.
- Data should conform to a specified data template and format, with an appropriate licence and sufficient documentation, including a publication policy.
- Sufficient information should be captured to create an auditable record, including dates and reasons for specific changes.
- Data should be available digitally, including in machine-readable formats.
- Data should be auditable by users by making it available in a range of ways, including in a browsable format, a bulk format, on a per-record basis, and via an application programming interface (API).

Since 2021, the SEC requires submission of the GIS, with the BOD form, through its online submission tool, eFAST.<sup>76</sup> The GIS is submitted in two formats: (1) a multi-page portable document format (PDF) with text layer of the accomplished but unsigned form,

and (2) a multi-page PDF high-resolution scan of the document with the signatories and notarisation pages.<sup>77</sup> The reporting company downloads the template form in Excel format, then saves and uploads it as a PDF, using eFAST. The BOTD form is likewise downloaded in Excel format and submitted to the SEC as a PDF, using Google Forms.

By requiring all companies to enrol in and submit reports through eFAST,<sup>78</sup> the SEC is better placed to potentially collect machine-readable data. However, its current strategy is to continue using Excel templates, as it is better understood by declarants and civil servants in the Philippines, and it avoids the additional implementation costs and resource requirements of implementing an online form.<sup>79</sup>

In its current state, the BOD form is generally static and does not yet standardise the data captured for ease of verification or cross-referencing between databases within and across jurisdictions. It also does not generate a unique identification number for each person, only a company-level ID number associated with the GIS of the company. An interactive, online form could improve the quality of data captured and make the process of declaring the GIS and BO information easier for many declarants. Using such a form to collect high-quality, standardised data – for example, in line with Beneficial Ownership Data Standard (BODS) guidance<sup>80</sup> – would make it easier for officials to connect data from different entities to better understand all the entities linked to a person and capture all the interests that a beneficial owner has in any number of entities and any potential entity types.

Nevertheless, eFAST is expected to help enhance the accuracy, accessibility and usability of BO data for the SEC, LEAs and other competent authorities. The SEC has mentioned that eFAST is part of a system that would facilitate the submission of SEC reportorial requirements and create an electronic database that is searchable.

The system is supposed to be capable of generating up-to-date reports containing statistics and information on SEC-registered entities, and even of supporting certain compliance monitoring and enforcement functions through red flagging and alert mechanisms. Further technical work on the system as part of the SEC's digital transformation programme is progressing.

## **Recommendations**

1. It is recommended that the SEC pursue its digital transformation goals and plans to deliver on the promise of better accuracy, accessibility, interoperability and usability of company information, including BO data, for use by LEAs and other competent authorities, including those with authority to issue licenses or contracts in the extractive sector. OO's January 2022 Forms review<sup>81</sup> provides actionable advice on how to capture high-quality, structured BO data, while OO's BODS guidance focuses on delivering interoperable data which can be more easily used or combined with other datasets; reduce costs; and help to achieve policy goals, such as increasing data use and functionality.<sup>82</sup>

2. The SEC should ensure that the eFAST system moves towards more comprehensive and systematic data collection to create a database that can make BO information digitally available in machine-readable formats, while maintaining compliance with data privacy principles.
3. The SEC should consider integrating these data infrastructure aspects in their technical policy reviews and proposals, in line with its efforts to comply with the FATF Recommendations.

## 2.7 Verification

### Principle

Measures should be taken to verify the data.

### Elements of Principle

- Measures should be taken to verify information about:
  - the corporate vehicle(s);
  - the beneficial owner(s);
  - their status as beneficial owner(s) (i.e. the means through which ownership or control is held); and
  - the individual(s) making the declaration.
- Mechanisms to verify the information when it is submitted should include:
  - ensuring values conform to known and expected patterns;
  - ensuring values are real and exist by cross-checking information against existing authoritative systems and other government registers; and
  - checking supporting evidence against original documents.
- After information has been submitted, the responsible agency should proactively check the information to identify potential errors, inconsistencies, and outdated entries, and query, remove, or update the data where necessary. The responsible agency should have the legal responsibility, mandate, and powers to do so.

> continues on page 31

- Mechanisms should be in place to raise red flags, both by requiring parties dealing with beneficial ownership data to report discrepancies and by setting up systems to detect suspicious patterns based on experience and evidence.
- Ownership types that are difficult or impossible to verify (e.g. bearer shares) should be prohibited.

Apart from conducting desk review and manual audits, there appears to be no established mechanism for regularly verifying the BO data submitted to the SEC. While an initial review takes place when the GIS/BOD form is submitted through eFAST, this review is confined to the image quality of the scanned PDF and compliance with the prescribed template.<sup>83</sup> Filings that do not conform with the prescribed image quality or template are reverted to the reporting entity with notice of resubmission. During this stage, none of the fields' content is verified. The system does not require the submission of supporting documents, nor is there any indication of cross-checking against other information sources. The responsibility for ensuring the accuracy and completeness of the report still lies with the reporting entity on pain of sanctions.

In principle, verification can be done by the SEC "at any reasonable time" through "on-site inspection of the books and records of the corporation and/or other means available".<sup>84</sup> This may include "information that may be obtained from other sources such as the books and records of other corporate entities and data gathered by law enforcement and other government agencies and/or the AMLC in the exercise of their respective functions".<sup>85</sup> The SEC has mentioned that it conducts regular desk reviews of BO information using a risk-based approach and based on requests from the AMLC and LEAs.<sup>86</sup> It also said that it checks BO compliance as part of the AML/CFT audit examination of covered persons and NPOs.<sup>87</sup> During the audit, examiners supposedly determine the corporations' level of understanding on BO and their compliance with reportorial requirements.<sup>88</sup>

In addition, under the AML/CFT regime, covered persons – such as financial institutions and other entities regulated by the AML/CFT supervisors (the BSP, the SEC, the IC, the PAGCOR, the CEZA and the APECO) – are required to report to the AMLC "covered transactions" and "suspicious transactions", as defined by law.<sup>89</sup> Although not necessarily based solely on discrepancies found in BOD forms, these discrepancies are taken into account. Depending on the nature of the discrepancy reported, consequent government action may include investigation; determination of probable cause; inquiry into bank deposits; issuance of freeze order; and criminal and civil (forfeiture) prosecution. The SEC also expressly prohibits bearer shares or bearer share warrants,<sup>90</sup> an ownership type that is difficult to verify.

It may be worth mentioning that eFAST, together with the SEC's other digitalisation projects, is expected to have features that can support certain compliance monitoring and enforcement functions through red flagging and alert mechanisms. Further technical work on this endeavour is purportedly progressing, although details are not yet available at this time.

Insofar as verification of extractive companies' BO data is concerned, the EITI Standard requires the MSG to assess any existing mechanisms for assuring the reliability of BO information and agree on an approach for corporate entities within the scope of Requirement 2.5(c) to assure the accuracy of the BO information they provide. This could include requiring companies to attest the BO declaration form through sign-off by a member of the senior management team or senior legal counsel, or to submit supporting documentation.<sup>91</sup> The BOD form on which PH-EITI relies for BO reporting is notarised (i.e. subscribed and sworn to by the corporate secretary or authorised person before a notary public), which would provide penalties for perjury for any misinformation. One of the expected outcomes in the draft Sixth OGP National Action Plan is for PH-EITI and the MSG to conduct "a joint BO data validation exercise for the extractive sector in cooperation with the SEC".<sup>92</sup>

### **Recommendations**

1. As the Philippines undertakes measures to address its FATF deficiencies, which include increasing the level of assurance that BO information is accurate (especially for use by LEAs), the SEC itself acknowledges that it must establish a strong system for BO data verification. To strengthen the BOT regime, this system should include verification checks that cover both the identity and status of beneficial owners, or the means by which they exercise ownership or control.
2. The SEC has expressed the need to improve personnel capacities. Thus, it is recommended that the agency take steps to allocate financial and other resources to build this system. Verification checks should take place at point of submission to ensure that the values submitted are real and conform to expected patterns. Checks should also be carried out post-submission, employing a risk-based approach, including monitoring, red-flag analysis and risk-based sampling as a basis for desk audits.
3. With a target to exit the FATF grey list later this year, the Philippines should also consider the advantages and ways of expanding user-reporting of discrepancies, consistent with international standards, for purposes of data verification. Publication of certain BO information, coupled with reporting mechanisms, would enable interested parties to detect and report any errors and discrepancies in published BO data, thereby helping improve its accuracy.
4. Other prospective BO data users, such as the DENR-Mines and Geosciences Bureau and the DOE, could also assist in discrepancy reporting by including BO data verification aspects in their review and processing of extractive contracts and licenses.

## 2.8 Up-to-date and historical records

### Principle

Data should be kept up to date and historical records should be maintained

### Elements of Principle

- Initial registration and subsequent changes to beneficial ownership should be legally required to be submitted in a timely manner, with information updated within a short, defined time period after any changes occur.
- Data should be legally required to be periodically confirmed as correct, on at least an annual basis.
- All changes in beneficial ownership should be legally required to be reported.
- Information should be kept for a reasonable and specified number of years, including for dormant and dissolved corporate vehicles.

Philippine law provides for the timely submission and updating of corporate information reports, including BO data. Under MC 15, the BOD form is filed annually, together with the GIS. The GIS must be filed with the SEC within 30 calendar days from the date of a stock corporation's annual stockholders' meeting; the date of the annual members' meeting of a nonstock corporation; and the anniversary date of a foreign corporation's SEC licence issuance. If no meeting is held, the corporation must submit the GIS no later than 30 January the following year. However, should an annual meeting be held thereafter, a new GIS must be submitted.<sup>93</sup> In case of changes in the submitted BO information, an updated GIS form must be submitted within 30 calendar days after such change occurs or becomes effective.<sup>94</sup>

MC 1, on the other hand, requires incorporators, directors, trustees and shareholders of corporations applying for registration to declare their nominators/principals using the BOTD form within 30 days from issuance of their certificate of incorporation. Directors, trustees and shareholders of existing domestic and foreign corporations are required to make such a declaration within 30 days from the date they become or start acting as nominees. In addition to these reporting requirements, corporations need to carefully preserve at their principal office the current ownership structure and voting rights of the corporation, including BO.<sup>95</sup> Hence, corporations need to ensure that their record of BO information is timely and accurate. MC 1 defines "timely" as that which is recorded within three days "from the time the information became available or is reasonably expected to be available to the corporation with the exercise of due diligence".<sup>96</sup>

The SEC stores BOD and BOTD forms as they are submitted as part of company filings. It is not clear under the current regulation for how long the SEC is required to store BO information, including for companies that are dormant or dissolved.

### **Recommendation**

- It is recommended that the SEC have clear data management policies and protocols, including for handling historical and current BO data. Focusing on the quality and coverage of data being collected could also reap rewards in the long run when it comes to using such records as the basis for investigations or audit checks.<sup>97</sup>

## **2.9 Sanctions and enforcement**

### **Principle**

Effective, proportionate, and dissuasive sanctions for noncompliance should exist and be enforced.

### **Elements of Principle**

- Effective, proportionate, dissuasive, and enforceable sanctions should exist for noncompliance with disclosure requirements, including:
  - non-submission;
  - late submission;
  - incomplete submission;
  - incorrect submission;
  - deliberately false submission; and
  - persistent noncompliance;
  - as well as other obligations related to the disclosure regime.

*> continues on page 35*

- Sanctions should cover all the persons involved in declarations and key persons of the corporate vehicle, including the:
  - beneficial owner(s);
  - declaring person;
  - company officers; and
  - the declaring corporate vehicle.
- Sanctions should include both administrative and criminal sanctions.
- In order to be dissuasive and not to be seen as merely the cost of doing business, for noncompliance, financial sanctions should be set sufficiently high and be complemented by non-financial sanctions.
- Sanctions and their enforcement should be effectively operationalised, including by clearly determining which authority is responsible to enforce sanctions; ensuring it has sufficient resources, legal mandate, and powers to enforce sanctions; and automating sanctions where possible.

The SEC imposes administrative sanctions on corporations that fail to or falsely disclose their BO information without lawful cause. The sanctions for failure to disclose are fines in graduated scales based on whether the company is stock or nonstock (i.e. higher for stock); its retained earnings or fund balance (i.e. increases with the amount in set ranges); and whether it is a first-time or repeat violator (i.e. higher for repeat violator). At present, the lowest possible fine that can be imposed is PHP 25,000 (approximately USD 500) for a first-time violation of a nonstock corporation with less than PHP 500,000 fund balance, while the highest possible penalty is PHP 2 million (approximately USD 37,000) for a fourth or subsequent violation of a stock corporation with PHP 10 million or more in retained earnings.<sup>98</sup> The penalty for false declaration is up to PHP 2 million.<sup>99</sup> These fines are complemented with non-monetary sanctions, such as revocation of the corporation's certificate of registration and/or license.

Directors, trustees and/or officers of a corporation are also meted out fines for failing to exercise due diligence in ensuring timely submission of BO information. These range from PHP 10,000 (about USD 185) to PHP 100,000 (about USD 1,850).<sup>100</sup> The penalty for false declaration is a fine of up to PHP 200,000 (about USD 3,700) and disqualification to be a director, trustee and/or officer of any corporation for a period of five years.

The requirement that the GIS be notarised may also trigger prosecution for the crime of perjury for any false statement by the affiant.<sup>101</sup> In addition, any false or misleading statements may also lead to further administrative sanctions under the Revised Corporation Code or the Securities Regulations Code, and other rules of the SEC.<sup>102</sup> These are in addition to penalties already imposed under MC 15 and the Revised Penal Code. The act of reporting directors, trustees and/or senior managing officials as beneficial owners (i.e. category I), despite having a beneficial owner/s with controlling ownership interest or through other means as defined in MC 15, is considered prima facie evidence of a false statement in the GIS.<sup>103</sup>

These penalties took effect on 1 January 2023, in compliance with recommendations of the FATF. At the time of writing, it is too early to assess the dissuasiveness and effectiveness of these increased sanctions. The SEC EIPD-AMLD, which is responsible for enforcing these sanctions, is monitoring its ongoing implementation.

Enforcement of BO disclosure requirements under Requirement 2.5 has also been challenging for PH-EITI. In its 2020 EITI report, companies that have consented to participate in BO disclosure through the EITI process mostly come from the metallic and non-metallic mining sector, followed by a few oil and gas companies, where a majority did not participate. Semirara Mining, as a representative of the coal sector, has opted not to participate from the start up to this reporting period.<sup>104</sup> However, in its 2023 work plan, the MSG has identified continued engagement with Semirara as part of its key result areas for improving MSG governance, including its participation in BO disclosure efforts.<sup>105</sup> Requirement 2.5(c) of the EITI Standard establishes that the MSG must disclose any significant gaps or weaknesses in reporting on BO information, including any entities that fail to submit all or some BO information.

### *Recommendations*

1. It is recommended that the SEC continue to monitor and assess the impact of the increased sanctions and to recalibrate, if necessary.
2. It is also recommended that, in the future, the SEC consider other non-financial and possibly automated sanctions to increase compliance.
3. It is recommended that the EITI MSG name entities that failed to submit all or some BO information.

## 3. Conclusion

Based on the OO Principles, this scoping assessment is an initial step for identifying technical gaps and areas of concern to inform the design and planning of a sound BOT system appropriate for the Philippines, and could help determine priorities for action. This assessment generated the following important observations:

- The definition of BO is not in primary legislation.
- The BOD form does not allow for further detail where BO is held indirectly or ownership/control is exercised informally.
- BO data is not being collated in a central register and does not appear to be structured and interoperable (although the PH-EITI operates a provisional BO register for the extractive industry).
- There is no general public access to BO data even if there is no legal obstacle to publishing certain BO information.
- There is a lack of an adequate verification system or mechanism to increase the level of assurance on collated BO data.

Addressing these issues will require certain levels of policy reforms as well as enhancement of the information system where BO data is collected and maintained. Amendments to current administrative rules and regulations or the issuance of new ones can be done in the short term, while legislative proposals to Congress can be done over the medium term. System improvements can be done programmatically.

The SEC is front and centre in the BOT agenda, as it performs its mandates as corporate regulator, company register and supervising authority under the AMLA. The SEC can forthwith integrate more structural BO aspects in its ongoing efforts to comply with the FATF Recommendations. It should take steps to allocate financial resources for progressively upgrading its IT infrastructure, as well as building relevant personnel and stakeholder capacities for key functions, such as data verification. As the SEC carries out its digitalisation plans, it should ensure that comprehensive information on SEC-registered entities – including their BO data – will be more systematically collated and made accessible in machine-readable formats compliant with data protection principles, as well as made accessible to LEAs and competent authorities through data-sharing and interoperability. It could also consider how this system may accommodate an expansion of the scope of coverage of corporate vehicles to include, for example, trusts and other legal arrangements.

In parallel, PH-EITI could continue supporting the SEC by ensuring that extractive companies comply with EITI Requirement 2.5. It could maintain public access to its PH-EITI BO registry in the interim, and discuss with the SEC ways of embedding EITI Requirements for regular BO reporting obligations of extractive companies and ensuring BO information is verified.

In the medium term, the SEC could amend or supplement MC 15 to enhance the BOD form to provide space for the disclosure of PEPs and further information where BO is held indirectly. This would also support the country's compliance with EITI Requirement 2.5. To ensure comprehensiveness of BO data collection for extractives, it is likewise recommended that an enabling legal environment for the public disclosure of BO information specific to extractives be maintained by legislative enactment of an EITI bill and/or by executive policy amendment. This will encourage reporting of BO data from other sectors, such as non-metallic mining, small-scale mining and oil and gas. A policy setting forth guidelines on the use of BO data as part of evaluating licenses and contracts for extractives and enhancement of inter-agency cooperation will also help ensure BO data-sharing and use across key agencies.

In the longer term, the Philippines should consider enacting an omnibus statute on BOT that will:

- Provide a single, robust definition of BO to be applied across all applicable secondary legislation
- Set out principles for BO disclosure that ensure a strong legal basis for data collection, storage and publication
- Expressly allow public access to certain BO information within the bounds of the law
- Effectively expand the coverage of the current BO disclosure regime to all types of legal entities, legal arrangements and other corporate vehicles.

## 4. Appendices

### Appendix A: Beneficial Ownership Declaration Form (SEC MC 15)

#### BENEFICIAL OWNERSHIP DECLARATION

**Instructions:**

1. Identify the Beneficial Owner/s of the corporation as described in the Categories of Beneficial Ownership in items A to I below. List down as many as you can identify. You may use an additional sheet if necessary.
2. Fill in the required information on the beneficial owner in the fields provided for.
3. In the "Category of Beneficial Ownership" column, indicate the letter(s) corresponding thereto. In the event that the person identified as beneficial owner falls under several categories, indicate all the letters corresponding to such categories.
4. If the category is under letter "I", indicate the position held (i.e., Director/Trustee, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, etc.).
5. Do not leave any item blank. Write "N/A" if the information required is not applicable or "NONE" if non-existent.

"Beneficial Owner" refers to any natural person(s) who ultimately own(s) or control(s) or exercise(s) ultimate effective control over the corporation. This definition covers the natural person(s) who actually own or control the corporation as distinguished from the legal owners. Such beneficial ownership may be determined on the basis of the following:

**Category**

**Description**

- A Natural person(s) owning, directly or indirectly or through a chain of ownership, at least twenty-five percent (25%) of the voting rights, voting shares or capital of the reporting corporation.
- B Natural person(s) who exercise control over the reporting corporation, alone or together with others, through any contract, understanding, relationship, intermediary or tiered entity.
- C Natural person(s) having the ability to elect a majority of the board of directors/trustees, or any similar body, of the corporation.
- D Natural person(s) having the ability to exert a dominant influence over the management or policies of the corporation.
- E Natural person(s) whose directions, instructions, or wishes in conducting the affairs of the corporation are carried out by majority of the members of the board of directors of such corporation who are accustomed or under an obligation to act in accordance with such person's directions, instructions or wishes.
- F Natural person(s) acting as stewards of the properties of corporations, where such properties are under the care or administration of said natural person(s).
- G Natural person(s) who actually own or control the reporting corporation through nominee shareholders or nominee directors acting for or on behalf of such natural persons.
- H Natural person(s) ultimately owning or controlling or exercising ultimate effective control over the corporation through other means not falling under any of the foregoing categories.
- I Natural person(s) exercising control through positions held within a corporation (i.e., responsible for strategic decisions that fundamentally affect the business practices or general direction of the corporation such as the members of the board of directors or trustees or similar body within the corporation; or exercising executive control over the daily or regular affairs of the corporation through a senior management position). This category is only applicable in exceptional cases where no natural person is identifiable who ultimately owns or exerts control over the corporation, the reporting corporation having exhausted all reasonable means of identification and provided there are no grounds for suspicion.

| COMPLETE NAME<br>(Surname, Given Name, Middle Name, Name Extension (i.e., Jr., Sr., III)) | SPECIFIC RESIDENTIAL ADDRESS | NATIONALITY | DATE OF BIRTH | TAX IDENTIFICATION NO. | % OF OWNERSHIP <sup>1</sup> / % OF VOTING RIGHTS <sup>2</sup> | TYPE OF BENEFICIAL OWNER <sup>3</sup><br>Direct (D) or Indirect (I) | CATEGORY OF BENEFICIAL OWNERSHIP |
|---|------------------------------|-------------|---------------|------------------------|---|---|----------------------------------|
|   |                              |             |               |                        |   |   |                                  |
|   |                              |             |               |                        |   |   |                                  |
|   |                              |             |               |                        |   |   |                                  |

Note: This page is not for uploading on the SEC iView.

<sup>1</sup> For Stock Corporations.

<sup>2</sup> For Non-Stock Corporations.

<sup>3</sup> For Stock Corporations.

## Appendix B-1: Beneficial Ownership Transparency Declaration Form

(SEC MC No. 1, s. 2021) – Incorporators of newly registered corporations

| BENEFICIAL OWNERSHIP TRANSPARENCY DECLARATION FORM (Form-BOTD-SEC6-V3) <span style="float: right;">(Per</span>  |  |                      |                      |                     |
|---|--|----------------------|----------------------|---------------------|
| SECMC No. 1, Series of 2021)  |  |                      |                      |                     |
| DECLARANT'S INFORMATION   |  |                      |                      |                     |
| Complete Name   |  |                      |                      |                     |
| Valid E-mail Address  |  |                      |                      |                     |
| Contact Number  |  |                      |                      |                     |
| Company Name  |  |                      |                      |                     |
| SEC Registration No.  |  |                      |                      |                     |
| Check the one(s) that applies/apply to you:   | <input type="checkbox"/> Incorporator<br><input type="checkbox"/> Stockholder/Subscriber<br><input type="checkbox"/> Director <input type="checkbox"/> Trustee |                      |                      |                     |
| FOR DECLARANTS UNDER SECTION 6 OF SECMC NO. 1, SERIES OF 2021 (NEWLY-REGISTERED CORPORATIONS)   |  |                      |                      |                     |
| <b>A. Please provide the following details about the person / persons on whose behalf the registration of the corporation was applied for:</b>                                      |  |                      |                      |                     |
|   | Complete Name  | Country of Residence | Nationality          | TIN/Passport Number |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| 6   |  |                      |                      |                     |
| 7   |  |                      |                      |                     |
| 8   |  |                      |                      |                     |
| 9   |  |                      |                      |                     |
| 10  |  |                      |                      |                     |
| <b>B. Please provide the following details about your nominator and/or principal:</b>   |  |                      |                      |                     |
| Provide the following details about your <b>nominator/principal</b> :   |  |                      |                      |                     |
| I. NATURAL PERSON   |  |                      |                      |                     |
|   | Complete Name  | Country of Residence | Nationality          | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| II. JURIDICAL PERSON / LEGAL ARRANGEMENT  |  |                      |                      |                     |
| II.A. CORPORATION*  |  |                      |                      |                     |
| Name of the Entity  |  |                      |                      |                     |
| Country of Registration   |  |                      |                      |                     |
| *SEC Registration No. for SEC-Registered  |  |                      |                      |                     |
|   | Complete Names of Incorporators, Directors and Beneficial Owners   | Nationality          | Position             | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| <i>*Note: If the corporation is registered with the SEC there is no need to indicate the incorporators, directors and beneficial owners. Indicate only the SEC Registration No.</i> |  |                      |                      |                     |
| II.B TRUST  |  |                      |                      |                     |
| II.B.a TRUSTOR  |  |                      |                      |                     |
|   | Complete Name  | Nationality          | Country of Residence | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| II.B.b TRUSTEE  |  |                      |                      |                     |
|   | Complete Name  | Nationality          | Country of Residence | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| II.B.c BENEFICIARY  |  |                      |                      |                     |
|   | Complete Name  | Nationality          | Country of Residence | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |
| II.C OTHERS (e.g., Partnership)   |  |                      |                      |                     |
| Name of the Entity  |  |                      |                      |                     |
| Country of Registration   |  |                      |                      |                     |
|   | Complete Names of Managing Partners, Controlling Persons and Beneficial Owners   | Nationality          | Position             | TIN/Passport No.    |
| 1   |  |                      |                      |                     |
| 2   |  |                      |                      |                     |
| 3   |  |                      |                      |                     |
| 4   |  |                      |                      |                     |
| 5   |  |                      |                      |                     |

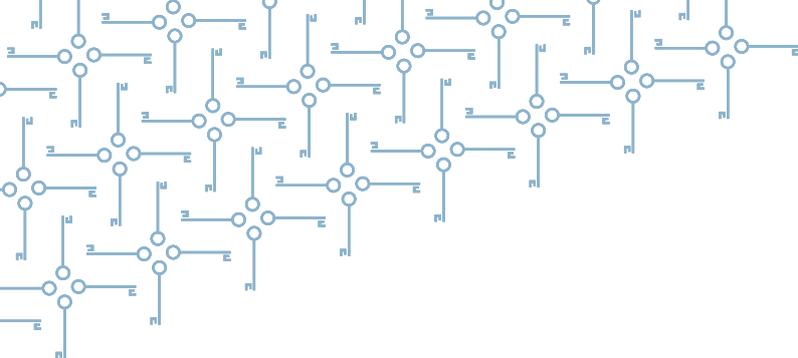
Please save this file as PDF and rename it to format: BOTD\_SEC6\_Company Name

## Appendix B-2: Beneficial Ownership Transparency Declaration Form

(SEC MC No. 1, s. 2021) – Nominees of existing corporations

| BENEFICIAL OWNERSHIP TRANSPARENCY DECLARATION FORM (Form-BOTD-SEC7-V3)<br>(Per SEC MC No. 1, Series of 2021)  |  |   |                      |
|---|--|---|----------------------|
| DECLARANT'S INFORMATION   |  |   |                      |
| Complete Name   |  |   |                      |
| Valid E-mail Address  |  |   |                      |
| Contact Number  |  |   |                      |
| Company Name  |  |   |                      |
| SEC Registration No.  |  |   |                      |
| Check the one(s) that applies/ apply to you:  |  | <input type="checkbox"/> Incorporator<br><input type="checkbox"/> Stockholder/Subscriber<br><input type="checkbox"/> Director<br><input type="checkbox"/> Trustee |                      |
| FOR DECLARANTS UNDER SECTION 7 OF SEC MC NO. 1, SERIES OF 2021 (EXISTING CORPORATIONS)  |  |   |                      |
| Provide the following details about your <b>nominator/principal</b> :   |  |   |                      |
| A. NATURAL PERSON   |  |   |                      |
|   | Complete Name  | Country of Residence  | Nationality          |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |
| B. JURIDICAL PERSON/LEGAL ARRANGEMENT   |  |   |                      |
| B.1. CORPORATION*   |  |   |                      |
| Name of the Entity  |  |   |                      |
| Country of Registration   |  |   |                      |
| *SEC Registration No. for SEC-Registered Corporations   |  |   |                      |
|   | Complete Names of Incorporators, Directors and Beneficial Owners               | Nationality   | Position             |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |
| *Note: If the corporation is registered with the SEC, there is no need to indicate the incorporators, directors and beneficial owners. Indicate only the SEC Registration No. |  |   |                      |
| B.2 TRUST   |  |   |                      |
| B.2.a TRUSTOR   |  |   |                      |
|   | Complete Name  | Nationality   | Country of Residence |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |
| B.2.b TRUSTEE   |  |   |                      |
|   | Complete Name  | Nationality   | Country of Residence |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |
| B.2.c BENEFICIARY   |  |   |                      |
|   | Complete Name  | Nationality   | Country of Residence |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |
| B.3 OTHERS (e.g., Partnership)  |  |   |                      |
| Name of the Entity  |  |   |                      |
| Country of Registration   |  |   |                      |
|   | Complete Names of Managing Partners, Controlling Persons and Beneficial Owners | Nationality   | Position             |
| 1   |  |   |                      |
| 2   |  |   |                      |
| 3   |  |   |                      |
| 4   |  |   |                      |
| 5   |  |   |                      |

Please save this file as PDF and rename it to format: BOTD\_SEC7\_Company Name



## Endnotes

1. The Philippines remained in the grey list during the fourth FATF plenary held in October 2023, as it has yet to address remaining strategic deficiencies, including “enhancing and streamlining law enforcement access to BO information, and taking steps to ensure that the BO information is accurate and up-to-date”. FATF (2023), *Jurisdictions under Increased Monitoring - 27 October 2023*. Retrieved from: <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-october-2023.html>.
2. See: FATF (no date), Home page. Retrieved from: <https://www.fatf-gafi.org/>.
3. See: Asia/Pacific Group on Money Laundering (no date), Home page. Retrieved from: <https://apgml.org/>.
4. AMLC (2001), Republic Act No. 9160 (2001), as amended by Republic Act No. 9194 (2003), No. 10167 (2012), No. 10365 (2013), No. 10927 (2017) and No. 11521 (2021). Retrieved from: <http://www.amlc.gov.ph/laws/money-laundering/2015-10-16-02-50-56/republic-act-9160>.
5. Philippine Government (2012), Republic Act No. 10168 (2012). Retrieved from: <https://www.officialgazette.gov.ph/2012/06/18/republic-act-no-10168/>.
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9. SEC (2020), “MC No. 30 s.2020 – Revision of the General Information Sheet (GIS) of Foreign Corporations to Include Beneficial Ownership Information”. Retrieved from: <https://www.sec.gov.ph/mc-2020/mc-no-30-s-2020/>.
10. SEC (2021), “MC No. 01 s. 2021 – Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (“BO Transparency Guidelines)”. Retrieved from: <https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/>.
11. Prior to this MC, there was no express prohibition against the transfer of bearer shares/bearer share warrants apart from the requirement under section 62 of the Revised Corporation Code of the Philippines (Republic Act No. 11232) that transfers must be recorded in the corporation books to be valid as to third parties. See: SEC (2019), Republic Act No. 11232. Retrieved from: [https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation\\_RA-11232-REVISED-CORPORATION-CODE-2019.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RA-11232-REVISED-CORPORATION-CODE-2019.pdf).
12. SEC (2001), Republic Act No. 8799, “The Securities Regulation Code”. Retrieved from: [https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation\\_RA-8799-Securities-Regulation-Code-2000.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RA-8799-Securities-Regulation-Code-2000.pdf); SEC (2015), Implementing Rules and Regulations of Republic Act No. 8799. Retrieved from: <https://www.sec.gov.ph/wp-content/uploads/2019/11/2015-SRC-Rules-Published-in-Phil-Star-Manila-Bulletin-October-25-2015.pdf>.
13. See: SEC (2018), Implementing Rules and Regulations of Republic Act No. 9160, as amended. Retrieved from: <http://www.amlc.gov.ph/images/PDFs/FINAL2018%20IRR.pdf>.
14. Revised Corporation Code, sections 177(b) and 73(b).
15. EITI (2023), “Requirement 2.5”, *EITI Standard 2023*. Retrieved from: <https://eiti.org/collections/eiti-standard>.
16. See: PH-EITI (2024), “Beneficial Ownership Registry”. Retrieved from: <https://pheiti.dof.gov.ph/boregistry>. The limited extractive BO register was an effort not only to meet the EITI Standard but also a commitment under the Philippine OGP 5th National Action Plan (2019-2022) to institutionalise transparency and accountability in the extractive sector by mainstreaming EITI implementation.

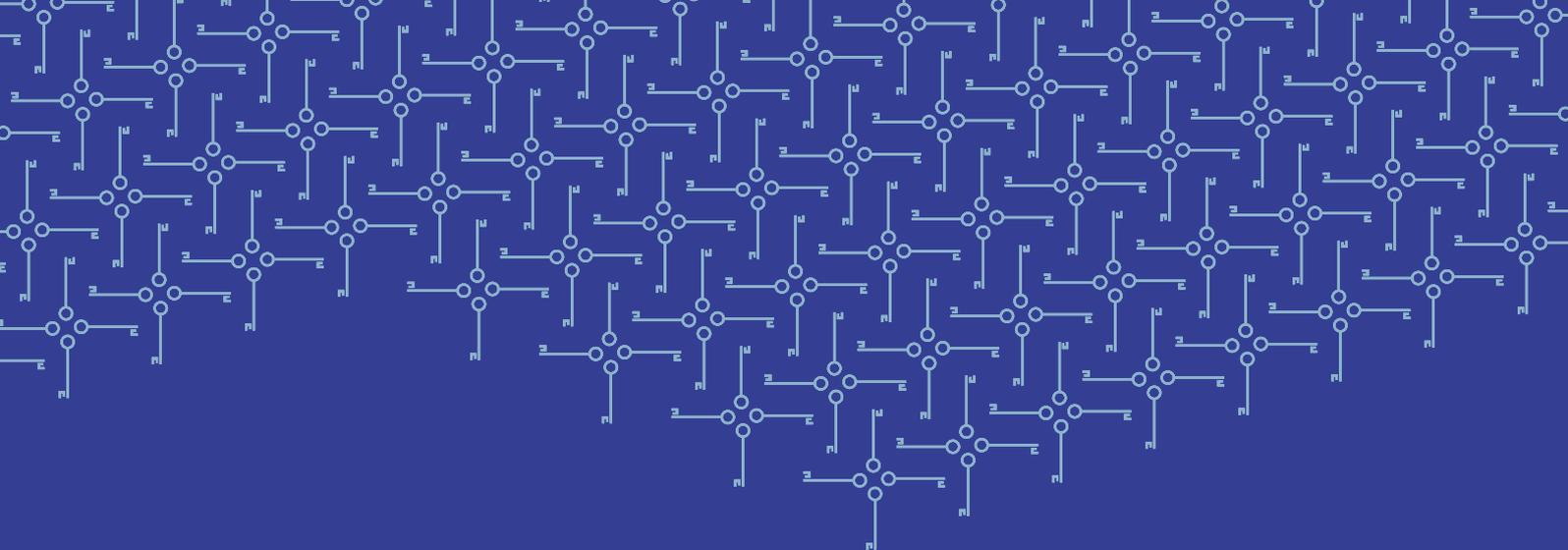
17. See: FATF (2022), *Jurisdictions under Increased Monitoring - June 2022*. Retrieved from: <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2022.html>.
18. Validation is the EITI's key instrument to assess implementing countries on their ability to meet the provisions of the EITI Standard. See: EITI (2021), *Validation of the Philippines: Final assessment of progress in implementing the EITI Standard*. Retrieved from: [https://eiti.org/sites/default/files/attachments/eiti\\_validation\\_of\\_the\\_philippines\\_2021\\_-\\_final\\_validation\\_report.pdf](https://eiti.org/sites/default/files/attachments/eiti_validation_of_the_philippines_2021_-_final_validation_report.pdf); EITI (2021), *Documenting progress for Validation*. Retrieved from: <https://eiti.org/guidance-notes/documenting-progress-validation>.
19. OO (2023), *Open Ownership Principles for effective beneficial ownership disclosure*. Retrieved from: <https://www.openownership.org/en/principles>.
20. SEC MC 15, section 2.1.
21. AMLA IRR (2018), rule 2, section 1(l).
22. SRC IRR (2015), rule 3, section 3.1.2.
23. SRC IRR (2015), rules 18 and 23.
24. EITI, *EITI Standard 2023*.
25. See: FATF (2022), *Revisions to Recommendation 24 and its Interpretive Note - Public Consultation*, paragraph 1. Retrieved from: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Public-consultation-r24.html>.
26. See: AMLA IRR (2018), rule 4.
27. Having lists of covered entities in regulations rather than primary law is best practice because it allows for evolution, and it will be good to keep it this way when primary legislation is introduced.
28. SEC MC 15, section 4(i).
29. SEC (2019), SEC MC 25, "Guidelines for the Protection of SEC Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse ('2019 NPO Guidelines')". Retrieved from: <https://www.sec.gov.ph/wp-content/uploads/2020/02/2019MCNo25.pdf>.
30. The term "NPOs at Risk" refers to those identified as being at risk of money laundering or terrorist financing abuse based on a risk assessment of the NPO sector, conducted by the AMLC and/or the SEC. See: 2019 NPO Guidelines, section 1.4.6.
31. 2019 NPO Guidelines, section 8.1.
32. 2019 NPO Guidelines, section 1.4.7.
33. Philippine Government (2011), Republic Act No. 10149, "GOCC Governance Act of 2011". Retrieved from: <https://www.officialgazette.gov.ph/2011/06/06/republic-act-no-10149/>. While there are non-chartered GOCCs that are registered with the SEC, as provided for by law, they nonetheless retain their governmental nature and are likewise under the jurisdiction of the Governance Commission for GOCCs.
34. Philippine Government Cooperative Development Authority (2009), Republic Act No. 9520, "Philippine Cooperative Code of 2008". Retrieved from: <https://cda.gov.ph/issuances/republic-act-9520/>.
35. Revised Recommendation 25 guidance is expected to be published in early 2024. For further information on coverage of trusts and other legal arrangements, see: OO (2022), *Open Ownership response to the FATF consultation on the revision of Recommendation 25 and its Interpretive Note*. Retrieved from: <https://www.openownership.org/en/publications/open-ownership-response-to-the-fatf-consultation-on-the-revision-of-recommendation-25-and-its-interpretive-note/>; OO (2023), *Open Ownership response to the FATF consultation on the Guidance on Recommendation 25*. Retrieved from: <https://www.openownership.org/en/publications/oo-response-fatf-consultation-guidance-recommendation-25/>.
36. The 2023 EITI Standard requires SOEs to disclose "the name of the state(s) owning or controlling the SOE, the level of ownership, and details about how ownership or control is exerted". For implementation purposes, the EITI Standard defines SOEs as "a wholly or majority government-owned company that is engaged in extractive activities on behalf of the government". EITI, *EITI Standard 2023*.
37. Asia/Pacific Group on Money Laundering (2019), *Anti-money laundering and counter-terrorist financing measures - Philippines, Third Round Mutual Evaluation Report*. Retrieved from: <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/APG-Mutual-Evaluation-Report-Philippines.pdf>. [coredownload.inline.pdf](https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/APG-Mutual-Evaluation-Report-Philippines.pdf).

38. See: Emma Howard and Stephen Abbott Pugh, OO (2023), *Defining and Capturing Data on the Ownership and Control of State-owned Enterprises*. Retrieved from: <https://www.openownership.org/en/publications/defining-and-capturing-data-on-the-ownership-and-control-of-state-owned-enterprises/>.
39. These guidelines from the Danish Business Authority on beneficial owners provide a good example on what this may look like: Erhvervsstyrelsen (2017), *Vejledning om Reelle ejere*. Retrieved from: <https://erhvervsstyrelsen.dk/vejledning-reelle-ejere>. See also: Alanna Markle, OO (2023), "Setting out the coverage of a disclosure regime in law", *Coverage of corporate vehicles in beneficial ownership disclosure regimes*. Retrieved from: <https://www.openownership.org/en/publications/coverage-of-corporate-vehicles-in-beneficial-ownership-disclosure-regimes/setting-out-the-coverage-of-a-disclosure-regime-in-law/>.
40. SEC MC 15, section 3, as amended by MC 10.
41. SEC MC 15, section 2.1.
42. See: SEC (2021), "Beneficial Ownership Transparency Declaration Form". Retrieved from: <https://www.sec.gov.ph/amf-notices/beneficial-ownership-transparency-declaration-form/>.
43. SEC MC 15, section 3, as amended by MC 10.
44. Simon Whitehouse (2022), "Securities and Exchange Commission Philippines: Beneficial Ownership Declaration form review and feedback", unpublished.
45. EITI, *EITI Standard 2023*. See also: EITI (2022), *Validation Guide*. Retrieved from: <https://eiti.org/guidance-notes/validation-guide>.
46. PH-EITI collects information on PEPs separately using a PEP declaration form.
47. At present, the declarant must request for a copy of the received BOD form from the SEC, as this is not sent back to the declarant.
48. OO defines "central register" as a digital repository that stores statutory declarations of BO that are updated on a continuous basis. OO (2023), *OO Principles – Central register*. Retrieved from: <https://www.openownership.org/en/principles/central-register/>.
49. Studies show that countries with a central register perform better against the FATF's requirement of ensuring timely access to adequate, accurate and up-to-date BO information. See: OO (2023), *OO Principles – Central register*. Retrieved from: <https://www.openownership.org/en/principles/central-register/>.
50. SEC MC 1, section 11.
51. PH-EITI, "Beneficial Ownership Registry".
52. EITI (2022), *Philippines 2021 Validation Report*. Retrieved from: <https://eiti.org/documents/philippines-2021-validation-report>.
53. Philippine Government (1987), The Constitution of the Republic of the Philippines, Article II, section 28; Article III, section 7. Retrieved from: <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.
54. Philippine Government (2016), Executive Order No. 2 (EO 2), series of 2016. Retrieved from: <https://www.officialgazette.gov.ph/2016/07/23/executive-order-no-02-s-2016/>.
55. EO 2, section 4.
56. SEC MC 15, section 3.
57. SEC MC 1, section 11.
58. The GIS includes stockholder information such as name, nationality, residential address, TIN, number of shares subscribed and percentage of ownership, and the top 20 stockholders in number of shares subscribed.
59. PH-EITI, "Beneficial Ownership Registry".
60. Jerick T. Aguilar and Linnet Madelane C. Chan, PH-EITI (2020), *The Fiscal Year 2020 PH-EITI Country Report*, 51. Retrieved from: <https://pheiti.dof.gov.ph/country-reports/>.
61. NPC, Republic Act No. 10173, "Data Privacy Act of 2012". Retrieved from: <https://www.privacy.gov.ph/data-privacy-act/>.

62. The DPA Section 3(j) defines processing as “any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data”.
63. It can be argued that BOT falls under the exceptions in Section 4(e) and (f) of the DPA:“(e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions...; (f) Information necessary for banks and other financial institutions under the jurisdiction of the independent, central monetary authority or Bangko Sentral ng Pilipinas to comply with Republic Act No. 9510, and Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act and other applicable laws”.
64. National Privacy Commission Privacy Policy Office, Interview with the Policy Review Division, 2 March 2023.
65. NPC (2020), Privacy Planning Office Advisory Opinion No. 2020-047. Retrieved from: <https://www.privacy.gov.ph/wp-content/uploads/2020/11/Redacted-Advisory-Opinion-No.-2020-047.pdf>.
66. Philippine Government (2012), Executive Order No. 79, s. 2012. Retrieved from: <https://www.officialgazette.gov.ph/2012/07/06/executive-order-no-79-s-2012/>.
67. Philippine Government (2013), Executive Order No. 147, s. 2013. Retrieved from: <https://www.officialgazette.gov.ph/2013/11/26/executive-order-no-147-s-2013>.
68. NPC, Advisory Opinion No. 2020-047, 3.
69. EITI (2022), *Philippines 2021 Validation Report*. Retrieved from: <https://eiti.org/documents/philippines-2021-validation-report>.
70. SEC (2021), “In the Matter of Requests for Copy of the Beneficial Ownership Declaration Page in the General Information Sheet”. Retrieved from: <https://www.sec.gov.ph/amf-notices/in-the-matter-of-requests-for-copy-of-the-beneficial-ownership-declaration-page-in-the-general-information-sheet/>.
71. These include: BSP, Bureau of Immigration, Department of Trade and Industry-Strategic Trade Management Office, IC, PAGCOR, National Intelligence Coordinating Agency, Philippine Drug Enforcement Agency, Government Procurement Policy Board, Bureau of Internal Revenue, CEZA, Philippine National Police and Department of Interior and Local Government. The DSA with the National Bureau of Investigation is awaiting signature by the SEC. (Interview with SEC EIPD-AMLC, 20 February 2023.)
72. AMLC Office of the Executive Director, Interview with the Office of the Executive Director, 2 February 2023. Video conference via Zoom organised by OO Consultants.
73. SEC EIPD-AMLC, online interview, 20 February 2023.
74. See: Alanna Markle and Tymon Kiepe, OO (2022), *Who Benefits? How company ownership data is used to detect and prevent corruption*. Retrieved from: <https://www.openownership.org/en/publications/who-benefits-how-company-ownership-data-is-used-to-detect-and-prevent-corruption/>.
75. See: Tymon Kiepe, OO (2021), *Making central beneficial ownership registers public*. Retrieved from: <https://www.openownership.org/en/publications/making-central-beneficial-ownership-registers-public/>.
76. SEC MC No. 3, series of 2021, sections 1, 2.
77. SEC MC 3, section 6.
78. SEC MC 3, section 3.
79. Whitehouse, “Beneficial Ownership Declaration form review and feedback”.
80. See: OO (no date), Beneficial Ownership Data Standard v0.3. Retrieved from: <https://standard.openownership.org/en/0.3.0/>.
81. Whitehouse, “Beneficial Ownership Declaration form review and feedback”.
82. Jack Lord and Tymon Kiepe, OO (2022), “Benefits of structured and interoperable data”, *Structured and interoperable beneficial ownership data*. Retrieved from: <https://www.openownership.org/en/publications/structured-and-interoperable-beneficial-ownership-data/benefits-of-structured-and-interoperable-data/>.

83. eFAST Tutorial Video, 19 March 2023. Retrieved from: <https://www.sec.gov.ph/online-services/sec-efast/#gsc.tab=0>. See SEC guidance on how to file using the online submission tool: SEC (2022), "SEC Electronic Filing and Submission Tool". Retrieved from: <https://www.sec.gov.ph/online-services/sec-efast/>. The submission portal can be found at <https://efast.sec.gov.ph/user/login>.
84. SEC MC 15, section 9.
85. SEC MC 15, section 9.
86. Oliver Leonardo (2022), "Beneficial Ownership Transparency in the Philippines", presentation delivered by the SEC EIPD Director during the ADB-EITI Regional Workshop on Advancing Beneficial Ownership Transparency in Asia and Pacific Region via video conference, 21 February 2022. Retrieved at: <https://www.youtube.com/watch?v=0Mwq7IMyly8&feature=youtu.be>.
87. Leonardo, "Beneficial Ownership Transparency in the Philippines".
88. Leonardo, "Beneficial Ownership Transparency in the Philippines".
89. See: Republic Act No. 9160 (2001), as amended by Republic Act No. 9194 (2003), 10167 (2012), 10365 (2013), 10927 (2017), and 11521 (2021); Republic Act No. 10168 (2012).
90. SEC MC 1, section 3.
91. EITI, EITI Requirement 2.5(e), *EITI Standard 2023*.
92. Philippine OGP (2024), "National Action Plan Tracker". Retrieved from: <https://ogp.dbm.gov.ph/index.php/national-action-plan#for-public-comment>.
93. See General Instructions on the GIS forms (Annex B and Annex C, MC 15).
94. SEC MC 15, section 7, as amended by MC 10.
95. Revised Corporation Code, section 73(b).
96. SEC MC 1, section 12.
97. Kadie Armstrong, OO (2022), *Building an auditable record of beneficial ownership*. Retrieved from: <https://www.openownership.org/en/publications/building-an-auditable-record-of-beneficial-ownership/>.
98. SEC MC 15, section 11, as amended by MC 10.
99. SEC MC 15, section 11, as amended by MC 10.
100. SEC MC 15, section 11, as amended by MC 10.
101. Revised Penal Code, article 183.
102. SEC MC 15, section 11, as amended by MC 10.
103. SEC MC 15, section 6.
104. EITI (2022), *Philippines 2020 EITI Report*. Retrieved from: <https://eiti.org/documents/philippines-2020-eiti-report>.
105. PH-EITI (2023), *Philippines EITI 2023 Work Plan*. Retrieved from: <http://pheiti.dof.gov.ph/work-plan/>.





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