

# OPEN OWNERSHIP



## Implementing beneficial ownership transparency in the Kyrgyz Republic extractives sector: findings and recommendations

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# Executive Summary

The Kyrgyz Republic has the potential to become a leader on beneficial ownership transparency in the extractives sector among Extractive Industries Transparency Initiative (EITI) countries, following the passing of legislation that mandates an online public beneficial ownership register of companies holding mining licenses. This puts the Kyrgyz Republic on course to implement the beneficial ownership requirements in the EITI Standard during 2019, and does so in a manner that generates usable and useful data to detect and deter corruption and strengthen the business environment.

This report summarizes findings from Open Ownership's scoping visit to the Kyrgyz Republic in September 2018, and the research surrounding the visit. It makes recommendations for improvements to the legal and regulatory environment, business process and technical tools that will enable the Kyrgyz Republic to fulfil its policy objective and generate useful beneficial ownership data. The issues and recommendations in this report will also be relevant to other EITI countries implementing beneficial ownership transparency commitments in line with the EITI Standard.

The report is informed by meetings with leadership and staff at the State Committee on Industry, Energy & Subsoil Use (SCIESU), lawyers appointed to assist with beneficial ownership matters, the EITI International Secretariat and EITI Kyrgyz Republic, and mining company representatives through the EITI Multi-Stakeholder Group. We would like to thank all participants for their willingness to provide information and assist with this process.

We found there to be a clear commitment within SCIESU to implementing beneficial ownership transparency in a manner that results in genuinely useful data, and significant work has been undertaken to develop regulations and a disclosure form. Some of the processes that SCIESU has established, and the database currently used to record and publish information, are helpful foundations for implementing beneficial ownership transparency.

However, we found the regulations pertaining to beneficial ownership disclosure to be inadequate with respect to implementing the beneficial ownership provisions in the law and meeting the EITI Standard. They lack detail about what information is required and the requirements for updating information. In addition, SCIESU's reliance on hard copy and scanned PDF documentation means that only a limited amount of information is stored in it as structured data, making it difficult to use.

Our recommendations center around collecting and publishing beneficial information with the needs of users of that information firmly in mind. Ultimately, a beneficial ownership register that is user-focused is synonymous with a beneficial ownership register that is fit-for-purpose in tackling corruption: using the data helps identify errors and improve data quality, creating positive feedback that will have genuine impact for government, society and the extractives sector.

## Our recommendations to SCIESU include:

- Developing a data model for beneficial ownership information based on the Beneficial Ownership Data Standard, which ensures high-quality, granular data that is useful for users.
- Amending the legal and/or regulatory framework to enable all required beneficial ownership information to be published, including disclosure of politically exposed person (PEP) status, and include a requirement for companies to submit updated information when there is a change to their beneficial ownership.
- Digitalizing the submission process as much as possible and storing more information as structured data rather than PDFs and paper files, improving data usability and quality.
- Working with companies, other Government departments, and potential data users to better understand how they can use the data, and how beneficial ownership information can complement other data-sets.



As an outcome of the OpenOwnership Pilot Program, beneficial ownership data from the Kyrgyz Republic will be shared with the OpenOwnership Register, an initiative to build a global register of beneficial ownership information and enhance the utility of the data to deter and detect corruption. OpenOwnership will support SCIESU in testing and refining its data model for beneficial ownership information, resulting in data that is both accessible and useful to a range of users, and can act as an example of

effective beneficial ownership transparency in a national extractives sector.

We hope these draft recommendations set out a foundation for an extractives sector beneficial ownership regime in the Kyrgyz Republic that meets policy goals and provides a solid starting point for further technical discussions within the OpenOwnership Pilot Program.

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This report has been compiled on a best efforts basis, and whilst we believe it to be an accurate reflection of the evidence reviewed as of January 2019, it should not be used in place of professional legal advice.



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# Glossary

**Beneficial owner:** A real, living person who ultimately controls, has influence over, or materially benefits from a company or other legal entity. The control or benefit could be either direct or indirect, e.g. via intermediate entities, nominees, or contractual agreements.

**Beneficial ownership chain:** The entire chain of entities that are linked by their control of one company, starting at that company and stretching to the beneficial owner, including any intermediate companies.

**Business process:** The functions and practices that result in published (and usable) beneficial ownership data.

**Identifier:** A unique identifier for a natural person or legal entity. All identifiers used for publication, or where disambiguation may be required, consist of a 'scheme' where the identifier may be found (e.g., 'The Kyrgyzstan electronic database of legal entities and branches') and an 'id' that identifies a particular record in a scheme (e.g. '48206-3303-000', a company registration number in Kyrgyzstan).

**Open data:** digital "structured" or "machine-readable" data that is "made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed by anyone, anytime, anywhere."

**Public access:** Beneficial ownership data is made available to any user with no access restrictions (e.g. registration, fees). This does not mean that all data in the registry needs to be publicly available; sensitive data, such as a beneficial owner's place of residence, can be held back and available only to relevant authorities. A beneficial ownership register can be publicly accessible without being available in open data format -- for example, individual records could be searchable by the public, but the data could not be downloaded in bulk as structured data. Thus, it is important to define both terms.

**Use case:** A description of the needs different classes of users have when they use an application or web site, and how they will use the web site to perform tasks that help them reach these goals.



## Introduction and scope

In recent years, global society has come to understand the importance of corporate transparency, particularly in key sectors such as extractives. High-profile corruption, tax avoidance and evasion scandals involving extractives companies have caused a radical shift in the what we think of anonymous companies. It is clearer than ever that anonymity is often a cloak for nefarious or criminal activities such as corruption and money laundering.

Increasingly, forward looking governments, law enforcement agencies, and socially responsible businesses agree that making information about who owns companies public is critical to tracking the flows of illicit financial flows and tackling corruption. This is particularly important in certain sectors where there are high corruption risks, like extractives. Within the extractives sector, the Extractive Industries Transparency Initiative (EITI) Standard<sup>1</sup> requires member countries to publish publicly information about the beneficial owners of all companies applying for or holding extractives licenses. The deadline for meeting this requirement is 1 January 2020. To date over 20 countries have committed to establishing central public registers of beneficial ownership in their EITI beneficial ownership roadmaps.<sup>2</sup>

The Kyrgyz Republic, one of the first countries to commit to the EITI Standard, has taken significant steps to implement its EITI beneficial ownership roadmap.<sup>3</sup> In April 2018 Parliament the new law “On Subsoil” was adopted, and this requires companies to disclose their beneficial owners when they apply for or hold an extractives license. The Kyrgyz Republic’s commitment to establishing a public register of beneficial ownership linked to extractives licenses that is freely accessible online, will, once implemented, make the country a leader among EITI

countries on beneficial ownership in the extractives sector. This is a natural next step, given that the Kyrgyz Republic already publishes other information about extractives licenses openly via an online portal.<sup>4</sup>

In August 2018, SCIESU signed a Memorandum of Understanding with OpenOwnership to participate in the OpenOwnership Pilot Program. This enables the Kyrgyz Republic to receive in-kind technical assistance from OpenOwnership, with the goal of producing high-quality beneficial ownership data that is truly fit for purpose to tackle corruption and improve the environment for business. The end result is for the Kyrgyz Republic to publish open data in a standardized format – the Beneficial Ownership Data Standard – and for this data to be shared automatically and regularly with the OpenOwnership Register (see [next section](#)).

To understand the technical assistance that SCIESU requires, and identify how OpenOwnership can best support the publication of open data beneficial ownership information, a scoping visit was undertaken in September 2018. The findings and recommendations from this visit and follow up activities are presented in this report. Our intention is for this report to lay the groundwork for a beneficial ownership regime that flows cohesively from submission of company data, to processing of license applications, to storage of that data, to user engagement and enforcement as necessary. Ultimately, the goal is to see a sustainable and effective beneficial ownership transparency regime in the Kyrgyz Republic’s extractives sector, which delivers on the government’s vision to become a leader on beneficial ownership transparency in the extractives sector, and prevents the misuse of companies to facilitate corruption.

<sup>1</sup> <https://eiti.org/document/standard#r2-5> - see section 2.5

<sup>2</sup> London Anti-Corruption Summit country statements are available at <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements>. EITI beneficial ownership roadmaps are available at <https://eiti.org/publication-types-public/beneficial-ownership-roadmaps>. See this post for a discussion of OGP National Action Plans: <https://www.opengovpartnership.org/stories/one-year-after-panama-papers-leaks-new-way-discover-company-ownership>.

<sup>3</sup> <https://eiti.org/document/kyrgyz-republic-beneficial-ownership-roadmap>

<sup>4</sup> <http://open.gkpen.kg/>

During the time that this report was being drafted, revisions were taking place to the draft regulations that describe how the beneficial ownership requirements in the subsoil law are implemented. Therefore, the recommendations in this report that relate to the legislative and regulatory framework articulate overall principles and features that are required to effectively deliver the Kyrgyz Republic's policy goals.

Our recommendations do not prescribe processes but set a direction for future conversations, based on what we know about the particular circumstances in the Kyrgyz Republic's extractives sector. Following a brief introduction to OpenOwnership, we begin by explaining why a public, open data beneficial ownership register is the only kind of register "fit for purpose" for stemming corruption in the section on background that follows. Then, we briefly document the methodology we followed in compiling this report. We follow that by discussing our findings, which we assess and analyze against our knowledge of international best practice and our own expertise, and discuss our recommendations in each area. Finally, we outline our proposed next steps, and a timeline for supporting SCIESU to implement the recommendations.



# About OpenOwnership

OpenOwnership is a global initiative to end corporate secrecy being driven by the world's leading transparency organizations and allied businesses. These include Transparency International, Global Witness, Open Contracting Partnership, the ONE Campaign, The B Team and OpenCorporates. Initial funding was provided by the UK Department for International Development.

Our work focuses on three connected strategic priorities:

## 1. Building the world's first global beneficial ownership register and data standard

The OpenOwnership Register is an easy-to-use, cloud-based, platform that aggregates beneficial ownership information from multiple sources and makes it available for free to all. Data comes from regulatory sources such as national companies registers and the Extractive Industries Transparency Initiative and is also self-submitted by companies. The OpenOwnership Register currently contains beneficial ownership information for over 5 million companies from over 20 countries.

The Beneficial Ownership Data Standard (BODS) is a template for describing beneficial ownership information; data that is in BODS format can be easily linked with other data in BODS format, through the OpenOwnership Register and elsewhere. BODS is being developed in collaboration with dozens of international experts in company data and technical standard-setting. It enables beneficial ownership data to be interoperable, more easily reused, and of higher quality.

## 2. Supporting the implementation of beneficial ownership transparency

We are helping governments implement beneficial ownership regimes, working across the spectrum of technical, administrative, and policy/regulatory issues that affect the usability of published data. Through the OpenOwnership Pilot Program we are partnering in depth with strategic countries – including Kyrgyz Republic – to support implementation and identify lessons that can assist other countries implementing beneficial ownership regimes. We will draw these lessons together into a suite of guidance documents and tools for implementers.

## 3. Developing and sharing beneficial ownership best practice

We also work to increase awareness of the importance and utility of high quality public beneficial ownership data. This means sharing success stories, case studies and best practice through relevant networks internationally.



# The Utility of Public Beneficial Ownership Information

It is the engagement of people and organizations using the data that transforms beneficial ownership data collection from a tick-box exercise to having genuine impact on corruption and creating a better environment for business. These users improve data quality by flagging missing information and inconsistencies, making it more difficult for corrupt individuals to hide behind lies or omissions. Public, open data beneficial ownership can be linked with other useful datasets, such as procurement data, sanctions lists and land registries, and with beneficial ownership datasets from other jurisdictions. Beneficial ownership transparency thus becomes a means to hold corrupt individuals accountable and a deterrent for unethical behavior, and increases companies' confidence in undertaking business in the country in question.

Below, we outline three use cases for the beneficial ownership information that will be published by the Kyrgyz Republic. These are intended to assist SCIESU in considering who will use the data and how, in order to inform the next stages of implementation.

## Public sector users

Beneficial ownership information collected through license applications has several potential uses within SCIESU. It provides valuable information for undertaking due diligence when assessing license applications and will increase SCIESU's awareness of the true beneficiaries of the licenses that it awards, and the potential connections between applicants and holders of different licenses. This is necessary to stem corruption risks in the Kyrgyz Republic's extractives sector. Where the license is awarded by auction, the submission of beneficial ownership information will enable SCIESU to identify situations

where apparently competing bidders have the same beneficial owners and are potentially distorting the market by artificially reducing the cost of a license. For active licenses, beneficial ownership information could assist SCIESU in dealing with environmental or health and safety issues, by identifying the natural persons who own or control the responsible companies. If the same beneficial owner applied for another license through a different legal entity then their record on environmental or labor safety might influence the decision over a new license.

Beneficial ownership data in easy, shareable, open data format will also be useful for law enforcements and other Government departments. It can be linked with existing data such as the Ministry of Justice tax information, and can be used to assist Financial Intelligence Service investigations, providing valuable additional information to detect corruption in the extractives sector.

## Private sector users

The requirement for open beneficial ownership data can increase the confidence of extractives companies wishing to do business in the Kyrgyz Republic. Companies can better vet prospective partners, clients or suppliers in the extractives sector, or use the data to enhance due diligence and manage risk exposure, for instance in foreign direct investment. For these reasons, company representatives in the Kyrgyz Republic EITI Multi-Stakeholder Group were supportive of the overall requirement for beneficial ownership transparency. This echoes international findings that over 90% of senior executives believe it is important to know the ultimate beneficial ownership of the entities with which they do business.<sup>5</sup>

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<sup>5</sup> EY, "Corporate misconduct - individual consequences." 2016. Available at [http://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/\\$FILE/EY-corporate-misconduct-individual-consequences.pdf](http://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/$FILE/EY-corporate-misconduct-individual-consequences.pdf)



The corruption risks associated with the global extractives sector make this need particularly relevant to extractives companies. Publicly accessible beneficial ownership information will assist compliance officers and agents acting on behalf of companies or investors in ensuring that they are not exposing themselves to undue financial risk, reputational risk or US Foreign Corrupt Practices Act (FCPA) / UK Bribery Act risk. Certain private sector users, such as credit reference agencies, benefit in particular from having beneficial ownership data downloadable in bulk and combinable with their existing datasets. A cost-benefit analysis conducted in the UK calculated that beneficial ownership disclosure (across all sectors) would bring over £50 million back into the economy, mostly due to reduced rates of fraud and other types of financial misconduct based on the availability of the data to credit reference agencies.<sup>6</sup>

### Civil society users

Journalists and others in civil society use beneficial ownership data to conduct investigations of interesting cases or patterns that come to their attention. The result is often a complementary relationship between civil society and law enforcement, wherein civil society conducts preliminary investigations, helping to open a law enforcement case. Greater use of the data also highlights inconsistencies and errors, increasing the quality of data, and could be particularly important in the Kyrgyz Republic context if limited verification is undertaken by SCIESU.

For example, civil society investigators in Slovakia used data from the national beneficial ownership register to uncover that a company had submitted inaccurate information about their beneficial owners. They submitted the results of their investigation to the state, leading to a productive partnership that resulted in the world's first official censure for reporting inaccurate beneficial ownership data.<sup>7</sup>

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<sup>6</sup> HM Treasury and DTI, "Regulatory Impact Analysis: Disclosure of Beneficial Ownership of Unlisted Companies." 2002. Available at [http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/9/9/ownership\\_long.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/9/9/ownership_long.pdf)

<sup>7</sup> Medical supplier fined for Cypriot go-betweens," the Slovak Spectator (2017). Available at <https://spectator.sme.sk/c/20471528/medical-supplier-fined-for-cypriot-go-betweens.html>

# Methodology

The findings in this report were gained through discussions with stakeholders and a review of relevant documents, including applicable provisions in the Subsoil Law and various versions of the draft regulations and disclosure form for companies. This was supplemented with desk research and a review of relevant documents relating to international best practice.

Discussions were held with SCIESU management and staff (covering the IT, legal, technical and license processing departments), EITI International Secretariat and Kyrgyz Republic EITI Secretariat, extractives company representatives through the EITI Multi-Stakeholder Group, and lawyers at Kalikova & Associates, the law firm appointed to assist with drafting relevant legal provisions.

The majority of meetings took place at the SCIESU office during September 2018, with preparatory and follow up discussions occurring between August and December. The visit was undertaken by Louise Russell-Prywata, Program Manager at OpenOwnership, and Jack Lord, Beneficial Ownership Lead at Open Data Services – Open Ownership’s technical partner.

# Findings and Recommendations

In the following pages we present our findings and identify areas where improvements are needed. We were impressed by the commitment of SCIESU leadership to publicly publishing beneficial ownership information, by the knowledge of staff in their respective areas, and by the functional potential of the existing database and web portal. We were grateful for the willingness of staff to share the challenges they face when processing applications and we understand the urgency of ensuring regulations are in place.

Our recommendations are informed by international best practice and underpinned by five principles for collecting and publishing useful beneficial ownership data: a thorough beneficial ownership test; collecting granular data; providing users with sufficient data to disambiguate companies and people with similar names; preserving historical data; and requiring timely updates.

Our findings and recommendations are ordered into three categories: legal and regulatory framework; business process; and technical capacities and coordination. As the technical specifications are yet to be defined, the final section just provides an overview of the key capability required.

# Summary of Recommendations

## Legal & Regulatory Framework

1. The definition of beneficial ownership should include a category of ‘other influence or control.’
2. Regulations should specify what information is to be collected, and what data is to be published publicly.
3. The definition of Politically Exposed Person for purposes of beneficial ownership should reflect that already in use in Kyrgyz law, but longer term this definition should be reviewed and compared with international guidance.
4. Companies should be required to submit revised beneficial ownership information when their ownership changes.
5. Entities applying for licenses through all license-issuing mechanisms should be required to declare their beneficial owners.
6. Exemptions, such as for publicly listed companies and SOEs, should be clearly defined, limited in scope, and useful data about the entities should be collected.
7. Suspension of license and fines should be considered in addition to termination of license in cases of non-compliance, and SCIESU should be empowered to ask companies to make corrections or submit missing information.

## Data Collection and Publication

8. Data collection should be structured and include key points about all beneficial owners.
9. The exact percentage of ownership, and the nature of ownership, should be published publicly.
10. Office address, and month and year of birth should be published to allow the disambiguation of individuals.
11. Historical information should be stored rather than replaced.

## Technical

12. Store information as structured data in BODS format, using unique, stable identifiers for all companies, branch companies and beneficial owners.

## Business Processes

13. Digitalize the submission process as much as possible.
14. SCIESU should undertake basic verification to improve data quality and enable red flags to be surfaced.
15. SCIESU should coordinate with other Government departments and external stakeholders to ensure successful implementation.



# Legal and Regulatory Framework

This section covers our findings and recommendations with regard to law and regulation. OpenOwnership reviewed provisions in the Subsoil Law relating to beneficial ownership, two versions of draft regulations relating to its implementation, and other information provided by SCIESU.

## 1. Definition of Beneficial Ownership

The Subsoil Law obliges companies holding subsoil licenses to disclose their beneficial ownership, and mandates SCIESU to collect and publicly publish it. This provides the foundation both for compliance with EITI Standard provisions on beneficial ownership and the Kyrgyz Republic's leadership on beneficial ownership transparency in the extractives sector.

The 10% ownership threshold used in the Subsoil Law to determine beneficial ownership will enable useful information to be captured and avoid excessive quantities of information, although as a principle Open Ownership's view is that it is best to declare all ownership and not use a threshold. The Subsoil Law does not specify how this information should be published by SCIESU (see recommendation 2).

The Subsoil Law includes a clear definition of beneficial ownership, covering three key categories of control: shares, votes and power to appoint Board members. However the definition does not extend to informal methods of control or control via proxies.

**Recommendation 1: The definition of beneficial ownership should include a category of 'other influence or control'.**

This addition would capture informal methods of control over a legal entity, i.e. not legal ownership of voting rights or shares. In particular, it provides an explicit method for declaring beneficial ownership when control is exercised via an informal proxy. Formal and informal proxy

arrangements are well known methods of maintaining control or benefit from a company, and these can be used to hide the identity of the true beneficial owner. Although some people may still submit false information, this amendment would enable law enforcement to take action, and potentially uncover other offenses.

## 2. Regulations to balance transparency and data protection

The law clearly mandates the collection and public publication of information on beneficial owners. However, there are currently no regulations in place to enable SCIESU to implement the provisions in the Subsoil Law. Under Kyrgyz law, regulations are needed to describe how SCIESU should collect and publish the information required by the Subsoil Law. Draft regulations have been developed and are nearing the final stage of government approval process; OpenOwnership is commenting separately on their content.

Following the passing of the law "On Subsoil" (2018), regulations were drafted to specify how the beneficial ownership provisions in the law are implemented. These regulations do not contain sufficient detail, and this has caused a lack of clarity over exactly what information about beneficial owners must be collected, and what must be published. The lack of clarity in regulations is also likely to have contributed to a lack of clarity about which data points will be published publicly versus just collected and held by SCIESU. This was reflected in companies' concerns about what data will be made public.

Amended regulations are required as soon as possible to enable SCIESU to progress with technical aspects of beneficial ownership disclosure. These should be sufficiently specific about what data is to be collected and published in order to deliver the provisions in the Subsoil Law and achieve meaningful beneficial ownership transparency. SCIESU is taking steps to resolve this by drafting an amended set of regulations.

**Recommendation 2: Regulations should specify what data is to be collected, and what data is to be published publicly.**

Specifying what data is to be published publicly provides an additional safeguard that publication is fully compliant with relevant privacy and data protection law. The disclosure form that companies use should clearly indicate for each field whether or not the data will be published publicly, which should alleviate companies' concerns. Further legal advice may be useful to determine how publication operates within existing data protection principles and on the appropriate wording to include on the draft disclosure form to seek consent from beneficial owners for their information their information to be used, stored and shared publicly, including with third parties and in public databases.

### 3. Treatment of Politically Exposed Persons

The Subsoil Law requires SCIESU to comply with EITI reporting requirements, meaning that beneficial owners must declare whether they are a Politically Exposed Person (PEP), and this must be published. This is reflected in the draft disclosure form. However, there is some uncertainty among companies and SCIESU staff about who qualifies as a PEP. Therefore, we recommend in order to meet the timescale required by EITI, PEP is defined in the disclosure form in reference to the definition in existing Kyrgyz anti-money laundering law. Longer term, the legal definition of PEP should be reviewed and kept up to date with international best practice.

**Recommendation 3: The definition of Politically Exposed Person for purposes of beneficial ownership should reflect that already in use in Kyrgyz law, but longer term this definition should be reviewed and compared with international guidance.**

### 4. Changes and Updates to Information

The Subsoil Law does not include an explicit requirement for companies to notify SCIESU of changes to their beneficial owners after the initial license application has been submitted. This is a serious loophole, and could enable companies to circumvent publication of their true beneficial owners.

**Recommendation 4: Companies should be required to submit revised beneficial ownership information when their ownership changes.**

This requirement should be made clear in relevant law and/or regulation and forms. We recommend that the conditions that trigger an update are: a change in beneficial owner; a change in the *nature* of the beneficial ownership interest; a change in the *level* of beneficial ownership interest; and, a change in the personal details of the beneficial owner. In the UK a 'relevant change' to either the interest held by a beneficial owner or the details of the beneficial owner must be registered on the company's own register within 14 days and with the central register at Companies House within a further 14 days.

### 5. Scope of the beneficial ownership register

OpenOwnership did not find provisions within the Subsoil Law that specified how companies bidding for a license via auction are to be treated. The provisions shared with us do not specify that beneficial ownership information must be collected and published for applicants and bidders, in addition to license holders. Whilst operationally this is clearly SCIESU's intent – and is required for EITI compliance – this should be clear in the law and/or regulations. To avoid loopholes and maximize the usefulness of data, all beneficial owners and license types should be included within the regime.

**Recommendation 5: Entities applying for licenses through all license-issuing mechanisms should be required to declare their beneficial owners.**

### 6. Treatment of listed companies and state-owned enterprises

Where a license is owned by a publicly listed company or a state owned enterprise, the Subsoil Law does not specify what information should be collected about such entities. SCIESU's draft disclosure form requires the applicant company to disclose whether any of the entities in their ownership chain are publicly listed companies. If so, it requires the following information: name of the listed company, the percentage of shares held, the market the company is listed on, the stock code and a link to the stock market listing. These disclosures meet the current EITI requirements on beneficial ownership but will not maximize the possibilities of useful and linkable data for Kyrgyz Republic's license register.



**Recommendation 6: Exemptions, such as for publicly listed companies or state-owned enterprises, should be limited in scope, clearly defined, and useful data about the entities should be collected.**

SCIESU should clarify that the exemption for publicly-listed companies applies only to the block of shares legally-owned by the publicly-listed company; where a company is part-owned by a publicly-listed company, other beneficial owners should declare in line with the regulation. If publicly-listed companies are to be exempted, then the list of markets with acceptable disclosure requirements should be specified, as in the UK.<sup>8</sup> This will reduce the possibility of regulatory arbitrage as companies avoid disclosure rules by listing on exchanges with low transparency requirements.

With regard to state-owned enterprises, the OECD has identified that these present an additional risk of corruption (due to the involvement of politically exposed persons), but can also be a way to safeguard economies through improved governance.<sup>9</sup> OpenOwnership therefore recommends that where the ultimate owner of a license-holding company is a state or a state-owned enterprise, the name and identifiers for the legal entity owning the license should be collected and published. Details of the information fields that should be collected are provided in Annex A.

## 7. Sanctions for Non-Compliance

The Subsoil Law allows SCIESU to terminate a company's license in case of non-submission of beneficial ownership information, or submission of incorrect information. This is a strong provision and should help ensure compliance. However, aside from this, the Subsoil Law does not contain other sanctions for companies failing to comply, such as

fines or suspension of license. Similarly, it does not contain provisions to sanction the beneficial owners themselves.

Whilst the ability to revoke a license for non-submission or the submission of incorrect beneficial ownership information is powerful on paper, the number of sanctions may be small in practice because SCIESU does not intend to undertake verification (see later section).

**Recommendation 7: Suspension of license and fines should be considered in addition to termination of license in cases of non-compliance, and SCIESU should be empowered to ask companies to make corrections or submit missing information.**

SCIESU should consider suspension, rather than revocation, of license for non-submission of information, in order to drive up compliance and limit the administrative impact on SCIESU of dealing with non-compliance. To encourage consensus and compliance around the beneficial ownership transparency regulations, SCIESU should be empowered to contact companies asking them to correct information that it suspects to be incorrect, outdated or missing. This is particularly important when knowledge of how to comply with the new regulations is low.

For companies that do not comply following initial steps, the Kyrgyz Republic should consider legislating for fines and/or other penalties, both for companies, company officers and beneficial owners – this approach is operational in the British and Danish systems, among others. In the UK, beneficial owners may be sanctioned for failure to respond to requests for information from companies about their beneficial owners, or knowingly or recklessly making a false statement to the register. They can also be sanctioned for failing to notify a company that they are a beneficial owner, even if they haven't been contacted by the company.

<sup>8</sup> Schedule 1 of The Register of People with Significant Control Regulations 2016.

<sup>9</sup> OECD. "State-Owned Enterprises and Corruption: What Are the Risks and What Can Be Done?" Paris: OECD Publishing, 2018. <https://doi.org/10.1787/9789264303058-en>.

# Data Collection and Publication

This section covers what data needs to be collected from beneficial owners effective beneficial ownership regime. This means collecting data that is granular and detailed to be useful for users.

## 8. What data needs to be collected

The draft form captures most of the key information required for an effective beneficial ownership disclosure, including name of beneficial owner, nature and percentage of ownership, PEP status, nationality, country of residence. This is the central information required by the EITI Standard from 2020. The form also includes additional information recommended by EITI: passport/citizenship number, date of birth, residential/service address and means of contact.

However, in other ways the draft disclosure form does not collect adequate information. For example, although the Subsoil Law includes provision for a State to be identified as the ultimate owner, the draft disclosure form for companies does not require any additional information beyond the full name of the State. This limits the utility of the information. In addition to missing some data, it is our view that some of the proposed data is not likely to be particularly useful to SCIESU or external users of published data. For this reason, we recommend that SCIESU focuses on collecting key data points and storing them as structured data.

**Recommendation 8: data collection should be structured and include key data points for all beneficial owners.**

OpenOwnership recommends that the disclosure form is amended to focus in on collecting fewer data points about beneficial owners but collecting them as structured data. Annex A provides a list of data points that should be collected for beneficial owners that are natural persons, and information to collect when a State or State Owned Enterprise is a beneficial owner. Importantly, as the

structure of the form can be agreed within SCIESU (within the remit of relevant laws and regulations), there is an opportunity to ensure that data collected is both useful and effective in bringing about beneficial ownership transparency and manageable in quantity.

## 9. Percentage and Nature of Ownership

SCIESU plans to collect the exact percentage and nature of ownership above the 10% threshold in the Subsoil Law. This aligns with international best practice and will, providing it is published, improve the utility of the data.

**Recommendation 9: The exact percentage of ownership, and the nature of ownership, should be reported and published publicly.**

## 10. Identifying information about beneficial owners

As mentioned in the section *Transparency and Data Protection*, whilst the law clearly mandates publication of beneficial ownership information, there is some concern among companies about exactly what information this will involve, in particular as the draft disclosure form includes some personal information such as passport number and date of birth.

Based on international best practice, OpenOwnership recommends that sufficient information is published about all beneficial owners to enable users of the data to take reasonable steps to compare the data with other datasets, and ascertain if a particular person or company in the Kyrgyz Republic register is the same as a person or company with a similar name in another dataset.

**Recommendation 10: Office address, and month and year of birth should be published to allow the disambiguation of individuals.**



Published information should include month and year of birth and office address; see Annex A for a full list. It is important to have a contact address for all beneficial owners to allow authorities to address any queries raised, and to assist users in ascertaining whether a beneficial owner on the register is indeed the same individual as a person with the same name in another dataset. Even where a business address is provided, this has been extremely helpful to civil society actors undertaking investigations. Where the beneficial owner is a State, the name and identifiers for the legal entity owning the license should be published.

## 11. Treatment of Historical Data

Historical information about companies can help uncover links that are not immediately evident from current information – for instance, from a law enforcement perspective, a sanctioned individual’s previous involvement in a company is a potential red flag. It is also important from a due diligence perspective, so that corporates can know if they are going into business with someone whose previous company, for instance, was closed due to fraud or bankruptcy. The European Court of Justice recently recognized this when it decided recently that there is no “right to be forgotten” in company registers.<sup>10</sup>

Currently, outdated information relating to licenses and license applications (e.g.: expired license holders, former legal owners of companies holding a license) is principally stored in hard copy files. Although SCIESU appears to have a well ordered system for this, it greatly limits the utility of this information by SCIESU, and means that even when the information is already publicly available it is only accessible by visiting the SCIESU office in person.

Beneficial ownership information serves as an important permanent record of ownership, and therefore historical records, and a list of changes, should be made public. When designing the business process for storage and publication of beneficial ownership information, mechanisms should be created that maintain a record of historical information submitted.

**Recommendation 11: Historical information should be stored rather than replaced.**

SCIESU should ensure that there is appropriate legal basis for publishing, and republishing, historical information on beneficial ownership of license holders and applicants. This legal basis should be in accordance with local and international data protection laws and allow for the removal or redaction of inaccurate information or information likely to create harm.

<sup>10</sup> Court of Justice of the European Union, “Press Release No 27/17.” 2017. Available at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170027en.pdf>.



# Technical

This section covers our initial review of SCIESU's existing database and technology, and sets out our central recommendation on data storage.

## 12. Storage of data

Storing data electronically in a structured format is key to unlocking its utility and creating an effective beneficial ownership regime. As much of SCIESU's current data is not in a structured format, we have not assessed the extent to which data as currently collected maps to the Beneficial Ownership Data Standard (BODS) – a standard format for describing beneficial ownership information. We did however conduct an initial review of SCIESU's existing database, and hold conversations with its developer, and from these it appears that SCIESU's current database could be amended and enhanced to collect the required beneficial ownership data in structured BODS format.

In addition, our initial review of company identifiers for Kyrgyz Republic suggests that each company has a stable, unique identifier, although we await confirmation that this is the case for Kyrgyz branches of foreign companies.

Once data collected for the register is entered into SCIESU's database, it should be stored using a data model informed by the Beneficial Ownership Data Standard (BODS), with unique, stable identifiers for each company and each beneficial owner. Statements about beneficial ownership of license-holding companies in the database

should be non-destructively replaced rather than updated. This will make the data much more useful for SCIESU and other users, and ensure that SCIESU's data aligns with emerging international best practice.

**Recommendation 12: Publish information as structured data in BODS format, using unique, stable identifiers for all companies, branch companies and beneficial owners.**

Using BODS will ensure data is easily linkable to other datasets in this format, and can be shared simply and automatically to the OpenOwnership Register. Annex B sets out three ways to do this. OpenOwnership will work with SCIESU to identify and take forward the best option.

OpenOwnership will support SCIESU in mapping the data stored in local systems to BODS and creating a BODS-compliant data schema. SCIESU should then explore whether the best method for implementing these recommendations is to adapt the existing database or create a new database.

OpenOwnership will also provide guidance on issuing identifiers for foreign-registered entities (e.g., a company listed on a stock exchange). The database should issue stable, non-semantic internal identifiers for natural persons that allow users to see when multiple licenses are beneficially owned by a single natural person.<sup>11</sup>

<sup>11</sup> These identifiers should act as surrogate keys, compatible with temporal databases, so that the actions of a single natural person can be tracked over time.



## Business Processes

This section covers how SCIESU currently processes license applications, and makes recommendations on these areas and on the issue of data verification. We reviewed what data is currently collected and how, and SCIESU's plans for collecting and publishing beneficial ownership information. This included a review of the draft disclosure form for companies to submit their beneficial ownership information.

### 13. How data is collected

Currently, applications are received in hard copy or scanned PDFs on CD, and basic details are input manually into SCIESU's database. Beneficial ownership information is currently collected in hard copy or scanned PDFs. Scanned PDFs cannot easily be converted into structured data, meaning this information is of limited use to SCIESU or other users beyond the basic processing of applications. For example, it is not currently easy to identify whether multiple license applicants have the same beneficial owner. In addition, the number of license applications received has increased over recent years, and this along with the backlog of applications awaiting processing has contributed to a backlog in scanning information received in hard copy.

SCIESU's plan for collecting beneficial ownership data is to require companies to submit via a disclosure form. We reviewed a draft of the disclosure form, and found that whilst it in theory should capture much of the information, its design is likely to result in inaccurate information being submitted and mistakes when data is entered into the SCIESU database. For example, the form groups several types of information together (e.g. one box is for date of birth, citizenship number, date of issue and issuing authority). In addition, SCIESU staff and companies raised concerns about the quantity of information required on this form.

When staff enter information onto this database, basic information about the applicant or license holder is then automatically published on the SCIESU website, along with structured data on information such as license

coordinates. A similar process could be adapted to publish beneficial ownership information.

SCIESU should explore with the EITI Multi-Stakeholder Group the practicality of encouraging companies to submit some or all information electronically; this would dramatically decrease the SCIESU resources required to process license applications, and improve accuracy. Electronic forms offer simple and instantaneous validation that paper forms cannot; for instance ensuring that the date of birth is reasonable (the person wasn't born in the future) or that a legitimate nationality is reported.

**Recommendation 13: Digitalize the submission process as much as possible.**

Although a fully electronic submission process is not likely to be practical, one option is to explore whether computer terminals could be provided at the SCIESU office, so that companies could complete the electronic forms on-site. OpenOwnership has developed an intuitive data submission process with feedback from businesses, and is happy to provide technical assistance on developing electronic forms for collection of beneficial ownership data.

Digitized submission would also enable SCIESU to identify where data is missing and record in the database the reason for this.

### 14. Verification of data

SCIESU's position is that companies should be liable for submitting correct data. Neither the Subsoil Law, draft regulations or submission processes require SCIESU to undertake any verification of the beneficial ownership data that is submitted. There is concern within SCIESU about the feasibility and resource implications of verifying data about beneficial owners who are foreign nationals. However, there is a commendable appetite within SCIESU for civil society actors to perform verification roles, once the data is publicly published. Some of the information collected, such as links to stock exchanges, could easily be



checked by SCIESU staff, and other published data will assist civil society actors in performing verification.

Basic checks, for example, through SCIESU requiring and viewing supporting documents during the application process, would strengthen the accuracy of published data. It would also provide valuable additional information for SCIESU to incorporate into their due diligence when assessing applications. We believe this is both possible and useful under SCIESU's legal remit to manage the technical process of license applications.

**Recommendation 14: SCIESU should undertake basic verification to improve data quality and enable red flags to be surfaced.**

Once data is stored in structured format, provided it is granular enough it can automatically be cross-checked with other datasets held by the government, such as tax and passport authorities. This would help agencies to surface inconsistencies and red flags. An appropriate agency should be given mandate to carry out this function, which would significantly increase compliance.

Publishing beneficial ownership information as structured data, at a granular enough level and with sufficient data points to enable matching to other publicly available datasets within the Kyrgyz Republic and internationally, will greatly enhance the ability of civil society actors to undertake additional verification independently. SCIESU can incentivize users to do this, for example by providing a form for users to submit notices of missing or incorrect information on company records (this system is used by UK Companies House).

## 15. Coordination with partners

The success of the beneficial ownership regime for extractives license holders will depend to some extent on the coordination with other government departments and external partners. SCIESU has already taken steps to liaise with some departments and engage external partners through the EITI Multi-Stakeholder Group. These activities should deepen and continue as implementation progresses, and include working with partners to better understand different use cases for the data.

**Recommendation 15: SCIESU should coordinate with other Government departments and external stakeholders to ensure successful implementation.**

In addition, we recommend that SCIESU works with the Ministry of Justice to ensure that all required information on domestic license holders is stored and accessible in the electronic database of legal entities and branches. Coordination with the EITI Multi-Stakeholder group will continue to be important, both for seeking feedback from companies and civil society users of the data, and raising awareness of the new requirements for companies, and the new opportunities for companies and civil society to use the data. Gaining user feedback regularly throughout the implementation process will significantly increase the prospect of a successful beneficial ownership regime, with good levels of compliance and widely used data.

The OpenOwnership team and Helpdesk are available to advise and support SCIESU, and in addition to the technical assistance being provided through the OpenOwnership Pilot Program, we encourage SCIESU to use the OpenOwnership Helpdesk to link to international best practice on matters such as company identifiers.

## Next Steps and Timeline

Based on our findings and recommendations, OpenOwnership will work with SCIESU as follows:

Action	Indicative Timeline
Technical specification drafted for creating software system that is compliant with Beneficial Ownership Data Standard	March 2019
Regulations governing beneficial ownership disclosure approved by Government of Kyrgyz Republic	Target: April 2019
Submission form and process finalized and agreed with companies	May 2019
Specification for database and online portal developed and commissioning process begun	May 2019
Software development of database and online tools is commissioned	June 2019
SCIESU conducts awareness raising with companies	July – August 2019
Software to enable collection and publication of information is completed	September 2019
Collection and processing of beneficial ownership information by SCIESU is tested with OpenOwnership support	September 2019
Publication of beneficial ownership information is made public	November 2019
Exports of data in BODS format to OpenOwnership register commence	November 2019
Feedback and iteration on BODS format export	November 2019 onwards
Review and commence monitoring of impact	January 2020

## Summary and Conclusion

In major economies around the world, beneficial ownership registers are increasingly understood to be a critical piece of business infrastructure, providing visibility and assurance, and playing a key role in creating a trusted, effective business environment. This is particularly important in the extractives sector, and EITI has been driving global progress through the beneficial ownership requirement in the EITI Standard.

In recent years, with the increasing importance of data in the world, and new capacities to analyze and combine beneficial ownership data in productive ways, publishing as open data accelerates access to and utility of the information. With central company registers, the UK has been a world leader in this field. As the former Chief Executive of UK Companies House, Tim Moss, said “The purpose of the registry is to provide information.” He went on to say, “We support the economy by providing data and allowing people to make decisions, compare companies they’re going to do business with or not, and if nobody looks at the register we might as well pack up and go home.”<sup>12</sup>

By publishing open data beneficial ownership information for its extractives sector, the Kyrgyz Republic can be a leader on this issue among EITI countries, and bring the

benefits of open data to bear on transparency in the extractives sector. Not only will this reap rewards for the Kyrgyz Republic, but the lessons learned through the OpenOwnership Pilot Program will enable other EITI countries to implement open data beneficial ownership registers more efficiently and effectively.

The key recommendation of this report is for SCIESU to put the needs of users at the center of what they do. This is because, as we have argued throughout, the purpose of a beneficial ownership register cannot be achieved without engagement by users.

In this spirit, we have made recommendations on strengthening the legal and regulatory framework, improving business processes and updating technologies. We believe these changes are critical to ensuring a sustainable beneficial ownership regime for the extractives sector in the Kyrgyz Republic.

OpenOwnership looks forward to supporting SCIESU in implementing the beneficial ownership requirements, and we hope this report above provides a solid starting point for further discussion.

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<sup>12</sup> <https://www.accountingweb.co.uk/tax/hmrc-policy/accountingweb-quizzes-companies-house-ceo>

# Annex A: Recommended data to collect for entities and natural persons

**For natural persons that are beneficial owners, the following data should be collected and published:**

- Name of beneficial owner
- Politically-exposed person status
- Nationality
- Country of residence
- Contact address (and, separately, the type of address e.g. office or contact)
- Date of birth (the day can be redacted on publication, as with the UK system)
- The percentage of shares held directly
- The percentage of shares held indirectly
- The percentage of votes held directly
- The percentage of votes held indirectly
- The right to appoint or remove directors
- Whether any other influence or control is exercised

**In addition, for natural persons that are beneficial owners, the following data should be collected but not published:**

- Residential address
- National identification number, or equivalent, for residents of Kyrgyz Republic
- Passport number and issuing authority for non-residents

**For publicly listed companies that are required to submit information:**

- Official company name
- Identifier of listed company (consisting of company registration number and scheme as specified on org-id.guide). This will ensure that beneficial ownership registers in different jurisdictions can be linked to the same entity by data users

and in the OpenOwnership Register. These identifiers will also ensure stability if a company delists from one stock exchange, to relist on another exchange or go private.

- Identifier and identifier scheme on current exchange (e.g. SEDOL, ISIN, LEI)
- The name of the exchange the company is listed on
- The percentage of shares held directly
- The percentage of shares held indirectly
- The percentage of votes held directly
- The percentage of votes held indirectly
- The right to appoint or remove directors

**For states or state-owned enterprises that are beneficial owners:**

- The name of the State (internally this should resolve to a 2-digit ISO country code).
- The official name of the legal entity (state-owned enterprise or other legal form) that owns the license-holding company
- Contact address
- Any identifiers for the legal entity that owns the license-holding company; OpenOwnership can advise on suitable identifiers.
- The percentage of shares held directly
- The percentage of shares held indirectly
- The percentage of votes held directly
- The percentage of votes held directly
- In cases where no controlling legal entity exists, or can be identified:
  - the official name of the government department that makes decisions relating to ownership should be specified; and,
  - a senior point of contact in the department should be named.

## Annex B: Synchronizing with the OpenOwnership Register

There are three main ways that the data could be synchronized with the Open Ownership Register:

- **Regular data dumps** (probably daily, or perhaps weekly), driven by a script and a scheduler (e.g. cron job). We would strongly recommend the dumps be done to the Beneficial Ownership Data Standard, and be made available as open data on a public interface as the UK register does with the PSC Register.<sup>13</sup> This is the cheapest, quickest, and easiest to implement, and easiest for users to consume too.
- **‘Pull’ interface.** With this option, SCIESU would provide an API (like that [provided by UK Companies House](#)) that gives access to the underlying data as structured data. We (would recommend that such an [API](#) returned data in BODS-format JSON). We think that there are benefits to building this type of API, which would position the extractives sector to lead transparency within the Kyrgyz Republic by allowing integration with other systems (e.g. procurement systems or asset declaration registers). This would promote innovation, and increase use of the data domestically.
- **‘Push’ interface.** With this option, the OpenOwnership Register would implement an API that would allow updates to be ‘pushed’ by SCIESU’s systems to the OOR. While this is best for synchronicity, it is also the most complex to implement, and for this reason, would not recommend starting with it.

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<sup>13</sup> See [http://download.companieshouse.gov.uk/en\\_pscdata.html](http://download.companieshouse.gov.uk/en_pscdata.html). This bulk data is provided in addition to the public-facing register.

