

# BENEFICIAL OWNERSHIP INFORMATION IN THE PETROLEUM SECTOR

PRIMER



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# BENEFICIAL OWNERSHIP INFORMATION IN THE PETROLEUM SECTOR

## INTRODUCTION

### What is Beneficial Ownership?

The most agreed upon definition for beneficial owners provides that they are natural persons who are in control of and receive the economic benefits from companies and or activities performed by other natural persons, whether directly or indirectly. The demand for disclosing such information is increasing worldwide, since obscuring who are the real beneficial owners has shown to promote economic exploitation and corruption<sup>1</sup>. Ensuring beneficial ownership information is disclosed can reduce the involvement of Politically Exposed Persons (PEPs) as beneficiaries from any deals happening in the extractive sector<sup>2</sup>. This concept's application within the extractive sector was first propagated by Global Witness.

### Global Witness and The Extractive Industries Transparency Initiative

Global Witness was established in 1993 to investigate the linkage between economic exploitation and human rights abuses<sup>3</sup>. They were the first to clarify the role blood diamonds had in funding the civil war in Angola. The Angolan leadership was further profiting from the oil proceeds for their personal and political benefit. There was no possibility of eradicating the diamonds industry nor getting the oil companies out of Angola. The best alternative was creating accountability around the movement of money, or what

later was termed as “following the money”. Keeping track of the flow of the revenues and ensuring that an equal opportunity existed for all citizens to benefit economically from this lucrative sector was only possible if, as in the case of Angola, there was an accountable oversight that reduced the possibility of any conflict of interest existing between the government who approved the deals and the companies who were awarded these deals. Angola had issued several offshore exploration and production licenses to companies for its oil blocs. Global Witness uncovered that the beneficial owners of these offshore entities and their partners belonged to PEPs who massively contributed to the funding of the civil war conflict taking place in Angola. Blocks 32 and 33 were awarded to Elf Aquitaine and Exxon, with equity partners Prodev (20%), Falcon Oil (10%) and Naptha (5%). All these corporations have had connections to the weapon supply chain in Angola. The origin of the above equity partners is unclear. According to Global Witness investigative publications, Prodev, which acquired 20% of Block 32, had received its share as a form of payment for arms supply delivered to the Angolan Government that did not have the liquidity to pay upfront in cash. Falcon Oil & Gas is connected to President dos Santos, Pierre Falcone and Antonio Mbakassi. Pierre Falcone acted as an arms broker and supplier to the Angolan Government and the Angolan Armed Forces.

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1\* Westenberg, E. (2018). *Leveraging Beneficial Ownership Information in the Extractive Sector*. Retrieved from <https://resourcegovernance.org/sites/default/files/documents/leveraging-beneficial-ownership-information-in-the-extractive-sector.pdf>

2\* Natural Resource Governance Institute and Global Witness. (2016, September). *Beneficial Ownership: Tackling Hidden Company Ownership Through Myanmar's EITI Process*. Retrieved from <https://resourcegovernance.org/sites/default/files/documents/guidance-bod-myanmar.pdf>

3\* Global witness. *Extractive Industries Transparency Initiative*. (2021, June 4). Retrieved from <https://eiti.org/supporter/global-witness>

Antonio Mbakasi partner of Falcon Oil was a part of the diamond trade and had business with the government. Naptha is connected to Levdan, a company in which its senior manager is an ex-Israeli army general by the name Ze'ev Zahrine. General Zahrine is responsible for some of the security arrangements made for President dos Santos. This mutated from what was supposedly an oil exploration endeavor into an elaborate arms deal<sup>4</sup>.

The oil and gas sector is one of the most corrupt sectors by far where corruption ranges from bribes to sophisticated schemes and this is where the application of beneficial ownership can lead to a system of checks and balances within the petroleum sector to avoid and tackle situations such as the above.

Global Witness advanced the Publish What you Pay campaign following their publication, "A Crude Awakening", centered on the misconduct of the oil sector in Angola. However, the campaign of disclosing their finances put oil companies in conflict with their host governments and their contractors in jeopardy. There was a call by the companies to shift the reporting duties onto the governments as well as demanding this process become a global requirement to all companies in a state. This prompted Tony Blair, in 2003, as prime minister of the UK government to call for an international multi-stakeholder meeting in Johannesburg, attended by extractive countries, companies and international Civil Society Organizations (CSOs) calling for transparency, to create an initiative built on the premise of equal transparency from the governments and

companies. In 2003, the Extractive Industries Transparency Initiative-EITI-came into existence<sup>5</sup>.

The EITI implements a global standard that ensures the transparent, accountable, and ethical natural resource management of the extractive industries. This relates to the publication of information all along the value chain starting with extraction, the flow of revenues and how these revenues benefit the population and public. EITI has an international board that works to assess the progress of 56 member states (current number of members) and guarantees standard implementation is being successfully undertaken. CSOs have fought for several years to include beneficial ownership disclosure of information to the requirements of the EITI Standard. In 2016, CSOs successfully advocated for adding such language. As of January 1st, 2020, it has become an EITI standard requirement that participating countries document governmental policies and multi-stakeholder discussions revolving around beneficial ownership information disclosure. The publication of information on beneficial owners must include the level of ownership and how this control is exercised and identifying PEPs<sup>6</sup>.

The UK is one of the leading countries to have first adopted a beneficial ownership regime in 2016, by introducing a public register on beneficial ownership information. The registry provides direct and easy access to a database of 5.1 million beneficial owners around the UK. The information contained in the registry helps with combatting terrorist financing, anti-money laundering as well as the illegal trafficking of wildlife<sup>7</sup>.

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4\* Reynolds, J. (1992). *a crude awakening - global witness*. Retrieved from <https://cdn.globalwitness.org/archive/files/pdfs/a%20crude%20awakening.pdf>

5\* History of the eiti. Extractive Industries Transparency Initiative. (n.d.). Retrieved from <https://eiti.org/history>

6\* Extractive Industries Transparency initiative. Extractive Industries Transparency Initiative. (n.d.). Retrieved from <https://eiti.org/>

7\* Treasury, H. M. (2021, June 5). *G7 factsheet – beneficial ownership*. GOV.UK. Retrieved from <https://www.gov.uk/government/publications/g7-finance-ministers-meeting-june-2021-communicue/g7-factsheet-beneficial-ownership>

Following the UK's leads, Ukraine is the second state to have introduced the concept of a public register for beneficial owners. Accessibility of the information is an important aspect of the public registry, in which the data of 253,000 companies can be downloaded.

Challenges Ukraine faces concern the threshold of 25% of shareholding for a beneficial owner to be disclosed, the level of companies' compliance is low, and the data in the registry does not disclose chains of ownership nor does it incorporate a timeline of submission<sup>8</sup>.

## LEBANON AND BENEFICIAL OWNERSHIP DISCLOSURE

The first endeavor made by the Lebanese government to explore its potential hydrocarbon reserves in which onshore wells were drilled was between 1947 and 1967, however the exploration came to an end in the wake of the 1975 civil war. In between 1993 and 2003 geologic seismic surveys were piloted that estimated Lebanon might have some hydrocarbon reserves<sup>9</sup>.

2010	Lebanon adopts the Offshore Resources Petroleum Law (Law No. 132/2010). The law addresses the production sharing agreement between the government and the right holders. As well as clarifying that all revenues from the reserves will be placed in a sovereign wealth fund. Furthermore, the law obliges the companies to prioritize the employment of Lebanese nationals.
2012	The Lebanese Petroleum Administration (LPA) was established as a regulatory entity under the jurisdiction of the Ministry of Energy and Water.
2013	The Lebanese government issues the Petroleum Activities Regulations (Decree 10289/2013). The decree addresses the legal, technical, quality, health, safety, environmental and financial provisions of the petroleum sector. This includes the legal responsibilities of right holders and operators and the transportation and production of petroleum.
2017	The Lebanese government issues the Block Delineation Decree (Decree 42/2107). The decree addresses the division of the Lebanese exclusive economic zone into ten blocks with their coordinates.
2017	The Lebanese government issues the Tender Protocol to Participate in Licensing Rounds and the Model Exploration and Production Agreement (Decree 43/2017). The decree addresses the conditions the companies are required to fulfil in order to participate in the bidding of the First Licensing Round. These conditions include prequalified companies to apply together as a consortium of at least three companies including one as operator. The EPA is an agreement between the state and the oil companies, whereby the companies are granted the right to explore, develop and produce oil and gas in Lebanon's EEZ. Within the EPA the right holders shall hire at least 80% of their employees as Lebanese nationals.
2017	Lebanon announces its intention to join EITI and implement the EITI standard that consists of enhancing transparency and accountability in the petroleum sector. Part of Lebanon's commitments as a member will be the publishing of oil and gas management reports <sup>10</sup> .
2018	The Lebanese government adopts the Enhancing Transparency in the Petroleum Sector Law (Law 84/2018).

<sup>8</sup>\* Zosia Szytkowski. (2018, April 4). *Beneficial ownership transparency in Ukraine: What's next?* Open Ownership. Retrieved from <https://www.openownership.org/news/beneficial-ownership-transparency-in-ukraine-whats-next/>

<sup>9</sup>\* Abdallah, M., & Salami, H. (2015, April). *Overview of the oil and gas exploration in Lebanon - researchgate*. Overview of the Oil and Gas exploration in Lebanon. Retrieved from

[https://www.researchgate.net/publication/314296337\\_Overview\\_of\\_the\\_Oil\\_and\\_Gas\\_exploration\\_in\\_Lebanon](https://www.researchgate.net/publication/314296337_Overview_of_the_Oil_and_Gas_exploration_in_Lebanon)

<sup>10</sup>\* King & Spalding. (2018, October 15). *Lebanon's first steps in the oil and gas industry*. JD Supra. Retrieved from <https://www.jdsupra.com/legalnews/lebanon-s-first-steps-in-the-oil-and-66301/>

## ENHANCING TRANSPARENCY IN THE PETROLEUM SECTOR LAW

With over 3 years in the making, this law mirrors almost all of the requirements of the EITI. It transforms the practice of governance in the petroleum sector into mandated regulations. The key highlight of this law is that it requires the disclosure of beneficial ownership information not only at the company/rightsholder's level but across all companies working in the extractive sector in Lebanon. This law ensures limiting and preventing corruption related offenses within the sector. Article 9 of the law upholds the LPA to publicly disclose in a Petroleum Register beneficial ownership information of all contractors with petroleum licenses. Article 9 (5) stipulates that sub-contractors will also have to disclose their beneficial ownership information. Article 10 (7) further ensures that any service contracts conducted by the awarded Contractors are encompassed by this law. Contractual agreements with sub-contractors also requires the latter to disclose their beneficial ownership information. It is noteworthy to mention at this point that this law covers all petroleum activities, that transcend upstream activities, mid-stream, as well as downstream activities, be it onshore or offshore. It also assigns the role of ensuring that all information must be disclosed to the LPA.

### Practice

In its first offshore licensing round, the Lebanese government, under the OPRL (Offshore Petroleum Resources Law), and EPA (Exploration and Production Agreements) awarded the licensing rights of blocks No. 4 and No. 9 to the Total-led consortium.

The licenses awarded are exploration and production licenses which means that companies are permitted to explore for hydrocarbon wealth in the two awarded blocs, and in case they manage to discover a commercial quantity of hydrocarbons (quantities of either gas or oil that can be retrieved and will secure a commercial profit to both the companies and the Lebanese government), are allowed to produce them for period of time as determined by the contracts signed. The consortium that was awarded these two licenses consists of Total S.A, Eni International BV and JSC Novatek. As per the prequalification protocol developed by the Lebanese Petroleum Administration, the companies prequalified and allowed to participate in the first licensing round are of two kinds: Operator companies and non-operator companies. The role of the operator companies differs significantly from the role of the non-operators. The operator is expected to be financially and technically more advanced than the non-operator since it will burden the weight of leading the consortium and managing the exploration and production phases<sup>11</sup>. For the government to award a license (an exploration production agreement) a consortium of at least 3 companies needs to apply (with at least 1 operator company and 2 non-operators). The reason behind following this model of license awarding is to ensure any form of bloc monopoly by one company is avoided. Additionally, having three different International Oil Companies jointly and through a consortium apply for a single license will enhance

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<sup>11</sup>\* *International Law and Policy Institute (2013). Analysis of the Petroleum Sector in Lebanon. Retrieved from <https://www.norad.no/contentassets/ff013ad477b547ceb037a8de7b2cb3d0/analysis-of-the-petroleum-sector-in-lebanon.pdf?id=22198>*

oversight/accountability mechanisms to be implemented by different companies as well as allow for a multiplication of expertise and potential market opportunities.

Below is useful table that summarizes the difference between operator and non-operator companies<sup>12</sup>.

	Non-Operator	Operator
Legal	Joint stock company conducting hydrocarbon Activities	Joint stock company conducting hydrocarbon Activities
Financial	Total assets of USD 500 million	Total assets of USD 10 billion
Technical	Having an established hydrocarbon production	Operatorship of at least one hydrocarbon development in water depths in excess of 500m.
Quality, Health, Safety, Environment (QHSE)	QHSE policy statement(s) Established and implemented QHSEMS	QHSE policy statement(s) Established and implemented QHSEMS

Since the operators are mainly in charge of managing the day-to-day field operations on behalf of other companies in the consortium, including the design and execution of the exploration program, good design, drilling, completion, production, engineering, infrastructure and facilities construction and maintenance, and services and logistics<sup>13</sup>, they rely on sub-contractors in different areas. Subcontractors aid operators in areas such as engineering, technology, geological and marine services, site excavation, material transportation, waste management, project management and the general provision of services. The operation scale of an oil field is vast and for a successful upstream (exploration, drilling and extraction of crude oil and gas) subcontractors are needed to facilitate the process. For the drilling of the first exploration well in Bloc 4 (which occurred in February 2020), 25 service and goods

contracts were awarded by the Right holder/Operator. As per Law 44/2015 (AML/CFT) and Law 84/2018 (Enhancing Transparency in the Petroleum Sector), it is mandatory to disclose beneficial ownership information of sub-contractors. Therefore, all information about the subcontractors and their beneficial owners can be accessed on the LPA website. Out of the 25 subcontractors 7 are national companies and 19 international companies. 17 of these 25 subcontractors under the beneficial owner disclosure section are under the heading of publicly listed companies. This means that the companies' shares can be bought and traded on the stock market. This may lead to corruption and evasion of crimes if left unmonitored. In this case, what needs to occur following. The disclosed information must be verified by the LPA to limit and prevent the possibilities of corrupt practices within the sector.

12\* *Lebanese Oil and Gas Initiative (2018). Guidelines for Good Governance. Pg. 66.*  
 Retrieved from:  
[https://logi-lebanon.org/uploaded/2018/11/KMTW3R19\\_Guidelines%20for%20Good%20Governance-digital.pdf](https://logi-lebanon.org/uploaded/2018/11/KMTW3R19_Guidelines%20for%20Good%20Governance-digital.pdf)  
 13\* *Ibid p. 67*



Another problem arises when these sub-contractors subcontract other companies. A hypothetical example of this would be if Heli-Union SA, a subcontractor, contracts another company to provide helicopters instead of them. The beneficial owners of this second company could be connected to political elites which might include corrupt practices such as trading in influence and/ or conflict of interest. Therefore sub-sub contractions fall under Law 84/2018 article 10(7), and they are held under the same obligations as contractors when contracting within the petroleum sector. The disclosure of beneficial owners at every stage of the exploration phase is mandatory in line with good governance and transparency practices. Regulations directly addressing the petroleum sector in Lebanon does not provide a definition beneficial owners, knowing that the Petroleum Register Draft Decree that is yet to be adopted by the Council of Ministers includes such a definition; this does not mean that the LPA is not bound by any other definition, Lebanese laws do define beneficial owners as it will be presented in the next section of this primer, which means that until the Draft Decree is adopted, the LPA is bound by the current legal definition under the Tax Procedures Law in addition to other regulations based on the AML/CFT Law.

As is the case of countries such as the UK and Ukraine, it is imperative that the Lebanese government and competent authorities play a crucial role in the verification of the information that is being added to the petroleum registry. Due diligence measures must be applied on beneficial ownership information collected by the LPA to verify its truthfulness and accuracy which will increase the possibility

of limiting and preventing corrupt practices within the sector.. There is a need to have a verification process in place within the petroleum sector in Lebanon, where entities such as the LPA, Special Investigation Commission, Tax Department, CSOs, and investigative journalists collaborate to ensure timely access to accurate information in the Petroleum Registry.

### **Comparative approach between the UK and Lebanon**

The UK EITI clearly define who a beneficial owner is by their listing criteria as someone who either owns more than 25% of shares or voting rights in a company, someone who has the right to appoint or remove a large portion of the board of directors, has the right to control or influence the company and its activities. PEPs include those of higher rank positions, the UK EITI lists the positions of such individuals, and if they own more than 5% of their respective entities than they are to be registered as beneficial owners<sup>14</sup>.

In Lebanon the standard here is more strict, in its Circular No. 24/2018<sup>15</sup> the SIC provides that a beneficial owner of a legal entity should be identified through reasonable measures as follows:

- i) Natural persons holding 20% or of the legal person's capital, whether directly or indirectly;
- ii) When the conditions in (i) are not certain, Beneficial Owners can be identified by identifying the person who exercises control through holding the majority of voting rights, or the rights to appoint or dismiss the majority of an administrative or regulatory body of the given legal entity;

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<sup>14</sup>\* *Beneficial Ownership Guide*. (2019, June). Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/894512/UK-EITI-Beneficial-Ownership-Guide-June-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894512/UK-EITI-Beneficial-Ownership-Guide-June-2019.pdf)

<sup>15</sup>\* *Circular No. 24/2018 – Defining and Identifying the “Beneficial Owner”*. Special Investigation Commission. Retrieved from: [https://www.sic.gov.lb/sites/default/files/laws-regulations/24EN\\_0.pdf](https://www.sic.gov.lb/sites/default/files/laws-regulations/24EN_0.pdf)

- iii) When conditions in (i) and (ii) are not certain, Beneficial Owners can be identified by implementing reasonable measures to identify and verify the identity of the persons holding senior management positions.

While participating in a Panel Discussion in February 2022 organized by the Lebanese Transparency Association<sup>16</sup>, the Interim Chair of the Lebanese Petroleum Administration has provided that the oil sector in Lebanon does not have a comprehensive and well detailed definition of beneficial ownership such as the above. The Chair outlined that Article 10 (7) of Law No. 84/2018 (Enhancing Transparency in the Petroleum Sector) did not define beneficial ownership and that the current draft of the Petroleum Registry Decree includes a detailed definition of beneficial ownership as applied in Lebanon's petroleum sector.

This decree has been recently adopted (Decree no. 9471/2022) and it defines a beneficial owner as a natural person who ultimately, directly or indirectly:

- 1- Owns in the aggregate 5% or more of the shares, voting rights or other ownership interests in such Entity, or
- 2- Controls such an entity

Provided that where no single natural person meets the criteria in (1) or (2), the 5 natural persons holding the greatest percentage of direct or indirect ownership of the Entity shall each be considered a Beneficial Owner of such entity.

## Opportunities and Challenges

Lebanon as a prospective member with intention to join the EITI allows for the opportunity of CSOs to have a more fundamental and direct role in the transparency process. With the Enhancing Transparency in the Petroleum Sector Law (84/2018), the Right to Access Information Law (28/2017), CSOs and investigative journalists can play their part in monitoring and oversight of the sector. With Lebanon performing ever poorly on the Corruption Perceptions Index with a score of 24/100 ranking 154/180<sup>17</sup>, proper implementation of beneficial ownership is the right opportunity that all stakeholders can grab to ensure that corruption is prevented and limited, while kept to a minimum, otherwise the petroleum sector will be in jeopardy of abuse and misconduct.



<sup>16</sup>\* "Beneficial Ownership; A Prerequisite to the Success of the Economic Recovery Plan". Lebanese Transparency Association. February 24, 2022. Retrieved from:

<https://transparency-lebanon.org/events/details/%20Beneficial%20Ownership;%20A%20Prerequisite%20for%20the%20Success%20of%20the%20Economic%20Recovery%20Plan>

<sup>17</sup>\* 2021 corruption perceptions index. Transparency.org. (2022). Retrieved from <https://www.transparency.org/en/cpi/2021/>

## KEY TAKEAWAYS

- The legal framework in Lebanon provides an enabling environment for the implementation of beneficial ownership in the petroleum sector. It is imperative that CSOs play a proactive role in overseeing that all relevant beneficial ownership laws are implemented effectively and efficiently.
- Coordination and collaboration at the intergovernmental level and amongst the different stakeholders will maximize benefits for implementation of beneficial ownership. Breaking the seal of working in silos amongst the different government agencies through establishing electronic data basis that will contain machine-readable information pertinent to beneficial ownership will enhance the overall effectiveness of implementing this tool.

