



INTERNATIONAL DEVELOPMENT IN PRACTICE

# License to Drill

A Manual on Integrity Due Diligence for  
Licensing in Extractive Sectors

Cari L. Votava, Jeanne M. Hauch,  
and Francesco Clementucci



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**CARI L. VOTAVA, JEANNE M. HAUCH,  
AND FRANCESCO CLEMENTUCCI**

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ISBN: 978-1-4648-1271-2

DOI: 10.1596/978-1-4648-1271-2

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Cover design: Debra Naylor / Naylor Design Inc.

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# Foreword

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Corruption presents a major challenge to the World Bank's goals of ending extreme poverty by 2030 and boosting shared prosperity for the poorest 40 percent of people in developing countries. Businesses and individuals pay an estimated US\$1.5 trillion in bribes each year—ten times the value of overseas development assistance. Studies show that a notable portion of illicit financial flows are generated through highly regulated sectors such as the extractive sectors, which are then laundered through the financial sector.

The Extractives Industries Transparency Initiative (EITI) beneficial ownership disclosure obligations are designed to ensure that extractive regulatory systems include effective integrity and transparency safeguards to reduce the risks of corruption. This publication adds to the tools available to help officials and experts enhance the integrity of extractive licensing systems.

Countries that have sufficient political will, capacity, and resources have little difficulty implementing effective systems to comply with EITI requirements to publicly disclose the identities of beneficial owners and politically exposed persons. However, countries where capacity and resource challenges impede transparent regulatory governance, or where political will is inadequate, face tougher challenges. In these environments, it is more likely that corrupt actors will be able to find ways to create the illusion of technical compliance while preserving the loopholes that enable corruption.

Full and effective compliance with the EITI beneficial ownership disclosure requirements will not completely eradicate corruption in the extractives sector. The expectation is that it will incentivize officials to make better licensing decisions and help civil society play a stronger role in holding officials accountable for responsible regulatory management of lucrative extractive sectors. We must also focus on strengthening the systems and procedures for efficient cross-border exchange of information among regulatory officials in the extractives sector.

We acknowledge that there is much work to be done. By focusing on improving the integrity and transparency of a sector that is particularly vulnerable to corruption, we hope to make progress in the global fight against illicit financial flows. These flows perpetuate poverty and impede countries from mobilizing

resources to fund vital public services such as education, health, and infrastructure. All of us—international organizations, donors, developing countries, multinational corporations and civil society—have a role in ensuring that developing countries have the resources to finance their own development.

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# Preface

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Reducing corruption in the extractive sectors is now a high priority of the global development agenda because of the degree to which such corruption can impede economic development and contribute to illicit financial flows (IFFs). This kind of corruption can prove complicated and intractable to eliminate because mitigating corruption in natural resource and extractive sectors requires enhancing transparency and improving the quality and effectiveness of regulatory governance in order to eliminate the loopholes which corrupt officials can easily exploit in ways that are very difficult to detect. According to Al-Kasim, Søreide, and Williams (2008, 8), “Many countries have experienced firsthand how easily a few benefits to a few decision-makers can undermine an entire industry and impede welfare improvements to a whole population. This is, nevertheless, what corruption is often about: relatively small benefits in the personal world of civil servants and politicians that are sufficient to alter the decisions they make as representatives of the state.”

We hope this manual contributes to identifying good practice options for reducing corruption risks in the extractive sectors. Although there are many points in the extractive value chain where corruption can emerge, licensing decisions are among the most critical. Thus, this manual focuses on the licensing process because few countries benefit when unsavory persons are granted licenses to operate in the extractive sectors or negotiate concession contracts. It tailors the “fit and proper” concept, globally recognized for decades as a key Basel Core Principle for Effective Banking Supervision (Basel Committee on Banking Supervision 2012) to extractive sector licensing in order to improve the integrity and quality of market entrants. This concept, known among financial supervisors as Basel Core Principle 5 on fit and proper licensing,<sup>1</sup> has been long regarded as critical to responsible financial supervision because of the sector’s elemental role in the economic health and financial stability of national economies.

The “fit and proper” principle simply requires thorough and systematic background checks of license applicants, including documenting the identity of beneficial owners to reduce the probability that criminals or those likely to engage in abusive or unethical activities can acquire a license or controlling interest in a licensed entity. In countries where the extractive sectors are critical to economic

development, assessment of the fitness and propriety of license applicants and identification of beneficial owners can be a useful tool for improving the integrity and regulatory governance of these sectors.

The importance of identifying and documenting the beneficial ownership of those operating in the extractive sectors has also been recognized by the Extractives Industries Transparency Initiative (EITI). This EITI Requirement 2 (adopted in 2016; see box I.2 in the introduction) obligates countries to publicly disclose the identity of beneficial owners (EITI 2016). Operationally, disclosing the identity of beneficial owners requires first identifying them and then verifying their identity, which is best done before licenses are granted.

It must be recognized, however, that effective assessment of the fitness and propriety of license applicants and technical compliance with the EITI Requirements will not eliminate extractive sector corruption if other important safeguards to ensure accountability and transparency are ineffective. When officials are not (or cannot be) held effectively accountable for licensing decisions, corruption risks are likely to be high, with benefits rewarding those more interested in personal enrichment at the expense of the national interest than developing extractive sectors. Although effective implementation of international standards and good practices can help to enhance transparency, civil society must play an important role in holding officials to account for licensing decisions that involve important national assets. As has often been said, *the most important political office is that of the private citizen*.

A lot of work remains to be done. We hope this manual will be useful for officials and experts seeking to improve the quality and transparency of regulatory governance of the extractive sectors, and we welcome the contributions of all to advancing global and local knowledge in this important field.

## NOTE

1. Basel Core Principle for Effective Banking Supervision #5: Licensing, <https://www.bis.org/publ/bcbs230.pdf>.

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# Acknowledgments

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This volume could not have been written without the committed efforts and generous support of the many individuals with whom it has been a great pleasure to collaborate. They include:

Nathaniel Adams, Daniel Kwabena Boakye, Victor Boakye-Bonsu, Boubacar Bocoum, Lisa Bostwick, Parminder Brar, Jean Pierre Brun, Lisa Caripis, Pierre-Laurent Chatain, Allan Dunstant Odulami Cole, Michael Corlett, Marc DeFrancis, Ousmane Deme, Cheikh M'Backe Fall, Anusree Garg, Errol Graham, Collista Jean Harris, Suzhe Jia, Fatu Karim-Turay, Henry Kerali, Sheila Khama, Sergiy Kulyk, Smile Kwawukume, Bryan Christopher Land, Daniele La Porta, Larisa Leshchenko, Olivier Longchamp, Shervin Majlessi, Kemoh Mansaray, Yira Mascaro, Mark Mattner, Cedric Mousset, Donald Mphande, Marie Madeleine Ndaw, Eugene Norman, Anwar Ravat, Alexandra Readhead, Sven Ulrich Renner, Dyveke Rogan, Eleanor Ross, Ivanna Rossi, Kathrin Russner, Ines Schjolberg, Sheikh Alhaji Yayah Sesay, James Seward, Christopher Gilbert Sheldon, Yara Esquivel Soto, Klaudijo Stroligo, Victoria Wandera Taaka, Juliane Weymann, Pablo Valverde, Emile van Der Does, Carlos Leonardo Vicente, Erica Westenburg, Sahr Wonday, and Yihong Zhang.



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# Abbreviations

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AML/CFT	anti-money laundering / countering the financing of terrorism
COI	conflict of interest
EITI	Extractive Industries Transparency Initiative
EU	European Union
FAR	Federal Acquisition Regulation (US)
FATF	Financial Action Task Force
FDI	foreign direct investment
FIU	financial intelligence unit
GDP	gross domestic product
IFF	illicit financial flow
IOSCO	International Organization of Securities Commissions
IPO	initial public offering
MoU	memorandum of understanding
OECD	Organisation for Economic Co-operation and Development
PEP	politically exposed person
POI	person of influence
PRA	Prudential Regulation Authority (UK)
SEC	Securities and Exchange Commission (US)
SOE	state-owned enterprise
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

In this report, all dollar amounts are US dollars unless otherwise indicated.



# Introduction

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It may appear implausible that a few benefits to a few decision-makers can undermine an entire industry and impede welfare improvements to a whole population. This is, nevertheless, what corruption is often about.

– Farouk Al-Kasim, Tina Søreide, and Aled Williams,  
*“Grand Corruption in the Regulation of Oil,”* U4 Issue

For many countries, natural resources are important national assets. In rich and poor countries alike, these sectors have the transformational potential to support economic development and political stability as well as contribute to national prosperity. The resource curse paradox, however, asserts that resource-rich countries often experience lower levels of economic development than resource-poor countries, and suggests that natural resource sectors may be highly susceptible to corruption in countries whose economies largely depend on them.

Although the causes of corruption can be complex, there is widespread agreement that governance systems with weak oversight and enforcement institutions lack transparency and accountability safeguards, and enable an environment in which rent-seeking and corruption thrive (Mlachila and Ouedraogo 2017). Furthermore, the illicit capture of resources from lucrative natural resource and extractives sectors can support the illegitimate enrichment of political elites, which in turn generates significant political tension and violence (Marc, Verjee, and Mogaka 2015, xvi, 83–84). Conversely, the risks that link resource abundance with fragility status can be mitigated if regulatory institutions operate on the basis of recognized principles of transparency and democratic governance, and if effective law enforcement systems limit the misuse and misallocation of commodity windfalls (Mlachila and Ouedraogo 2017, 22).

Yet because of the unique nature of natural resource and extractive sectors, corruption in their management and governance is particularly difficult to untangle, let alone mitigate. These challenges are complicated in countries with weak and nontransparent regulatory governance systems which increase opportunities for corruption, and where integrity safeguards that require financial and regulatory transparency, as well as accountability, are lacking. In such environments, the costs and risks of exploration and extraction tend to be high, and these factors often drive away responsible investors, making productive economic

development of natural resource sectors a greater challenge. Moreover, the lack of transparency in the licensing process perpetuates a “brown envelope culture,” which can easily impede productive development of natural resource and extractive sectors, depriving a country of important benefits such as the optimization of economic returns, environmental protections, and empowerment of workers (see GIATOC and Levin 2017, 5, 13). In this way, corruption can erode the ability of the extractive sectors to contribute to the overall economy.

Over the last decade, significant efforts have been made to identify and share good practices in regulatory governance and transparency in these sectors. The wealth that well-regulated natural resource and extractive sectors can generate can support shared prosperity and contribute to poverty reduction. This manual will focus on extractive rather than other natural resource sectors, and will outline methods to improve the licensing process—both to maximize the quality of entrants and to improve transparency in the earliest stage of the extractive value chain. It also offers options for conducting integrity due diligence checks for licensing in the extractive sectors, which contributes to responsible management and regulation.

Broadly defined, the natural resource sectors include all materials and substances that occur in nature and can be used for economic gain. Examples are minerals, forests, water, and fertile land. Extractive sectors generally include mining, quarrying, and petroleum and gas extraction, the exploitation of which is done on the basis of a license or concession contract.

A license is generally understood to be a permit from an authority to allow a person or company to carry out an activity, subject to specified limits. Before licenses are granted or renewed, it is essential to know exactly who is the potential recipient. When valuable licenses fall into the hands of those who will not act responsibly, the sectors can be seriously harmed. An effective and transparent licensing process can filter out many such actors. Therefore, this manual offers effective, low-cost options for implementing *integrity screening* systems to assess potential licensees, thereby mitigating corruption risks.

Integrity screening is the process of determining whether a license applicant may present a risk to a sector based on an assessment of that applicant’s beneficial ownership; criminal, civil, and regulatory history; and conflicts of interest. A *beneficial owner* is the natural (physical and individual) person (or persons) who ultimately owns or controls the legal entity or benefits from its assets. To evaluate the risk level of the beneficial owner of a potential licensee, it is first necessary to identify the individual in accordance with clear internal processes for verifying the identity of a license applicant and beneficial owner. Once an applicant’s identity is confirmed, the reputation and background can be assessed to determine the fitness and propriety to hold critical licenses.

A good integrity screening system is valuable in identifying *politically exposed persons* (PEPs)—that is, individuals whose backgrounds may show no evidence of unfitness per se, but who would be more likely to present reputational risks or conflicts of interest because they have been entrusted with prominent public functions. Examples of PEPs are heads of state or of government; senior politicians; senior officials in the government, judiciary, or military; senior executives of state-owned corporations; and important party officials. Business relationships with family members or close associates of PEPs could also involve reputational risks.<sup>1</sup>

Recognizing that each extractive sector differs from country to country in terms of risks, legal and regulatory frameworks, systems, and procedures,

- **Beneficial owner**

The natural person who ultimately owns or controls a legal entity or benefits from its assets.

- **Politically exposed persons (PEPs)**

Individuals who are, or have been, entrusted with prominent public functions, such as heads of state, senior politicians, judicial or military officials, and important party officials.

this manual aims to set forth common principles that can easily be tailored to and integrated with existing systems.

## THE POTENTIAL OF IMPROVED INTEGRITY SCREENING

### More economic opportunities

The potential benefits of improved integrity screening can be illustrated by some examples of the serious economic consequences suffered when licensing systems fail to identify risks related to criminal conduct, a lack of previous professional experience, or status as politically connected or politically exposed persons. In each of the cases illustrated in figure I.1, a thorough integrity checking system may have produced a better outcome.

It is no surprise that corruption thrives in sectors where the profit potential and risks are high. Critical sectors in which regulators devote little attention to scrutinizing market entrants tend to attract those with dishonorable intentions. Through corruption, fraud, and tax evasion, bad actors impede a sector's ability to contribute to the economy and support shared prosperity. Potential revenue losses can be huge, considering that in 2011–13 oil trading alone accounted for more than half of the state public budgets of 10 major Sub-Saharan countries (OECD 2016).

**FIGURE I.1**  
Defective licensing systems



The Organisation for Economic Co-operation and Development (OECD) estimated in a 2014 study that approximately one out of five cases of transnational bribery involves the extractive sectors (OECD 2014, 8). The OECD's 2016 typology report, *Corruption in the Extractive Value Chain*, concludes that “large-scale corruption involving high-level public officials was observed in the awarding of mining and oil and gas rights, procurement of goods and services, commodity trading, revenue management through natural resource funds, and public spending” (OECD 2016, 10). As a portion of transactions, the

OECD estimates that bribery in the extractive sectors amounts to about 21 percent, the highest of the 15 sectors it rated (OECD 2014, 27). Although reducing corruption risks across governance systems may be a longer-term goal, screening out potential market participants whose past activities indicate that they represent serious risks in corruption-prone extractive sectors will go a long way toward reducing corruption in the short term.

In addition to lowering corruption risks, effective integrity screening can help countries meet their commitments to implement measures to prevent corruption pursuant to other obligations, such as those in the United Nations Convention against Corruption (box I.1).<sup>2</sup>

Effective integrity screening in extractive sector licensing can improve transparency in those sectors, which can attract responsible investors as well as help countries meet emerging international standards such as the beneficial ownership disclosure requirements of the Extractive Industries Transparency Initiative (EITI)—see box I.2.<sup>3</sup> These requirements are based on a recognition that corruption risks that can include money laundering and tax evasion escalate when the real identities of the persons who hold the legal rights to extract oil, gas, and minerals are hidden behind a chain of corporate entities (EITI 2015, 2). Thus, public disclosure of the identity of extractive sector licensees and their beneficial owners has become accepted as an important norm for improving transparency in the extractive sectors. Although identifying beneficial ownership may appear complicated and expensive when information is located abroad, new initiatives, including implementing a risk-based approach, can help to identify solutions and tools that make the process easier and cheaper.<sup>4</sup>

### Fewer illicit financial flows

Another benefit of effective integrity screening is the potential to reduce illicit financial flows (IFFs), which include both cross-border flows of illicit funds (cross-border movement of money and assets illegally

#### BOX I.1

### United Nations Convention against Corruption

Initiated in 2003, the United Nations Convention against Corruption (UNCAC) is the only legally binding, universal anticorruption instrument. UNCAC's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. It covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. UNCAC encompasses many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. As of October 2017, 183 states were parties to UNCAC.

Source: United Nations Office on Drugs and Crime, <https://www.unodc.org/unodc/en/corruption/uncac.html>.

#### BOX I.2

### Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) is a global standard-setting organization that countries may join voluntarily once they meet certain thresholds. They are then obligated to publish an annual report containing the required data once that report passes through a validation process. Each country discharges its EITI Requirements through its own secretariat and multistakeholder group.

Source: Extractive Industries Transparency Initiative, <https://eiti.org/>.

earned, transferred, or used) and the underlying activities that generate the flows (World Bank 2016). Illegal proceeds are generated in the extractive sectors in many ways—for example, through tax evasion, fraud, bribery, theft, or the use of an extractive license as a cover to launder illegal proceeds from an unrelated criminal activity. According to a recent World Bank study, “Money and activities that have a clear connection with illegality—corruption, illegal natural resource exploitation, smuggling and trafficking, money laundering, tax evasion and fraud in international trade—fall under IFFs” (World Bank 2016, 2).

Blocking corrupt actors from entering extractive sectors through improved integrity screening in the licensing process can significantly reduce corruption risks and stem IFFs. Studies analyzing sources of IFFs recognize that a notable portion of them flows through highly regulated sectors, such as the extractive and financial sectors, and that these IFFs can be a large drain on the resources of developing countries (World Bank 2016, 3). IFFs sap resources from the economy of a developing country and inhibit its ability to finance the United Nations’ Sustainable Development Goals (SDGs). Africa is particularly affected; the African Development Bank estimated that the continent has lost more than \$1 trillion since the 1980s, making it a net creditor to the world (World Bank 2016, 3).

## Greater financial transparency

There is a growing consensus that IFFs generated from corruption could be reduced by improving financial transparency.<sup>5</sup> Well-implemented principles of financial transparency integrated into licensing regulatory systems can mitigate the risks created by those seeking to conceal their identities behind layers of corporate entities.<sup>6</sup> The Basel Committee on Banking Supervision (2012), the G-20 (2014), and the Financial Action Task Force (FATF—see box I.3) all consider financial transparency a high priority in protecting the integrity of financial systems. These institutions promote global standards that require countries to document the identity of the beneficial owners of companies engaged in certain financial activities to strengthen systems to prevent and detect the misuse of corporate vehicles and financial systems for criminal purposes.

## OVERVIEW

This manual highlights practices, recognizing that systems to check the integrity of potential market entrants can be designed to be both effective and cost-effective within the available resources. It is intended to be a useful collection of effective recognized concepts, good practices, and efficient options for policy makers and practitioners seeking to implement or improve integrity screening systems in extractive sectors.

It focuses on strengthening integrity due diligence systems with respect to three important integrity checks: (1) identifying beneficial owners; (2) checking the criminal and legal backgrounds of applicants; and (3) screening for conflicts of interest related to a license. These three aspects of integrity checking

### BOX I.3

## Financial Action Task Force

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and corruption. The FATF has developed a series of recommendations that form the international standard for maintaining the integrity of the international financial system. The standard includes a monitoring mechanism to promote adoption of the recommendations and their successful implementation.

Source: Financial Action Task Force, <http://www.fatf-gafi.org/>.

should be integrated in extractive licensing procedures, taking into account the importance of the technical and financial background checks because all are interrelated.

Chapter 1 (Overview of Basic Licensing Concepts) and chapter 2 (Calibrating Risk) define the basic concepts critical to the three substantive integrity checks. Chapter 3 (Beneficial Ownership), chapter 4 (Criminal and Legal Backgrounds), and chapter 5 (Conflicts of Interest) provide options for cost-effective implementation of these integrity checking processes. Together, these chapters present the general design of an integrity checking system—something that must be understood before moving into drafting the foundational legal framework on which all aspects of the integrity of the licensing system will depend.

Chapter 6 (Policy and Legal Framework) and chapter 7 (Implementing the Regulatory Process) focus on the critical underlying legal and regulatory framework issues, including decision-making roles, functional responsibilities, and fundamental disqualifying factors that should be stipulated in the legal framework to ensure transparency and accountability. Clear steps for all procedures are set forth, along with systematic requirements, to ensure thorough documentation and integrity safeguards for compliance throughout the process. In addition, commonly observed deficiencies in legal frameworks are identified because these can seriously undermine the integrity of the overall licensing system as well as the quality of the background checking process.

Chapter 8 (Documenting and Monitoring Effectiveness) provides options for systematic monitoring and evaluation, which are useful for ongoing refinement of procedures to maximize efficiency and cost-effectiveness while ensuring mitigation of the most serious risks. Because most extractive commodities are invariably subject to wide price fluctuations, the licensing system and background checking procedures must be refined frequently and tailored. Variables include the economic environment and commodity prices, as well as the new and innovative trends and methods by which unscrupulous actors seek to enter the sector. All of these factors affect the risk, threat, and vulnerability assumptions on which integrity systems depend for effectiveness. This chapter also offers suggestions for self-monitoring of compliance with the EITI Requirements for beneficial ownership disclosure.

Finally, Chapter 9 offers policy recommendations for an improved integrity checking system. It is followed by extensive appendixes that include additional resources. It is important to keep in mind that as this field continues to attract global attention in terms of problem solving, experts continue to identify new, better, and more cost-effective solutions and information resources.

## NOTES

1. For more discussion of PEPs, see chapter 6 of this report and FATF (2013).
2. See UNODC (2004), specifically Articles 5 (Preventive Measures), 8 (Code of Conduct for Officials), 9 (Procurement and Management), 10 (Public Reporting), 13 (Participation by Society), and 52 (Prevention and Detection of Transfers of Proceeds of Crime).
3. “EITI Requirement 2: Legal and Institutional Framework, Including Allocation of Contracts and Licenses,” [https://eiti.org/files/english-eiti-standard\\_0.pdf](https://eiti.org/files/english-eiti-standard_0.pdf).
4. See appendix A for a list of free resources for identifying beneficial owners.
5. The use of transparency in dealing with the relevant government authorities can discourage crime and enhance anti-IFF measures, as discussed in UNODC and OECD (2016, 7).
6. Corporate vehicles are legal entities through which a wide variety of commercial activities are conducted (OECD 2001, 8).



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# Overview of Basic Licensing Concepts

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The risk of corruption is probably greatest during the process of awarding licenses.

—Farouk Al-Kasim, Tina Søreide, and Aled Williams,  
*“Grand Corruption in the Regulation of Oil,”* U4 Issue

In any country, overall economic development, poverty reduction, and job creation depend more on some sectors than on others. Critical sectors differ from country to country, because the economies of some may depend heavily on natural resources or extractive sectors, whereas in others they may rely more heavily on the financial, manufacturing, or other sectors. Generally, a critical sector is any sector that is key to supporting economic development in terms of profitability, economic growth, and job creation.

## DEFINING CRITICAL SECTORS

It is no coincidence that in many countries, the most corruption-prone sectors are also the critical sectors. Transparency International’s study of bribe payers indicates that the most corruption-prone industries are construction and public works; utilities; real estate, property, legal, and business services; oil and gas; mining; power generation and transmission; pharmaceuticals and health care; heavy manufacturing; fisheries; and arms, defense, and the military. The characteristics of the poorest-performing sectors (in terms of transparency) include high-value investment coupled with significant public sector exposure because such a characteristic increases the propensity for bribery (Transparency International 2011).

The extractive sectors are critical sectors in countries where extractive resources are abundant. Corruption in these sectors has been identified as a major impediment to inclusive and broad-based development (OECD 2016), and is thus a contributing factor to the “resource curse”—that is, the theory elaborated in 1993 by Auty (1993) and many authors since, to describe the negative correlation between natural resource abundance and economic growth. Countries rich in natural resources have more unequal income distribution, a larger share of their population living in poverty, and greater corruption than countries without such an abundance (World Bank 2005, 304).

**BOX 1.1****What factors make a sector “critical”?**

- Business/economic environment  
What is the sector’s size and role with respect to the total economy?
  - To measure this, set thresholds in percentage of gross domestic product (GDP).
  - Consider the sector’s potential for short- or medium-term growth.
- Overall risk environment  
What threats and vulnerabilities does the sector face?  
What are the integrity risks the sector faces, and how significant are they?
- Other relevant social or physical risks  
What are the other relevant social or physical risks in this sector? These may be related, for example, to health, safety, or the environment.

Effective integrity screening procedures can be tailored to improve the quality of market entrants in sectors beyond natural resources. Such procedures can be applied in sectors considered less economically critical but where the high integrity of market participants is crucial—for example, to protect public safety or health, such as in the pharmaceuticals industry. In determining what sectors are sufficiently critical to justify an integrity checking process, consider the criteria listed in box 1.1, together with other contexts and circumstances that are relevant to the country.

**The financial sector**

The financial sector is considered a critical sector in all countries because it provides the infrastructure to execute financial transactions, both local and global, and thus is needed to enable private sector trade and growth. When the financial sector is used for criminal purposes, including money laundering or terrorist financing, the safety and soundness of financial institutions, as well as entities outside the financial sector and across countries, can be harmed. This situation

has arisen because as national economies become increasingly interconnected globally, they become more interdependent with each other.

Serious harm can occur when individuals involved in organized crime or corruption obtain a banking or financial license. One reason is the challenges officials face when trying to identify and trace the proceeds of crime and related money laundering. Once a license is obtained by those involved in criminality, it can be costly and legally difficult to suspend or cancel such a license. Countries now devote significant attention to vetting applicants for financial licenses because the potential cost of repairing the damage due to criminal abuse can be extremely high. As a result, international standards require that countries seriously scrutinize applicants for financial licenses to ensure that they adhere to high standards of fitness and propriety, which is Basel Core Principle 5 (see Basel Committee on Banking Supervision 2012).

**Characteristics of extractive sectors**

For reasons similar to those in the financial sector, thorough integrity screening in the form of fitness and propriety checks for license applicants are beneficial, especially for sectors and sub-sectors that may be crucial to economic prosperity. In the extractive sectors, licenses can take various forms, from simple short-term permits to multiyear licenses or concession contracts. The limits and obligations to which licensees are subject are defined in laws, regulations, contracts (or concession agreements), or a combination of these. In the smaller-scale extractive sectors, the terms and conditions of a license are generally contained in laws and regulations. However, in the larger-scale mining sectors, the terms (including limits and obligations) of a license may be contained in a concession

agreement or contract individually negotiated between a company and government rather than in legislation.

The size and scale of concession agreements generally create special opportunities for profitability, economic growth—and corruption. These agreements are individually negotiated contracts between a company and a government that permit the company to operate within a jurisdiction and generally contain terms that are unique to each negotiation. Thus such negotiations can give rise to the risk of corruption. Countries aiming to attract mining companies to unexploited regions where the profit potential is uncertain may provide financial or other incentives in concession contracts such as tax breaks, low royalty rates, or other special benefits or privileges. Although these kinds of incentives are generally legal and sometimes indispensable, when the decision-making authority to grant such benefits is not subject to adequate administrative oversight systems and safeguards to ensure integrity, transparency, and accountability, the risk of corruption is likely to be high.

The starting point for reducing risks is a credible risk analysis of the sector and those risks presented by potential licensees. This analysis should involve documenting the risks in terms of the threats and vulnerabilities and using the available data and statistics to prioritize risks according to potential harm. Once the risks are identified and prioritized, screening procedures can be tailored in cost-efficient ways to mitigate the most serious risks, while avoiding unnecessary steps or procedures that add little value. In this way, resources can be aimed at the higher risks, using the appropriate depth and breadth in the screening procedures for each type of license in each extractive sector or subsector.

Because risks vary both among extractive sectors and across various types of licenses, regularly measuring the effectiveness of the integrity checking process and using the findings to improve the licensing process will improve outcomes in terms of productivity, quality of market entrants, and credibility of regulatory governance. Sequentially, a risk assessment of the general risk profile of each sector or subsector will make it easier to determine the appropriate substance, depth, and breadth needed in the integrity checks of the license applicants. These critical integrity checks, which are pillars of the integrity screening system, are briefly described here, but developed in greater detail in the following chapters:

- Beneficial ownership verification
- Criminal and legal background checks
- Conflict-of-interest checks.

## OVERVIEW OF INTEGRITY CHECKS

### Beneficial ownership verification

Verifying the identity of beneficial owners—those persons who would be managing, controlling, or profiting from an extractive sector license—is widely recognized as an important way to protect critical state sectors from the risk of corruption or other forms of abuse. If officials entrusted with managing critical state assets do not know the true identity of the natural persons who own, control, or benefit from the legal entities that profit from licenses, the risk of abuse

by criminal elements will be high because the aim of many criminals is to hide their true identity or status. Once criminals have obtained a license, it can become costly, complicated, and, in some instances, even dangerous to revoke that license. Therefore, before a license is granted or renewed, verifying the identities of those who will benefit from the license and have ultimate and effective control over the applicant/entity is essential.

To reduce overly broad and unnecessary discretion in licensing decisions, consideration should be given to adopting a legally enforceable definition of *beneficial ownership*. Beneficial owners may be persons with (1) direct or indirect ownership of a stipulated threshold (percentage ownership of the equity of an entity) or (2) significant responsibility for controlling, managing, directing, or benefiting from an entity, though they may “own” no portion of it.<sup>1</sup>

When adopting legal definitions of beneficial ownership and thresholds for use in laws and regulations, it is important to closely follow the general guidance of the beneficial ownership concept set forth in international standards.<sup>2</sup> Although the concept of beneficial ownership is quite important across different sectors for different reasons and uses, consideration should be given to identifying a threshold level of ownership that is relevant for individual sectors or subsectors based on the risks prevalent in each sector or subsector. Such a decision should depend on the level of activity in each sector or subsector, its economic importance to the country, and the level and types of risks (threats and vulnerabilities) prevalent in it. For example, if gold mining has a “high” integrity risk, perhaps a 5 percent threshold for ownership would make sense, whereas if iron ore exploration is “low” risk, 20 percent would suffice. For background checking purposes, a person owning 0.1 percent of the shares of a company may not be in a position to exert sufficient influence or receive benefits to warrant integrity checking, whereas a 50 percent owner will always be significant. Thus sector- (or subsector-) specific beneficial ownership minimum thresholds that correspond to the risks of specific sectors or subsectors are likely to be more effective in reducing corruption risks than adopting a universal beneficial ownership threshold applicable to all sectors in a country.

The main goals of a beneficial ownership assessment should include:

- *Identification.* Identifying all the natural persons who serve in positions of actual ownership and control of the applicant person or entity so that those persons can undergo a criminal background check and possibly a conflict-of-interest check.
- *Record keeping.* Maintaining the records of the checks as reference documents for any related future checks or criminal investigations and for the purposes of information sharing with other domestic agencies or foreign officials seeking to ensure beneficial ownership transparency.
- *Follow-up.* Investigating the basis of “red flags” on a license and the related beneficial owners to determine whether they suggest a potential or material risk of intent or actual conduct that is inconsistent with the professional and ethical standards desired of market entrants in the sector.

Before a license is granted, the regulator should be obligated to identify, document, verify, and analyze risks that each beneficial owner may represent. Licensing procedures for critical sectors that lack any of these steps may open the door to corruption risks. Because the beneficial owners of companies may change hands over time, adequate systems should be in place to ensure the records are updated in a reliable and timely manner whenever such changes occur.

The Extractive Industries Transparency Initiative (EITI) beneficial ownership disclosure requirement recognizes the importance of identifying and publicly disclosing the beneficial owners of those engaged in and seeking to enter extractive sector activities.<sup>3</sup>

#### **Criminal and legal background checks**

Criminal and legal background checks should be conducted on applicants for licenses and their beneficial owners. The aim is to evaluate past conduct in order to assess the likelihood of adherence to high ethical and professional standards. Significant unethical, illegal, or criminal past behavior may indicate a propensity to engage in behavior that poses serious risks in a critical sector. In those sectors, an applicant whose past includes crimes such as fraud, corruption, or money laundering would be an unsuitable licensee.<sup>4</sup> Similarly, serious instances of professional or ethical misconduct would be a cause for concern. In all cases, this information would be useful to assess integrity against defined standards. For the most important types of licenses, it is necessary to ascertain integrity early in the process.

#### **Conflict of interest checks**

In addition to the beneficial ownership and criminal and legal checks, it is important to identify where conflicts of interest might arise and take steps to manage, mitigate, or eliminate certain conflicts. A conflict of interest (COI) occurs when an official responsible for making certain decisions could profit, personally or otherwise, from exercising that discretion or making that decision. In other words, an official has private interests that could improperly influence the performance of his or her official duties and responsibilities (OECD 2005, 7).

For example, if a government minister presides over the awarding of an exploration license and his wife is the owner of a company applying or bidding for the license, it would clearly represent a conflict of interest that would require action by the regulator. Although many COIs are not so clear-cut, a licensing system should systematically identify relationships that present significant COI risks, with a view toward eliminating those that cannot be reasonably mitigated.

- **Conflict of interest (COI)**

When a person with the discretion or responsibility to make a decision in an official capacity could profit, personally or otherwise, from exercising that discretion or making that decision.

## **POLITICALLY EXPOSED PERSONS: A CROSSCUTTING ISSUE**

Conflicts of interest may arise when persons who occupy positions of authority or influence are related to a license applicant as a beneficial owner or through other ties. *Politically exposed persons* (PEPs) generally include individuals who hold prominent public positions or have been entrusted with important public functions. Examples are heads of state or of government; senior politicians; senior government, judicial, or military officials; senior executives of state-owned enterprises (SOEs); and important political party officials. Family members or close associates of PEPs also pose reputational risks (see FATF 2012, 2013).

PEPs are a category of persons first recognized both by the Financial Action Task Force and the United Nations Convention against Corruption (UNCAC).<sup>5</sup> EITI has incorporated into its Requirement 2 the obligation to identify PEPs who are beneficial owners in relation to companies that hold or seek extractive licenses.

There are many examples of PEPs who have been involved in corruption, money laundering, and plundering of state assets. To mitigate the risks, international obligations related to PEPs generally require financial institutions to identify PEPs and to perform enhanced monitoring of their financial transactions and of persons close to them. The international requirements for identifying PEPs are intended to be preventive rather than punitive, and they are not meant to imply that all PEPs are involved in criminal activity. In the financial sector, the process of gathering sufficient information about a client to understand what transactions should be considered unusual is known as “customer due diligence.” Financial institutions must undertake due diligence to identify PEPs so they can monitor financial transaction activity and identify and report any suspicious activity.<sup>6</sup>

Identifying beneficial owners who are PEPs is a practical way to identify and manage conflicts of interest in the awarding of licenses in any critical sector. Just as a financial institution should know with whom it is dealing and apply extra vigilance when that person is connected in some way to political power structures, regulatory agencies should also be aware of PEP interests in licenses in a critical sector to reduce conflicts of interest and corruption risks.

The FATF has developed general definitions to help countries understand how to identify PEPs. The three categories of PEPs are (1) “domestic PEPs”—officials within a country; (2) “foreign PEPs”—officials entrusted with the prominent function in a foreign country; and “international organization PEPs”—those entrusted with prominent functions in an international organization. To implement a credible system for systematically identifying PEPs, countries should adopt a legally enforceable, precise definition of “domestic PEPs” that fits the appropriate country context. The FATF’s definition of PEPs, which is recognized as the international standard, is a binding guideline that requires such country-level tailoring.

If a clear and objective definition of PEPs has not already been adopted nationally, consideration should be given to adopting one that is legally enforceable (in law or regulation). A clear legal definition will enable all officials to easily determine whether they are PEPs and disclose that status. Where a legally enforceable and objective definition of PEP does not exist, it will be much more difficult for officials to know whether they are a PEP so they can identify themselves accordingly. An unclear definition of PEPs will require discretionary interpretation before it can be applied, thereby unnecessarily complicating the work of regulators who must accurately identify PEPs. In addition, it will introduce unnecessary corruption risks into the licensing system.

Once a clear and objective PEP definition has been adopted, the next step is to determine which applicants or beneficial owners meet the PEP criteria. PEP status need not automatically exclude a person from obtaining a license; rather, it raises a red flag for certain risks, particularly possible inappropriate influence or a conflict of interest. When the COI risks involving a PEP are high and cannot be effectively mitigated, denying the license is warranted. Chapter 5 further discusses PEPs in the context of conflicts of interest.

## **LICENSING AS A GATEKEEPING FUNCTION**

Research has shown that the risk of corruption is greatest during the process of licensing (Al-Kasim, Søreide, and Williams 2008). Risks are also high when licenses can be freely transferred or “flipped” between companies without prior approval of the regulator. Extractive sector value chains tend



**FIGURE 1.1**  
**Extractive value chain**



to be long and complex, providing many opportunities for corruption risks. Figure 1.1 illustrates several points in the value chain where the risk of corruption is evident, although some extractive sectors have even more complex value chains, particularly those in which exploration and extraction licenses are granted in separate processes.

Defective licensing systems in countries whose governance, regulatory, and law enforcement systems are weak can exacerbate corruption risks because criminals seek to exploit weaknesses in the extractive value chain (box 1.2). Thus, enhancing integrity screening in the early part of the value chain can reduce corruption risks in other parts of the value chain. When integrity screening procedures for licensing are poor or lacking, the risk of granting licenses to those who are not truly interested in productive long-term development of the resources will be much higher. Weak-integrity due diligence systems can make a country less attractive to legitimate investors, negatively affecting the development potential of the sector.

Integrity screening systems based on principles of regulatory effectiveness, transparency, and accountability can reduce opportunities for corruption. Improving licensing systems can be challenging when powerful officials may be benefiting from a lack of transparency in those systems. However, now that greater attention is being paid worldwide to the use of beneficial ownership screening to better detect corruption and criminals hiding behind corporate entities, both domestically and abroad, the time is ripe to make inroads in this area.

EITI's beneficial ownership disclosure requirements, aimed at enhancing transparency in the extractive sectors, are the keys to building systems that can reduce opportunities for corruption. These requirements mandate public disclosure of beneficial owners and PEPs as well as other information, including deviations from technical, financial, or integrity criteria; details of state financial or decision-making control; and subsidies paid.

National registries that maintain information on the legal owners of companies are potentially effective tools for fighting corruption and combating illicit financial flows. There are, however, challenges in applying definitions and maintaining registries of such information. For one thing, countries use widely different systems for documenting who owns and controls corporate entities because

#### BOX 1.2

#### Vulnerability points in the extractive value chain

- Licensing: exploration and extraction
- Concession agreement negotiation
- Concession agreement enforcement
- Commodity trading
- Revenue collection and enforcement
- Importing equipment: taxes and clearances
- Exporting commodities: taxes and clearances
- Transfer pricing
- Regulatory compliance with operational requirements
- Immigration regulatory violations
- Use of profits from extractive activities

few efficient and cost-effective systems have been identified for maintaining and reliably updating beneficial ownership information. Even though systems and methods vary across countries, the more countries follow international guidelines and harmonize procedures, the easier and cheaper it will be for officials to obtain and share such information, making it more difficult for those who seek to conceal their identity to avoid detection.

The most significant challenge for registries is that most lack the resources and capacity needed to effectively monitor and effectively enforce compliance by companies to ensure that company information is reliable, accurate, and updated in a timely manner.<sup>2</sup> Even if companies file the required information upon establishment of a legal entity, the benefits of a registry are limited if the information is not reliably updated. In addition, obtaining information from a registry can often be a challenge, as in many countries such information may be available only in hard copy on-site, which makes it even more difficult for government officials or citizens from another country trying to determine beneficial ownership.

Several other factors can also impede the effectiveness of a licensing system and create systemic vulnerabilities. If the integrity screening standards are not clear and do not have legally enforceable safeguards, the system may be amenable to abuse. If there is insufficient demand or competition for licenses, there can be pressure to reduce the integrity standards to attract more applicants or bidders. Attention should be given, however, to changes in economic conditions or commodity prices so that integrity standards can be tightened when circumstances change.

Another challenge is securing the knowledge or tools needed to accurately assess the fair market value of a license in underdeveloped extractive sectors. A lack of knowledge or tools can result in selling a license too cheaply. When an unscrupulous licensee easily navigates the process because of inadequate screening procedures and then obtains a license, the risks of corruption will be significantly exacerbated.

## **INTEGRITY, FINANCIAL, AND TECHNICAL REVIEWS**

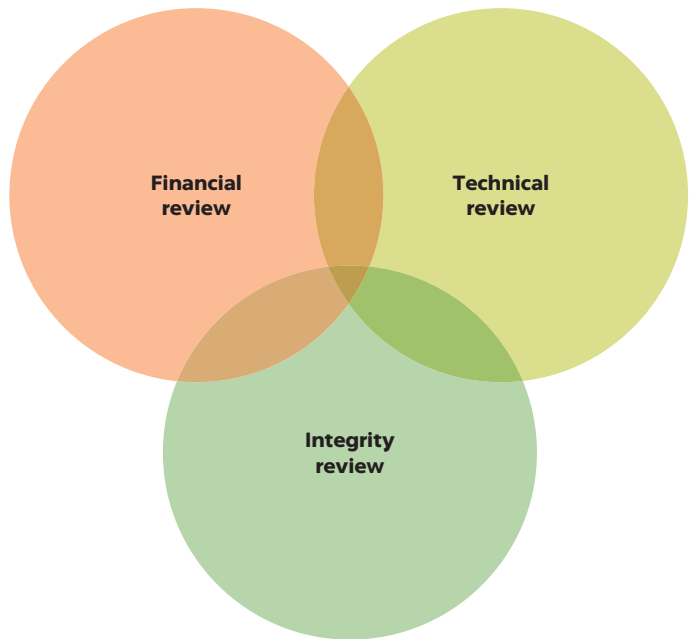
Integrity reviews should complement the two other types of background checks—technical and financial reviews—necessary for licensing, plus any others that may be needed because of a sector’s unique characteristics. The three basic evaluations (integrity, financial, and technical) are necessary for any licensing system, but the depth of each should be tailored to avoid wasting resources on less significant risks and to ensure that available resources are directed at mitigating the more serious risks. For anyone designing a licensing system, it is important to take into account the unique characteristics of the sector, including its size and expected growth (or decline). The country circumstances and risk factors will figure in as well. Once a screening system becomes operational, it will be possible to make refinements based on the results obtained.

Even though the integrity, financial, and technical reviews all have different purposes, they overlap. An applicant’s deficiencies in meeting technical or financial requirements can raise red flags that may call for deeper integrity screening. The converse is also true: if the personal profiles and skills of key personnel of an applicant firm are high in quality, this may also indicate that the

firm may be capable of fulfilling the technical specifications of certain projects. Figure 1.2 illustrates these interrelationships.

Financial background checks should include determining whether a company has any outstanding civil judgments or liens against it, because these are relevant to assessing financial soundness. Depending on their nature and the underlying circumstances, these indicators may also be a sign of irresponsible or illegal conduct. Similarly, consulting with securities and capital market regulators to inquire about possible regulatory penalties against an applicant is useful for assessing the quality of an applicant’s internal compliance and control systems, which is an indication of integrity. On the technical side, verifying the validity and status of professional licenses and certifications is useful because lapses or absences of such qualifications may indicate weak integrity. Table 1.1 summarizes some of the key indicators of the three main components of licensing evaluation.

**FIGURE 1.2**  
**Components of public procurement reviews**



**TABLE 1.1** Specific information reviewed under the three components of licensing evaluation

	GENERAL SCOPE	SPECIFIC INFORMATION
Integrity review	Reputation of integrity and business record <hr/> Public policy and regulatory compliance	<ul style="list-style-type: none"> <li>• Criminal: judgments and convictions, investigations and indictments, grants of immunity</li> <li>• Civil: judgments, investigations</li> <li>• Government suspension, debarment, exclusion</li> <li>• Prior conduct: contract termination, prior denial based on integrity issues</li> <li>• Labor/health/safety: willful violation of laws or regulations on safety, health, employee protections (treatment, injury compensation, general employment practices), environmental protection, human rights</li> <li>• Other laws and regulations: securities/capital market laws; immigration/ alienage laws; competition/antitrust</li> </ul>
Financial review	Financial capacity and resources	<ul style="list-style-type: none"> <li>• Credit agency ratings (or similar)</li> <li>• Filings with regulatory agencies (securities and capital markets authorities)</li> <li>• Bankruptcy and reorganization filings</li> <li>• Liens, judgments, delinquent taxes</li> <li>• Insurance coverage, bonding capacity</li> <li>• Audited financial statements</li> </ul>
Technical review	Satisfactory technical qualifications and experience <hr/> Demonstrated expertise to carry out work and meet projected performance targets <hr/> Organizational capacity: facilities, material, and human resources <hr/> Necessary licenses, insurance, bonds	<ul style="list-style-type: none"> <li>• Firm history and experience</li> <li>• Organization type (corporation, partnership, etc.)</li> <li>• Professional licenses and certifications</li> <li>• Authority to do business in relevant jurisdiction</li> <li>• Ownership, major stockholders, affiliates</li> <li>• Directors, principals, key personnel</li> <li>• Primary place of business</li> <li>• Domestic links and status</li> <li>• Past performance, references</li> </ul>

## LICENSING AND PROCUREMENT

Some recognized good practices from the field of procurement can be useful to the context of licensing. Although licensing and procurement have both similarities (Hasibuan-Sedyono et al. 2015; International Corporate Accountability Roundtable 2015) and differences (Center for Global Development 2014; ICT n.d.), both systems depend on effectively implemented systems of integrity due diligence to improve outcomes. In the licensing process, the government is the seller of a license that represents the right of limited access to a commodity, with the goal of *maximizing profit and revenues* while paying attention to sustainability and development. In procurement, the government is a buyer looking to *minimize costs* while maintaining quality.

Licensing decisions are generally more complex than procurement activities because licensing decisions are linked to further regulatory management of a resource that represents an important state asset. Procurement generally aims to maximize value for money in a shorter time frame. Issues such as the duration of the license or contract—as well as important conditions, limitations, and qualifications—must be considered in all licensing and procurement processes.

The transparency of the criteria for integrity is very important in both licensing and procurement. Applicants and bidders need to clearly understand the standards and rules by which they will be judged. Clarity and transparency will build confidence in and respect for the integrity-screening process. Early screening is also important for both procurement and licensing. Generally, the earlier in the process integrity factors are assessed, the earlier applicants that do not meet the minimum standards can be eliminated. Early assessment not only raises the integrity baseline of the candidates under serious consideration but also raises the overall quality of the market participants. Furthermore, it enables background checks to be targeted in a way that reduces costs while enabling improvements in quality and depth.

A unique challenge in licensing is that both parties—the state and the licensee—must accept certain business risks because the ultimate value of the license depends on how successfully the permitted activity is carried out. Nonetheless, an estimate of the *potential value* of a license is adequate for developing the risk profile of the sector or subsector, as discussed in the next chapter.

## NOTES

1. Examples would include executive officers, senior managers, and persons with agreements (written or unwritten) giving them control or an expectation of profits.
2. For the financial sector, the international standard is set by the guidelines of the Financial Action Task Force (FATF), which defines a “beneficial owner” as the natural person(s) who ultimately owns or controls an entity and/or the natural person(s) on whose behalf a transaction is being conducted. See the glossary of the FATF recommendations (FATF 2018).
3. For background on the EITI, see box I.2 in the introduction.
4. For a broader discussion of how to define the category of disqualifying offenses, see chapter 7. For a sample list of disqualifying offenses used by Canada, see Government of Canada (2017).
5. For background on the FATF, see box I.3 in the introduction and <http://www.fatf-gafi.org/>. For background on UNCAC, see box I.1 in the introduction and UNODC (2004).
6. However, international obligations in terms of customer due diligence for financial sector entities do not require public disclosure of PEPs.
7. See FATF (2014, 19–22 and para. 45) for a discussion of company registries.

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## Calibrating Risk

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A clearer understanding of the evolving patterns that perpetuate corruption is necessary for governments and companies to devise measures that act as catalysers of reforms to maximise the positive impact of extractive activities on development.

—OECD, *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives*

Licensing presents challenges because both parties—the state and the licensee—must accept certain risks. For the state, the risk lies in whether licensees will maximize value in a responsible way. For the licensee, the risk is in whether the costs of the financial investment in operations and compliance with regulatory requirements and relevant taxes will ultimately provide sufficient return on the investment. The ultimate value of a license as an asset depends on the success of carrying out the permitted activity. At the same time, the greater the potential profit from a license, the higher is the risk to the state if the licensee fails to perform. For example, the value, and thus the risk profile of large-scale mining and drilling (such as iron ore, copper, and petroleum) may differ significantly from the value and risk associated with small-scale or artisanal mining.

Thus the estimated value of a license will be an important factor in developing the risk profile of each sector or subsector, and the risk profile is in turn needed to determine how to tailor the integrity screening system and procedures. An estimated range of the potential value of the license is adequate, as long as it is a rational and logical calculation based on the duration of the license.

Effectively mitigating corruption risks depends on credibly identifying and assessing two kinds of risk: (1) the risks that exist in each sector and subsector and (2) the risks represented by each license applicant. Integrity screening systems should be tailored to each sector and, where appropriate to individual subsectors, based on risk profiles and unique sectoral characteristics. The most critical risk mitigation systems should take the form of laws and regulations, including safeguards against abuse and corruption. Because corruption actors are so adaptive, constantly seeking new ways to avoid detection, corruption risks are likely to change over time, often in response to improvements in mitigation systems. Therefore, effective mitigation systems require ongoing monitoring and improvements.

A good integrity screening process should reduce risks while maximizing the field of applicants so the state can reduce the risks represented by a license holder by licensing the applicant that represents a lower risk profile. Reducing such risks will help to maximize revenues. Screening procedures should avoid discriminating against small, local entities, which are often important in early-stage resource exploration in which the risks are high and the returns are uncertain. Similarly, the licensing processes should not unnecessarily favor larger and more vertically integrated companies because, even though they may be more technically capable, larger companies may be more prone to engaging in transfer pricing, supply discounting, or bribery. Diversity in the types of licensees can be advantageous in markets where larger or multinational entities may be unwilling to enter if the exploitation and profit potential is less certain. In these circumstances, local entities can play an important role in spurring development of new sectors.

## **TARGETING RESOURCES: A RISK-BASED APPROACH**

### **Establishing a tiered screening system**

A good integrity due diligence system will maximize results from the available screening resources. Because it is not always feasible to conduct exhaustive background checks on all applicants for all types of licenses, it can be cost-effective to design the screening system on the basis of identified risks, targeting scarce resources to mitigate the higher risks. Thus where risks vary within various sectors and subsectors, a tiered system could usefully scale the depth of the background checks to match the degree of integrity risk associated with each type of license and each sector.

Creating such a tiered screening strategy would entail analyzing the actual risks presented by each type of license and then applying the findings to decisions on the appropriate depth and breadth of background checks. Simpler background checks may be appropriate for lower-value, lower-risk licenses of short-term duration. However, because applicants aiming to hide their identity or status may apply for a license that is subject to little scrutiny, the screening procedures for lower-risk licenses should incorporate procedures for more extensive checking or verification where certain red flags are identified. Similarly, when a single entity applies for many licenses of smaller value in these categories, more scrutiny may be warranted because the aggregate value is significant.

### **Adjusting screening to match risks and resources**

The depth and extent of integrity screenings will depend on the risks and available resources. For example, background checks on foreign persons and entities tend to be costly and more time-consuming than domestic checks, and checks on legal persons are more complicated and costlier than checks on natural persons. The more complicated and expensive checks are necessary and absolutely critical for certain high-value, high-risk licenses. Also, mandatory minimum integrity standards can be used to eliminate certain applicants when prequalification or short-listing procedures are used, or when licenses are allocated on a first-come, first-served basis. In fact, applicants who have a disqualifying integrity-related issue in their past are usually good at obscuring such factors in the application and documentation.



In most extractive sectors, changes in economic circumstances and commodity prices will alter the risk profiles as well as the risk analysis. For example, if prices rise quickly for a certain commodity but screening remains light, a vulnerability will result. Therefore, periodic risk assessments and adjustments should take place when circumstances warrant in the context of systematically monitoring and evaluating the regulatory effectiveness of the licensing procedures (see chapter 8).

### Tracking costs

The costs associated with various background checks will vary greatly from country to country, depending on many factors, including labor costs, how efficiently the checks are conducted, and even the extent to which open (and cost-free) sources or commercial sources are (or are not) used. Where such cost estimates are not known, estimates can be used as a proxy. However, by systematically tracking such costs—recording actual time spent and the associated variable costs—resources can be better allocated to mitigate risks. This is particularly important for countries that lack adequate resources.

## RISK PROFILING

Assessing the general risk profile of a sector requires examining individual risk factors. A clear assessment of risk factors and circumstances provides a logical basis for targeting the available resources in designing background checks and determining their appropriate depth.

The first step is to identify the most obvious elements of risk. Risk is a function of the characteristics of licenses and licensees. It may be useful to start with the simple principle that the higher the risks, the deeper and more thorough the background checking process should be. Mitigating risks requires accurately identifying and measuring the threats and vulnerabilities in each sector and sub-sector and for each type of license.

Although sectors differ, the most common factors relevant to assessing risk for many licenses are the following:

- Type of license (such as exploration or extraction)
- Value of license
- Quantity of available licenses
- Duration of license
- Transferability of license
- Demographics of licensee
- Individual risk profile of license applicant.

### Exploration versus extraction licenses

In some extractive sectors, separate licenses are required for exploration and extraction because of the size of the investment required to extract certain commodities, such as oil and gas. Thus, before signing contracts or concession agreements committing to extraction activities, companies will need to assess the likelihood that the commodity exists in sufficient quantities, estimate the costs of extraction, and calculate the potential profitability. Although exploration

licenses may appear to have a lower risk for the licensing country, the logistics of large-scale exploration require large-scale investments and some large risks.

Careful attention should be paid to evaluating the risks presented by different types of licenses. More extensive background checks may be warranted for exploration licenses when the company holding the license is likely to apply (and perhaps receive a preference) for an extraction license where sufficient quantities of the commodity are identified.

In sectors with high profit potential and many interested applicants but a limited number of available licenses, auctions or bidding procedures should be part of the licensing process. Background-checking procedures should be fairly extensive for exploration licenses for high-value commodities or where auctions or bid procedures are used because it is highly likely that if the profit potential is detected, the explorer will apply for an extraction license. Auctions or bidding procedures should start with a prequalification procedure that certifies those eligible to participate.

### **Artisanal mining**

Small-scale mining or artisanal licenses generally cover both exploration and extraction. The risks will depend largely on the value of the commodity. Thus, higher-value commodities, such as precious metals (gold, silver) or gems (diamonds, semiprecious stones), may necessitate more extensive background checks. Some short-term licenses for relatively low-value commodities may not warrant extensive background checks. Moreover, conducting background checks for them may not be worthwhile because of the high number of applicants and low level of risk.

For artisanal and small-scale mining, low literacy rates among miners can complicate licensing. Accommodations may be needed to ensure that these persons are welcome in the sector (GIATOC and Levin 2017). However, small-scale or artisanal licenses for high-value commodities such as gold and diamonds may warrant more extensive checks. Just as for larger-scale applicants, the depth of these checks should reasonably correspond to the identified risks.

### **Export licenses**

Some degree of integrity screening should be applied to export licenses, particularly those for the export of precious stones and metals. These licenses require a focus not only on the annual license value (the purchase price of the license) but also on the annual turnover generated by that license. For example, possession of a single license to export diamonds, which may have an annual fee of \$35,000, could easily enable an entity to generate an annual turnover of millions of dollars. The risk analysis for export licenses should therefore be conducted with a view toward determining (1) the specific risks (vulnerabilities and threats) related to each type of license in each sector and (2) the best ways to mitigate the identified risks.

### **Extent and depth of screening**

Decisions on the extent and depth of such assessments should take into consideration the data on the various risks that affect the sector or subsector. Such risk assessments should include both threats (such as corruption, money laundering, and other criminal activities) and vulnerabilities (such as weak

enforcement systems), along with any other evidence or trends relevant to the sector. Specifically, three types of vulnerability should be examined:

- Potential financial damage to the sector and the country
- Potential reputational damage to the sector and the country
- Potential harm to the ability to attract future investors of good standing.

If the resources for conducting exhaustive background checks on all bidders are scarce, an abbreviated system of initial checking could be used. Reliance on base criteria to identify obvious corruption indicators, such as recent convictions of principals in a firm, would be followed by more extensive background checks conducted on a smaller pool of the top candidates identified on the basis of the submitted bid offers.

The more common risk factors related to most licenses are indicated in box 2.1, but other factors will be relevant, depending on the sector, country, or other contextual circumstances.

For example, an applicant for a license of limited duration and a net potential value of less than \$1,000 is less likely to be a threat and should require a less thorough background check than an applicant for a license with a potential value of \$50,000. Obviously, the application forms for each type of license would be substantially different. For the more valuable license, more detailed information and documentation on identity should be required, as well as documentary proof of no criminal record. Independent verification of the information and documentation submitted should be considered for higher-value licenses (see chapter 4).

Once all the material factors representing risk are identified, they should be risk-weighted so that rational decisions can be made on the depth of scrutiny. Because available resources will always be a factor in determining the depth of integrity checks, a system of risk weighting will enable analysts to ensure that deeper checks are conducted where higher risks are more likely.

Creating tiered categories will help calibrate the depth of checking to the actual risks, which in turn will help to balance cost-effectiveness. A simple tiered, risk-based system might consist of two levels (table 2.1).

## BOX 2.1

### Common licensing risk factors

#### *Estimated value of license and annual turnover*

- Single license
- Series of licenses for similar activity

#### *Quantity of licenses available*

- Unlimited: granted on rolling basis (such as for artisanal mining)
- Limited
  - Strictly controlled (such as financial licenses)
  - Unique and individually tendered (such as for tracts of land, sea)

#### *Duration of licenses and renewal requirements*

#### *Transferability or sale of licenses*

#### *Applicant risk profile*

- Natural persons: domestic versus foreign licensees
- Legal entities: domestic versus foreign
- Beneficial owners of applicant: politically exposed persons (PEPs) versus non-PEPs
- Conflicts of interest

#### Key Concept:

If resources are limited, consider doing an initial review to identify obvious corruption indicators, followed by more extensive background checks on a smaller pool of the top candidates.

**TABLE 2.1** Tiered risk-based system for calibrating the depth of background checks

LEVEL 1: LOWER-RISK PROFILE	LEVEL 2: HIGHER-RISK PROFILE
Low-value licenses	High-value licenses
Lower-risk / limited activities	Higher-risk / complex activities
Unlimited quantity of licenses	Limited quantity / individually tendered
Short-duration licenses	Long-duration licenses
Nontransferable licenses	Transferable licenses
Lower-risk applicant profile	Higher-risk applicant profile

**TABLE 2.2** Heat map of risk levels by license applicant type

ANNUAL LICENSE VALUE (US\$)	NATURAL PERSON (DOMESTIC)	NATURAL PERSON (FOREIGN)	LEGAL PERSON (DOMESTIC)	LEGAL PERSON (FOREIGN)	PEP (DOMESTIC AND FOREIGN)
<1,000	L	L	L	L	M
1,000–5,000	L	L	L	L	M
5,000–12,499	L	L	M	MH	MH
12,500–49,999	M	MH	MH	MH	H
50,000–99,999	M	MH	MH	H	H
>100,000	MH	MH	H	H	H

Note: H = high; MH = medium-high; M = medium; L = low; PEP = politically exposed person.

### Creating a risk rating matrix

Using the variables of license value and the type of applicant (natural or legal person, domestic or foreign person, PEP or non-PEP), it can be useful to construct a matrix with a rating system for degrees of integrity risk. The integrity risk rating can determine the depth and breadth of checks, as well as how many resources will be expended in verification. As the level of risk rises, the amount of detail and data required will rise as well. High costs to obtain data may be justified in high-risk scenarios because a poor decision may have major economic consequences.

Table 2.2 is a risk-rating system with four categories—low, medium, medium-high, and high—corresponding to the types of checks and the amount of data that may be required. License value thresholds can be added; the thresholds used in table 2.2 are merely illustrative. Such a matrix can be used to determine the best range of values based on the unique characteristics of various license markets.

Other factors may be relevant in occasionally modifying the depth or criteria used in screening procedures, such as trends in commodity prices or corruption risks, how critical an individual license is to the overall sector, or even policy decisions that may influence changes in the demographics of licensees.

### DIAGRAMMING INTEGRITY CHECKS

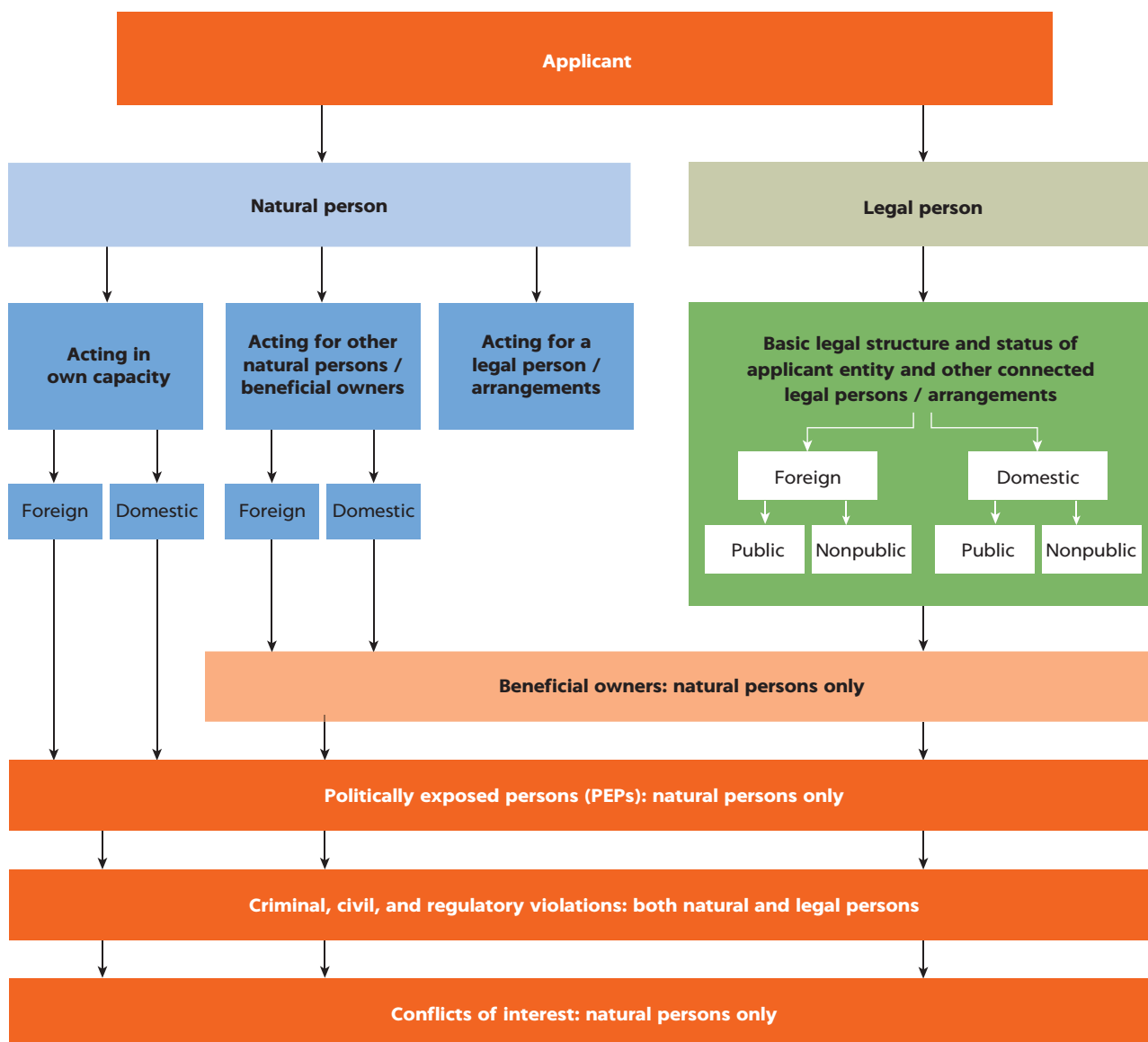
For purposes of efficiency, the order in which the various checks are conducted should not affect their quality. However, it may be useful to sequence the checks in a way that builds on the most easily accessible information, followed by deeper research and verification as needed. The sequencing of checks should be determined by the characteristics of each sector and country based on trial, assessment, and enhancement.

Although no single model can fit all sectors and circumstances, the integrity check flow chart in figure 2.1 provides one option for a logical sequence of steps in background checking. It should be tailored to the specific sector, based on the unique features of the sector and the risks identified in the local context of the market and operating environment. Suggested steps might be the following:

1. Ascertain whether the applicant is a natural person (individual) or legal person (entity).

2. If a natural person, determine whether the person is acting in his or her own capacity or on behalf of another (or others).
  - If acting in own capacity, ascertain whether foreign or domestic national and ensure sufficient identity documentation is obtained.
  - If acting on behalf of another (or others), determine whether the other is a foreign or domestic national (if a natural person) or a legal entity and obtain sufficient documentation to verify the identities of all relevant persons.
3. Identify and verify the beneficial owners of all relevant persons or entities.
4. Identify whether any beneficial owners are PEPs.
5. Conduct a background check to ascertain any materially relevant criminal, civil, or regulatory violations.
6. Conduct a conflict-of-interest check on relevant natural persons.

**FIGURE 2.1**  
Integrity check flow chart



Chapters 3–5 cover, respectively, the three areas of integrity checks—beneficial ownership, criminal and legal backgrounds, and conflicts of interest—in greater detail and suggest some useful practices and options for ensuring effective and efficient integrity due diligence checks.

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- GIATOC (Global Initiative Against Transnational Organized Crime, Deutsche Gesellschaft für Internationale Zusammenarbeit) and Estelle Levin. 2017. “*Follow the Money: Financial Flows Linked to Artisanal and Small-Scale Gold Mining—Tool for Intervention.*” <http://globalinitiative.net/illegal-financial-flows-linked-to-artisanal-gold-mining-asgm/>.
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## Beneficial Ownership

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Corporations . . . [have] brought such concentration of economic power that so-called private corporations are sometimes able to dominate the state. . . . Ownership has been separated from control; and this separation has removed many of the checks which formerly operated to curb the misuse of wealth and power. And, as ownership of the shares is becoming continually more dispersed, the power which formerly accompanied ownership is becoming increasingly concentrated in the hands of a few.

—Justice Louis Brandeis, dissenting opinion,  
*Liggett Co. v. Lee*, 288 U.S. 517, 565–67 (1933)

The *beneficial owner* of an entity is the person who will enjoy the economic rights stemming from the entity, regardless of whether that person is also the legal owner of record—that is, whether the entity’s ownership is registered in his or her name. Documenting the beneficial ownership of license applicants is important to identifying who will ultimately control or benefit from the licensed activity.

Documenting beneficial ownership requires (1) identifying the natural persons who own and control the legal entity and (2) verifying their identities.<sup>1</sup> Merely checking the names provided by an applicant on a license application would be insufficient because those names may not fully reflect the real persons to whom economic benefits would flow if the license were granted. The beneficial owner (or owners) of legal persons or vehicles is essentially the natural person who owns, controls, has an interest in, or exercises influence over the applicant or receives substantial benefit from the applicant’s activity. In other words, beneficial owners are those

- Who have the legal ability or functional responsibility to make decisions on behalf of the legal person and execute or impose those decisions, or
- Who can exercise *actual or effective* (rather than legal) ownership and control, or
- On whose behalf transactions are conducted, even where a person does not have actual or legal ownership or control (beneficiaries without decision-making control), or
- Who benefit economically.

The beneficial owner is often the indirect owner. For holdings in companies, beneficial ownership structures are sometimes known as *indirect holdings*, *nominee registrations*, or *omnibus holdings*—as opposed to end-investor or direct-holding structures (see appendix A for additional sources of information on the concept of beneficial ownership).

Although the complex ownership structures of extractive companies may serve legitimate purposes, unclear ownership structures are easily used to conceal the influence and beneficial interests of some persons who would prefer that this information remain unknown, in particular politically exposed persons (PEPs).<sup>2</sup> Thus when it is apparent that the chain of ownership and control is long, complicated, and covers many jurisdictions, this may be cause for suspicion, especially when one of the jurisdictions is recognized as having a high risk for money laundering.<sup>3</sup> Where complicated ownership and control structures are legitimate, the applicant will generally be willing to provide all the documents and information needed to fully verify identity and legitimacy.

Beneficial ownership verification should not be limited to legal entities and structures, nor to the information that is provided on an application. Although it is most often relevant to legal entities such as corporations, foundations, and associations, it also covers arrangements such as partnerships and trusts. In fact, it applies to any type of legal or other agreement (including verbal agreements) between natural persons (principal-agent relations) in which one person is acting or executing transactions on behalf of another person. For example, if a person acquires a license and verbally agrees with his brother to share the control or the profits, if the brother has decision-making authority or derives profits from the licensed activity, he is a beneficial owner, even though his name may not appear on any document.

Thus, it is important to verify whether the applicant (or applicants) for a license is the real person who possesses some form of material control or has some stake in the benefits that may result. It is important, then, to verify whether any name listed on an application denotes someone who is acting for or on behalf of another person.

For purposes of extractive sector licensing, countries should determine, as a policy matter, the minimum threshold level of ownership, control, or benefits above which persons will be considered beneficial owners, and then include a legally enforceable definition in the appropriate laws and regulations. The legal definition threshold to determine beneficial ownership should be sufficiently objective. However, regulatory officials should be allowed discretion to classify a person who falls below the designated threshold as a beneficial owner, where factual circumstances, material risks, or red flags may warrant. This definition of beneficial ownership, along with a country's definition of PEPs, will be cornerstones of the integrity screening process.

## IDENTIFYING BENEFICIAL OWNERS

Because identifying and verifying beneficial ownership can be time-consuming and costly, the license application should require all applicants to submit basic information that can be used to steer the remainder of the review. Such information should include:

- Whether the applicant is a natural or legal person or another legal arrangement



- Whether the applicant is (or will be) the sole beneficial owner of the licensed activity
- Whether other beneficial owners exist and, if so, the names, job titles, and contact details for all of them, down to the level of all natural persons, as well as a thorough description of their current and expected roles and functions
- How ownership is held (such as through direct or indirect shares, through voting rights, or by other means) and when ownership was acquired and any intermediaries
- Whether the applicant is acting on behalf of any other persons or entities pursuant to any formal, informal, or contractual principal-agent relationship or other legal arrangement and, if so, who they are, including names and contact details down to the level of all natural persons.

License applicants should be required, where appropriate, to provide additional documentation to confirm this information. They also should provide a signed sworn statement that the information provided is complete and truthful and acknowledge that any false or incomplete information can result in immediate rejection of the application, license revocation, or other possible sanctions.<sup>4</sup> It is important to ensure that the obligation to provide full and complete information and documentation regarding beneficial ownership is formalized in the relevant (sector-specific) laws and enforceable regulations. The consequences of failure to provide full and accurate information should be automatic denial or cancellation of a license, and the legal basis to apply such sanctions should be contained in the legal framework.

At a minimum, all applicants should be required to provide basic identity information on the beneficial owners. The Extractive Industries Transparency Initiative (EITI) has issued Guidance Notes and a draft model Beneficial Ownership Declaration Form to help officials identify and document beneficial owners and PEPs.<sup>5</sup>

Corporate applicants should be required to submit more detailed proof of beneficial ownership for higher-value licenses, including copies of company registration and ownership documentation. An applicant who is unable to provide such documentation may be poorly managed or have something to hide, and either of those factors would make the applicant a poor candidate for a license in a critical sector. Much of this information is also likely to be useful for conducting criminal background and conflict-of-interest checks, as well as facilitating compliance with EITI recommendations.

Beneficial owners are likely to be more complicated to identify where devices such as trusts, partnerships, corporate directors, nominee shareholders, or foundations are part of the ownership chain. Table 3.1 provides examples of types of proof that could be required and some common source documents relevant to certain forms of legal entities.

## **VERIFYING AND DOCUMENTING BENEFICIAL OWNERSHIP**

Determining the true identity of the beneficial owners located at the end of a complicated corporate ownership chain can be time-consuming and expensive. Adoption of the most cost-effective methods will depend on learning to what extent and under what circumstances the investigation will add clear value to identifying and mitigating the risks that characterize the sector. In doing so, it may be helpful to define beneficial ownership in terms of the materiality of risk

**TABLE 3.1 Complex legal entities: Types of beneficial ownership proof and possible source documents to request**

INFORMATION TO VERIFY	SOURCE DOCUMENTS
<b>Corporations</b>	
Where shares in the corporation are held by <ul style="list-style-type: none"> <li>• <i>A trust</i>: Identity of beneficiaries, trustees, and any protectors</li> <li>• <i>A partnership</i>: Details of limited and general partners and managing partners, including beneficial owners</li> </ul>	<ul style="list-style-type: none"> <li>• Copies of share registries</li> <li>• Periodic regulatory filing reports such as tax filings, as well as various public financial reports and required filings with securities regulator or other regulators</li> <li>• Certificate of incorporation and other corporate formation documents</li> <li>• Documents that provide persons with authority to act on behalf of the corporation and define the scope of that authority</li> </ul>
Where corporate directors are permitted: <ul style="list-style-type: none"> <li>• Identity of the beneficial owner of the “corporate directors”</li> </ul>	
Where nominee directors or nominee shareholders are permitted: <ul style="list-style-type: none"> <li>• Identity of their principals</li> <li>• Mechanisms available to determine and verify the beneficial owners</li> </ul>	
Shell or asset-holding companies: <ul style="list-style-type: none"> <li>• Identities of any representatives physically present in the jurisdiction from whom information may be obtained</li> </ul>	
<b>Trusts</b>	
Identities of the settlor and any contributor to the trust estate	<ul style="list-style-type: none"> <li>• Copy of the trust deed</li> <li>• Copy of documents stipulating scope of authority</li> <li>• Any documents granting other persons authority to act on behalf of the trust</li> </ul>
Identity of the trust beneficiaries and trustees	
Documentation confirming that trustees are acting in accordance with terms of the trust agreement	
Identities of persons who control the trust and make investment decisions	
Identity of the “protector,” if applicable, and legal power/authority under trust agreement	
<b>Partnerships</b>	
Identities of general and limited partners	<ul style="list-style-type: none"> <li>• Copy of partnership agreement</li> <li>• Copy of arrangements that permit limited partners to influence management (such as arrangements permitting a limited partner to serve as officer or director of a corporate general partner or otherwise provide advice to a general partner).</li> </ul>
General or limited partner is a corporate entity: <ul style="list-style-type: none"> <li>• Identity of the ultimate beneficial owner of the entity</li> </ul>	
<b>Foundations</b>	
Identities of persons who control the foundation and are responsible for allocating resources	<ul style="list-style-type: none"> <li>• Basic document that sets forth structure, power, and details of the foundation</li> <li>• Any documents that provide other persons with authority to act on behalf of the foundation</li> </ul>
Identities of the foundation beneficiaries	
Whether the jurisdiction permits the use of a nominee to form the foundation and, if so, the persons with final decision-making authority	

Sources: FATF 2014; OECD Steering Group on Corporate Governance 2002.

Note: Source documents could be domestic or foreign. If the documents are in a language other than an official language of the licensing state, the procedures should require that the documents be presented and filed in an official language of the licensing state.

by adopting a certain threshold as the minimum ownership level considered significant enough to warrant verification.

### International standards and cross-border information sharing

In most cases, a beneficial ownership analysis is likely to be cheaper and simpler when applicants and any beneficial owners are located within the licensing country rather than abroad. Because economic activity often crosses

borders, the screening procedures used to identify the ultimate beneficial owners will require the appropriate mechanisms for requesting information formally and informally from officials in other countries.<sup>6</sup> As those officials are likely to conduct similar background checks and will need similar assistance from the licensing agencies outside their country, it would be useful to establish formal, mutually agreed-on mechanisms such as memoranda of understanding (MOUs) and personal contacts through which licensing officials in both countries can request and provide information. Although it will take time to establish these networks, the benefits will be enormous, particularly in cost and time savings.

As more officials understand the value of enhancing the transparency of beneficial ownership, better tools to access the information more cheaply and easily are emerging, many as free resources.<sup>7</sup> The European Union is planning (2018) to issue a new anti-money-laundering directive to require wider access to corporate and beneficial ownership registries and similar records of other forms of legal entities so the information is effectively accessible to the competent authorities, financial intelligence units (FIUs), and the public.<sup>8</sup>

Such systems can reduce the cost and time needed to access information on beneficial ownership. A number of countries have published national guidelines for determining beneficial owners,<sup>9</sup> and more are likely to follow. The rising global importance and awareness of beneficial ownership transparency have spurred countries to enhance local systems for collecting, maintaining, and facilitating easy access to up-to-date records, including the use of public registries, some of which are made available online.<sup>10</sup> For example, at the 2016 Anti-Corruption Summit in London dozens of countries made public commitments to enhancing beneficial ownership transparency in the extractive sectors, and many of these countries have committed to establishing public beneficial ownership registries in the coming years (EITI 2016c).

### **Practical methods for recording ownership information**

To document each entity and person in the beneficial ownership chain, it is helpful to have a short form for simple cases of low-value licenses and a longer form for more important licenses of higher value. In many cases, further communications with the applicant may be needed to clarify or seek more information. Such time-consuming back and forth can be avoided by ensuring that the basic license application forms and instructions are comprehensive and clear.

Diagramming ownership and control structures to demonstrate the relationships can also be helpful. Some useful techniques include distinguishing entities from natural persons by using boxes for corporate entities, circles for natural persons, and question marks where information is unknown. Indicating the country of origin is very important.

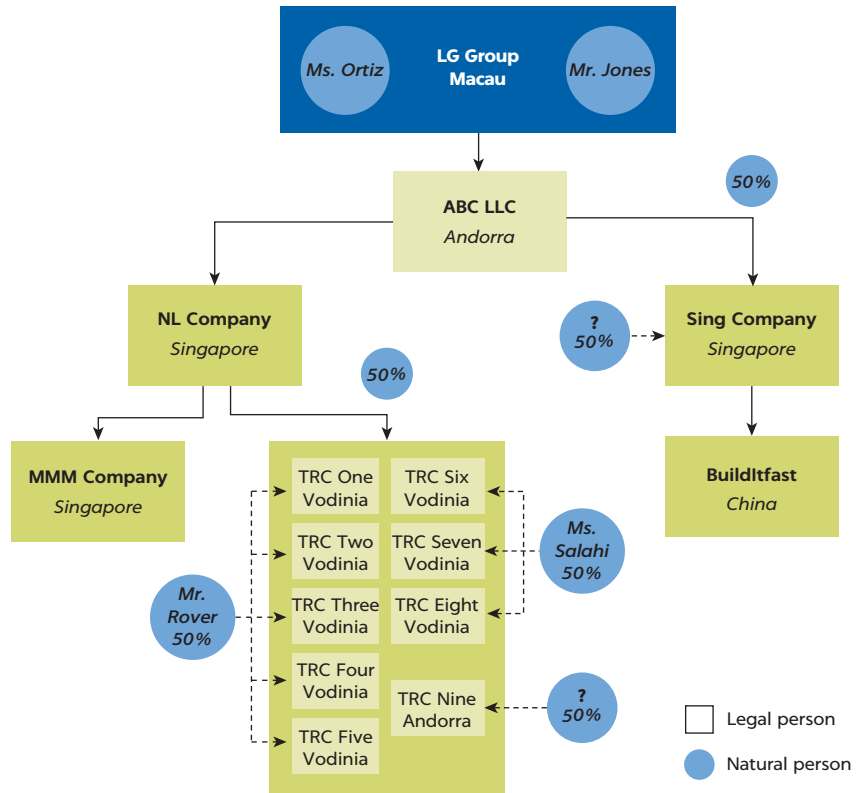
An example of partial ownership (less than 100 percent) is shown in figure 3.1. If the applicants are the TRC companies, the chart reveals that Mr. Rover owns half of TRC One, Two, Three, Four, and Five, and the NL Company owns the other half. In turn, the NL Company is owned by the ABC LLC, which is owned by the LG Group, which is owned by Mr. Jones and Ms. Ortiz. Therefore, the beneficial owners of the five TRC companies are Mr. Rover, Mr. Jones, and Ms. Ortiz. In the same example, if the applicant is the Sing Company, its beneficial owners are the ABC LLC and LG Group. Similarly, if the applicant is the MMM Company, its beneficial owners are the NL Company, ABC LLC, and LG Group.

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### **Key Concept**

Because licensing officials in other countries are likely to conduct similar background checks, it is useful to establish formal, mutually agreed-on mechanisms such as memoranda of understanding (MOUs) so that information can be shared across countries.

**FIGURE 3.1**  
Corporate ownership chart



**WHO SHOULD BE CHECKED?**

The scope of persons who, at a minimum, should be subject to beneficial ownership and other integrity checks should be objectively and clearly defined in law or regulations.<sup>11</sup> The regulations or accompanying guidelines should provide flexibility for checking additional persons when the relevant warning signs (red flags) or other information justify it (see box 3.1 for a list of warning signs). The Natural Resource Governance Institute’s 2015 briefing paper “Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies” provides some indicators to detect hidden beneficial ownership (Sayne, Westenberg, and Shafai 2015). Because the ways and means of exerting control or influence in a corporate entity are unlimited, professional judgment is important for assessing the risks that may arise from various mechanisms of control or influence, despite the use of beneficial ownership thresholds.

The identities of beneficial owners and those who occupy the following positions, as well as any others who exercise different forms of ownership or control (examples of which could be unlimited), should be verified:

- Senior management
- Members of the board of directors who have an ownership interest in the company
- Ultimate beneficial owners (natural persons) of significant shares of the entity.

**BOX 3.1****Red flags indicating concealed beneficial owners****Possible warning signs that a company has problematic, concealed beneficial owners****Talk in the market**

- Rumors circulate that a firm is actually a particular person's company, despite appearances, or is "inked" or "close to" a PEP.
- A news story, NGO report, or court case makes similar claims.
- Industry insiders or officials will not discuss who owns a company.
- A little-known person, company, or network of companies keeps cropping up in different deals, suggesting that one beneficial owner has stakes in all of them.

**Preferential deals with the government**

- A company's business suddenly takes off or falls apart when the government changes hands, suggesting its hidden owner's political connections were key to its success.
- A company wins a government contract or license for which it does not seem qualified based on its track record, age, or relatively unknown, inexperienced managers and shareholders.
- A company receives a contract, license or other favor—for example, a tax holiday or import duty waiver—that officials in the awarding government typically hand out as patronage.
- An unqualified indigenous company with unclear ties to officials receives a government contract or license purportedly in the interest of complying with the country's "local content" laws or policies.
- A company signs a deal at a discounted price or on a single-source basis, outside normal competitive auction or procurement processes.
- The government does not publicize the deal

**Noncompliance with industry rules and standards not sanctioned by the government****The government does not sanction the company for following types of noncompliance:**

- A company fails to file required paperwork.
- A company routinely breaks operational regulations.
- A company never performs its contractual obligations in full, or walks away from an unfinished, over-budget project.
- Underpayment or nonassessment of taxes and/or fees.

**Suspect commercial relationships**

- A company engages in high-value transactions with little obvious commercial justification

Source: Sayne, Westenberg, and Shafai (2015, 9).

Depending on the level and type of risks associated with a sector or subsector, a 5 percent threshold could be used as a general guide for determining the ultimate beneficial owners of shares, but those who own less should be verified on a case-by-case basis as circumstances of the sector or red flags may warrant. Among those who own less but should be verified are the following:

- For partnerships, the partners
- For trusts, the settlors, trustees, or beneficiaries of the trust
- For foundations, the persons in control or beneficiaries.

To verify the identities of natural and legal persons, it is important to collect basic biographical data and store it in a uniform way. Table 3.2 indicates the minimum data needed to begin the process.

It may be useful to check whether a particular company's officer has been disqualified—that is, has been deemed by other regulators to be unfit to serve in a position of such responsibility. The United Kingdom has a website for this purpose (see appendix I).

**TABLE 3.2 Identifiers for natural and legal persons**

MINIMUM IDENTIFIERS FOR NATURAL PERSONS	MINIMUM IDENTIFIERS FOR LEGAL PERSONS/COMPANIES
• First name + middle initial + family (last) name	• Full company name
• Functional title and role	• Date of incorporation or creation
• Date of association with entity or acquisition of interest	• Place of incorporation or creation of interest
• Date of birth (at least year)	• Full address
• Place of birth (at least country)	• Nature of business
• Country of citizenship	
• Country of residence	
• National identity number	

## PUBLIC DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION

### Key Concept:

Clear, objective definitions that eliminate the need for further discretionary interpretation will enhance integrity, transparency, and accountability, thereby significantly reducing the risk of corruption.

As a policy matter and to enhance transparency in regulatory governance of critical sectors, consideration should be given to publicly disclosing certain beneficial ownership information on licensed entities. EITI Requirement 2, adopted in 2016,<sup>12</sup> requires public disclosure of the identity details of beneficial owners who bid for, operate in, or invest in extractive assets. It also requires disclosure of those beneficial owners who are classified as PEPs (see appendix G for the full EITI language). The EITI beneficial ownership disclosure obligation applies to countries seeking EITI validation, but effective implementation of such a disclosure policy in any country will significantly reduce opportunities for corruption in any critical sector. The public disclosure principle can be adapted to other sectors where greater transparency is desired, but most important is to clearly specify the legal definition of beneficial ownership and the applicable ownership threshold. Where beneficial ownership thresholds may differ across sectors or subsectors, these thresholds should be clearly specified in sector-specific law or regulations. A legal definition of PEPs, particularly domestic PEPs, does not have to be adjusted across sectors; it need only be objectively defined within the overall country context to ensure that it is applied uniformly and equitably without bias or nepotism.

The least expensive way to publicly disclose this kind of information is via a public website. This approach eliminates the costly administrative functions of receiving and responding to individual requests, document reproduction, and mailing. Each country should decide what specific information and details are appropriate for public disclosure and under what circumstances. Such decisions should be based on considerations that balance privacy rights with the need for integrity, transparency, and accountability. For example, a country may choose to disclose beneficial ownership identities where risk levels warrant. So for example, only for licenses that represent higher market value. Furthermore, because reciprocity may apply, a country should consider public disclosure for any type (and extent) of information that it would like to easily access in other countries.

The more countries that publicly disclose such information on public websites, the easier and cheaper it will become for all countries to conduct

higher-quality background checks, thereby reducing opportunities for criminals and corrupt officials to conceal their identities. Moreover, Internet-based disclosure will enable the public and media to use the information to play a more effective watchdog role.

## NOTES

1. For the purposes of this report, the term “*legal entity*” encompasses various legal arrangements—that is, corporate and noncorporate vehicles of all kinds.
2. See chapter 1 for a definition and discussion of PEPs.
3. See appendix E, which gives some hints on how to identify high-risk countries or persons.
4. See chapter 4 for a discussion of sanctions for false or incorrect information supplied by the applicant.
5. See EITI (2016b) and its draft model Beneficial Ownership Declaration Form (<https://eiti.org/sites/default/files/documents/draft-model-beneficial-ownership-declaration-form.xlsx>). The form is available in English, French, Spanish, and Russian.
6. Although much of the information on beneficial ownership is likely available (such as corporate ownership records), some information may be shielded by privacy laws. One way around this barrier is to obtain consent from the party whose records are being sought. See chapter 4.
7. See the Fourth EU Anti-Money Laundering Directive (EU 2015) (AMLD4), [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_141\\_R\\_0003&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_141_R_0003&from=ES), and discussion on the forthcoming new EU directive.
8. Press Release of the European Council: Money laundering and terrorist financing: Presidency and Parliament reach agreement (Dec. 20, 2017), <http://www.consilium.europa.eu/en/press/press-releases/2017/12/20/money-laundering-and-terrorist-financing-presidency-and-parliament-reach-agreement/>
9. Beneficial ownership guides from the United Kingdom (including Jersey), the United States, France, and Liechtenstein can be found at <https://starworldbank.org/star/about-us/transparency-beneficial-ownership-resource-center>.
10. The United Kingdom is committed to implementing a publicly accessible central register of individuals who ultimately own and control UK companies—that is, the companies’ beneficial owners or “people with significant control.” See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/395478/bis-14-1145-the-register-of-people-with-significant-control-psc-register-register-final-1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/395478/bis-14-1145-the-register-of-people-with-significant-control-psc-register-register-final-1.pdf).
11. For an example of a definition of beneficial ownership in national legislation in the money laundering context, see section 6 of the United Kingdom Money Laundering Regulations 2007, which defines *beneficial ownership* as holding 25 percent or more in shares or voting rights (<http://www.legislation.gov.uk/>).
12. The EITI requires countries to submit in writing how they will achieve compliance with the new EITI Beneficial Ownership Disclosure Requirements by 2020. As of January 2018, 47 countries had posted EITI Beneficial Ownership Roadmaps (<https://eiti.org/publication-types-public/beneficial-ownership-roadmaps>).

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## Criminal and Legal Background

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Crooks don't tell the truth: that's what makes them criminals. They are deceitful and will simply put forward men of straw to front their companies and schemes. Public UBO [universal beneficial ownership] registers [will be] . . . only as good and accurate as the information honest people submit. If Al Capone or Meyer Lansky were alive today, does anyone seriously expect that their front companies would accurately and truthfully disclose their status . . . on a public UBO register?

— “Martin Kenney on the Paradise Papers: Real News or a Titillating Non-Story?” The FCPA Blog, November 9, 2017

The goal of criminal and legal background checks is to learn enough about a potential licensee to assure oneself that the applicant is likely to behave in a responsible manner and maintain high ethical and professional standards if awarded the license. Effective criminal and legal background checking procedures will detect significant prior misconduct while spending little time on petty incidents. Significant unethical, illegal, or criminal behavior could indicate a propensity to misuse a license and raise serious risks in a critical sector.

This chapter is an overview of the different types of criminal and legal background checks, along with cost-effective and practical steps for implementation. It also offers some sample checklists that could be used as the basis of a template to track data and results. The level of checking will depend on the importance of the license and the perceived risk of corruption. For certain licenses, less checking may be necessary, but for licenses of any significance or importance, more extensive checks may be warranted.

In most critical sectors, an applicant whose past indicates crimes such as fraud, corruption, or money laundering may be unsuitable.<sup>1</sup> In addition, serious instances of professional or ethical misconduct would be a cause for concern, and thus it is critical to document and thoroughly evaluate any such information in assessing the integrity of an applicant. Of the behaviors that may be cause for concern, some may be criminal, and others may be illegal under civil law. Still others may simply be violations of professional norms and guidelines but sufficient cause for debarment or elimination from a short-listing procedure or from competing for a license.

Specific rules or guidelines to determine which criminal or unethical behaviors warrant license denial or exclusion should be tailored to each sector with its unique characteristics and risks and to each type of license. For example, a license applicant with a prior conviction for money laundering may pose a low risk if applying for a small-scale fishing license; but if applying for a banking license, the same applicant should be assessed as a much higher risk. Whatever the case, the criminal and legal checking system should leave room for the applicant to explain adverse legal actions by regimes not operating under the rule of law.

The most cost-effective starting point in criminal and legal background checks is self-reporting by the applicant. At a minimum, application forms should require applicants to confirm whether they are currently under investigation or whether they have ever been

- Investigated for or charged with a criminal violation
- Convicted of a criminal violation
- Suspended, debarred, or terminated by a court or government agency
- Cited for failure to pay taxes
- Subjected to criminal or civil investigation by any government agency.

In the event of a positive response, applicants should be obligated to provide additional facts, dates, and other details, including penalties and the appropriate documentation. A positive answer to any of these queries would not necessarily lead to automatic disqualification in all sectors, but it would call for additional information to be evaluated on a case-by-case basis.

Licensing application forms should clearly set forth penalties for providing false, misleading, or incomplete information. These penalties should be severe enough to deter wrongdoing. Examples of such penalties would be heavy fines, criminal sanctions involving jail time, and license revocation. For example, Nigeria’s mining regulations include the rules, procedures, and processes for obtaining mineral titles, including integrity screening. The Nigerian regulations require that applicants—including all members, directors, and shareholders with a controlling interest—submit certification that they have not been convicted of a felony or any offense under the Minerals and Mining Act. When it is determined that company owners have been convicted of a felony or an offense under the act, even after the license has been granted, the license can be revoked.<sup>2</sup>

## **VERIFICATION OF CRIMINAL HISTORY**

To enable independent verification of the information provided, applicants should be required to sign a waiver or permission form authorizing access to criminal or administrative records in any jurisdiction. The time and resources dedicated to such verification should depend on both the risk level and materiality of the specific sector. For higher-risk licenses, a waiver form could be used to request employment and education data as well. “Blanket waivers” may not be accepted by all institutions because of concerns about liability for privacy violations. Nonetheless, requesting such a waiver implies that the verifying agency

may act on it, and thus may dissuade applicants from providing false information.

This section and the next address general methods for obtaining and verifying data on criminal history and information on both legal and natural persons about incidents or violations of civil, regulatory, or legal norms, rules, laws, or regulations. By fleshing out the contours of these categories of checks, this section lays the groundwork for actual performance of the checks.

### **Definition of criminal history**

*Criminal history* refers to records of actions by law enforcement and courts to hold accountable or punish a person for violations of the criminal laws. The process of checking criminal history should begin with any data disclosed by the applicant, followed by general searches of public information sources and the media. The information obtained may have to be independently verified, depending on the importance of the license and the credibility of the sources.

The process used for checking a person's criminal history will vary, depending on whether the applicant (or the beneficial owners) is domestic or foreign. It is not surprising that background searches for domestic applicants are likely to be much cheaper and simpler than verifying the backgrounds of foreign applicants. A standard application fee could help defray the costs of the background-checking process.

Criminal history can be challenging to verify for a variety of reasons, including poor and decentralized record keeping. In countries where corruption and a lack of capacity have led to a high level of dysfunction in the justice sector, few guilty persons are likely to have been convicted, especially for fraud and corruption. For legal persons, although criminal convictions have been imposed in some countries, globally the number of such cases remains low, although it is beginning to rise.<sup>3</sup>

Typically, law enforcement agencies have access to criminal records and the capacity to check by name, date of birth, place of birth, and national identity number. They will likely comply with a request from another agency within their own government. Because these checks tend to be rather time-consuming and expensive, good judgment should be used to determine when they are necessary in view of the available resources and risks posed by the applicant.

Where a spontaneous exchange of information is not possible, consideration should be given to the use of mutually agreed-on and signed memoranda of understanding (MOUs) with the relevant local (or frequently used foreign) law enforcement agencies to enable officials in such agencies to fulfill requests for criminal record documentation expeditiously, while providing the appropriate privacy protections.

### **Foreign criminal records**

Domestic persons may have criminal records in foreign countries, especially if they have spent significant time in or have connections to another country. Direct requests made to the public criminal record systems of other countries tend to be more complicated than those made to one's own domestic law enforcement agencies because even the sharing among other law enforcement agencies is usually subject to many restrictions. Although such services are provided by some licensed commercial investigation firms, they can be costly.

However, shifting some responsibility to the applicant may help overcome these obstacles.

Although checking criminal history in a foreign country can be complicated, time-consuming, and expensive, it is very important when foreign applicants have applied for licenses in critical sectors. In certain other contexts, such checks are already routinely conducted in many countries. For example, when issuing visas to foreign persons, or even when issuing passports to national residents, government agencies almost always conduct criminal history checks. Similar checks can be useful for licensing purposes. Certain categories of foreign applicants should be required to submit a certified copy of a Certificate of No Criminal Record, also known as a police clearance, from their home jurisdiction and for any country in which they have resided for a period of time.<sup>4</sup>

Requiring certain categories of applicants to undergo a police clearance process would greatly simplify the process of ascertaining whether an applicant has been convicted of crimes elsewhere. Because a requirement for a police clearance will in turn require a significant investment of time and perhaps money for applicants, the requirement should be considered only for higher-value and higher-risk licenses. Requiring all applicants to meet this requirement could decrease competition and diminish productivity.

A number of countries provide helpful guides on procedures for persons who need to obtain such documentation. Box 4.1 provides some examples.

Alternatives are available when countries lack systems to obtain or provide such clearances, such as in some conflict zones. For example, if a person seeks a visa to enter the United Kingdom, he or she generally needs documentation such as a police clearance certificate. The person must

#### BOX 4.1

### Resources on police clearance procedures

#### **Multiple economies: To enter the United Kingdom**

Guidance on obtaining police clearances from more than 100 economies to apply for a visa or obtain employment in the United Kingdom. Includes where and how to apply, documents needed, application costs, turnaround time for decisions, and contact details.

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

#### **Multiple economies: To enter Canada**

Guidance for those needing visas to request a police clearance from their home economy to apply to enter Canada. This online tool offers specific guidance for many economies, including many developing economies (updated April 2016).

<http://www.cic.gc.ca/english/information/security/police-cert/intro.asp>

#### **Guide for Hong Kong SAR, China, citizens**

Instructions for citizens of Hong Kong SAR, China, on how to obtain clearances.

[https://www.police.gov.hk/ppp\\_en/11-useful\\_info/cert\\_no\\_crime.html](https://www.police.gov.hk/ppp_en/11-useful_info/cert_no_crime.html)

#### **Guide for U.S. citizens**

Guidance for U.S. citizens on how to obtain clearances to provide to officials of other economies.

<https://travel.state.gov/content/travel/en/international-travel/while-abroad/criminal-record-checks.html>

provide documentation or, as an alternative, a letter detailing attempts to obtain the certificate and explaining why it has not been obtained. This information will be considered by the UK authority along with the relevant factors related to the particular country. If the relevant UK authority concludes that the explanation and documentation are insufficient and the certificate should still be obtained, the applicant may be given another chance to provide the certificate. If the explanation is deemed sufficient, the requirement may be waived.<sup>5</sup>

The same approach could be applied to a licensing background check. When the police clearance certificate does not appear authentic or if it discloses suspicious information, an agency could query the applicant about it or consider using a reliable third-party vendor to verify or investigate further. The applicant could be asked to supply more documentation, such as to explain precisely how the certificate was obtained and to show a copy of any receipt for any fee paid to the relevant police agency. Finally, the agency could query the foreign country directly, having first obtained and attached a “consent to release” from the interested party.

## **VERIFICATION OF CIVIL OR ADMINISTRATIVE SANCTIONS**

In addition to criminal issues, it is useful to look into whether an applicant has faced civil or administrative sanctions. Although assessments of civil penalties against legal entities are much more common than criminal charges, it may not be easy to determine whether an applicant has been subject to civil or administrative sanctions. Strategies to determine this include:

- Targeted Internet searches
- Searches of various “blacklists” (listing sanctioned or debarred companies)
- Reviews of information from filings of publicly listed companies.

### **Internet searches**

Well-constructed Internet searches on entities to detect civil or administrative sanctions are usually an inexpensive, productive, and worthwhile starting point. Specific techniques are provided later in this chapter. If negative information is found on public Internet sources, the reliability of the source should be considered. In addition, verifying such information or obtaining additional details that may be relevant can usually be done by contacting the competent regulatory agency that imposed such penalties.

### **Debarment and blacklists**

Debarment lists are lists of persons or entities debarred or excluded by a country or international organization from participation in activities related to public procurement. Reasons for such exclusion can include failure to respect basic integrity requirements or even conviction for bribery. Many public blacklists could be useful for flagging suspect applicants. The appearance of an applicant’s name on such a list would justify further due diligence.

Some countries publish lists of excluded or debarred companies on a website and update it regularly, but many countries do not make this information accessible. Appendix B contains a list of websites from various countries that include debarred companies as well as pointers on debarment data for international organizations and international financial institutions. All these are good sources to consult on whether a company has been sanctioned. Unfortunately, there is no one-stop shop for this information.

### Stock exchange and other public record filings

If an applicant is a legal person (rather than a natural person), the application form should require disclosure of the public stock exchanges on which they are listed. In most countries, companies listed on a public stock exchange are required to make disclosures for the purpose of informing potential shareholders of risks and of their general business activities. Many such disclosures are publicly accessible. A company may be required to disclose adverse actions, such as regulatory sanctions or pending investigations. Reports of companies that are filed with securities regulators may be good sources for verifying information supplied by the applicant. Box 4.2 offers an example of an online searchable regulatory filing database from Australia (see appendix C for more detailed information on how to locate and use sources such as the US Securities and Exchange Commission Form 10-K or 10-Q in the integrity screening process).

Efforts to make debarment information more available are under way in the European Union (EU). Although the EU maintains a debarment list, it is not always comprehensive or effective.<sup>6</sup> Recently, the EU developed an Internet-based Internal Market Information (IMI) system that permits cross-border checks of home country qualifications.<sup>7</sup> For example, if Ms. X claims to have a degree in petrochemical engineering from her country and is licensed in a home country in the EU, another EU country can use the IMI system to verify her credentials.<sup>8</sup> In April 2015, the EU reported that through the pilot project, public authorities may now use the IMI system in relation to public procurement.

Once a company is registered in the IMI system and depending on the national use of IMI, an agency could, for example, verify that the company does not meet any grounds for exclusion (such as having been convicted for fraud) or use the system to remove any doubts about the authenticity of a document or certificate provided by a tenderer (EU 2015). Meanwhile, within the EU there is an ongoing debate about public access to beneficial ownership registries, with no decisions to date from the European Parliament or Council.

Beyond public debarment or exclusion, civil sanctions could include adverse legal judgments that reflect on integrity, such as unfair competitive practices or misappropriation. When looking into foreign firms not listed on a major stock exchange, it could be challenging to verify whether an entity or person has

#### BOX 4.2

### Searchable regulatory filings, Australia

Australian Securities and Investments Commission (ASIC), <http://asic.gov.au/online-services/search-asics-registers/>

- Contains filed reports of companies registered in both Australia and New Zealand
- Allows searches of persons who may have been banned or disqualified from performing certain activities, including those who have been banned from managing companies
- Maintains search engine for charities, including public companies limited by guarantee and proprietary limited companies.

been the subject of civil or administrative proceedings for corrupt conduct in another country. The next section addresses specifically how to check, starting with using the Internet and other open sources. The goal is to perform just enough checking to bring to light major potential disqualifying indicators while not spending too much time on that task.

## **COST-EFFECTIVE STRATEGIES FOR BACKGROUND CHECKS**

A clear process, strategy, and perhaps even protocols are needed to carry out a background check in an efficient manner while ensuring a baseline level of quality. Background checks can be carried in many different ways. Officials will need to experiment to identify which method is the most suitable and cost-effective. The objective should always be to tailor procedures and protocols to the country, the sector, and the relevant risks.<sup>2</sup> Experience gained in trying new methods will be of enormous value if it contributes to ongoing improvements in the process (see chapter 8 for a discussion of ways to document and monitor effectiveness).

The next section presents options for strategies for wise use of the Internet and other open sources to develop building blocks. It discusses several levels of checks, starting with the most basic and ending with the most in-depth. For example, a country may wish to have three levels of checks, from basic to thorough. Such an example is followed through in tables 4.2 and 4.3 at the end of this chapter.

### **Initial open source checks**

The first step should be based on a short protocol aimed at checking open sources, using the Internet to verify the existence of and basic data about the applicant—in other words, to run a kind of profile check. It is useful to create a tailored checklist of the mandatory minimum checks, along with optional items where the need arises. Completing the initial checklist may require about 30 minutes for each company. A caveat, however, is that information found on the Internet is not always accurate and is in itself not sufficient evidentiary proof of important facts.

This profile check could be followed by a search aimed at uncovering any negative open source information on the applicant. Any relevant negative information uncovered may call for a more in-depth investigation. A basic search for integrity-related criminal history could begin by typing the following into the search engine:

["COMPANY NAME" or "PERSON'S NAME"] W/10 (Arrest! Or Indict! Or Grand jury or Investigat! Or Crime or criminal or Money launder! Or Bribe! Or kickback Or Steal or embezzle! Or larceny or Illegal or Guilty or Convict! Or Innocent or Acquit!)

If the risks justify taking the Internet search to the next level, the goal should be determining whether the applicant (person, company, or its principals or beneficial owners) has committed crimes, been cited for regulatory violations, been the subject of civil litigation that reflected negatively on its integrity, been involved in financial irregularities, or otherwise been engaged in disreputable behavior relevant to notable risk factors.

Because various keywords can be used to detect this information, it is helpful to create a list of the most common ones and refine that list based on experience using it. Table 4.1 contains examples of some search terms or keywords that could be useful. Terms can then be combined into a single search, often called a *string search* (for more guidance on how to conduct string searches, see appendix H).

Although search terms can be combined for efficiency, there may be limits on the number of terms that can be searched simultaneously. For example, Google appears to permit a maximum of 30 terms. Even with such limits, these search strings featuring keywords such as those in table 4.1 could prove useful. It is also often practical to budget the time spent in such searches by first using search tools to find the most recent data or by limiting the search to, say, the last two, three, or five years rather than leaving the period undetermined.

Once a licensing agency compiles a list of search terms as its basic standard, the list could be translated into the other languages needed frequently for license applicants. Even though this is only a crude measure, the fact that certain words come up frequently could alert checkers to the need to consult a translator to learn more.

Social media and social networking sites may be extremely valuable as well for uncovering negative information on individuals (natural persons).

**TABLE 4.1** Keyword search term options

CATEGORY	SAMPLE TERMS
Criminal violation	Arrest! Indict! Grand jury Investigat! Subpoena! Crime or criminal Money launder! Bribe! Or kickback Steal or embezzle! Or larceny Terrorist or terrorism Illegal Guilty or convict! Innocent or acquit! Sentence! Jail or prison or detention or incarcerat!
Regulatory violation	Sanction! Violat! Pollut! Or disaster Fine! Punish!
Civil misconduct or lawsuits	Litigat! Complaint Lawsuit or sued Fraud or defraud Corrupt! False or falsif! Lied Debarred or excluded or disqualified
Financial irregularity	Bankrupt or bankruptcy or insolvent! Belly up Bad debt Deadbeat Liquidat!



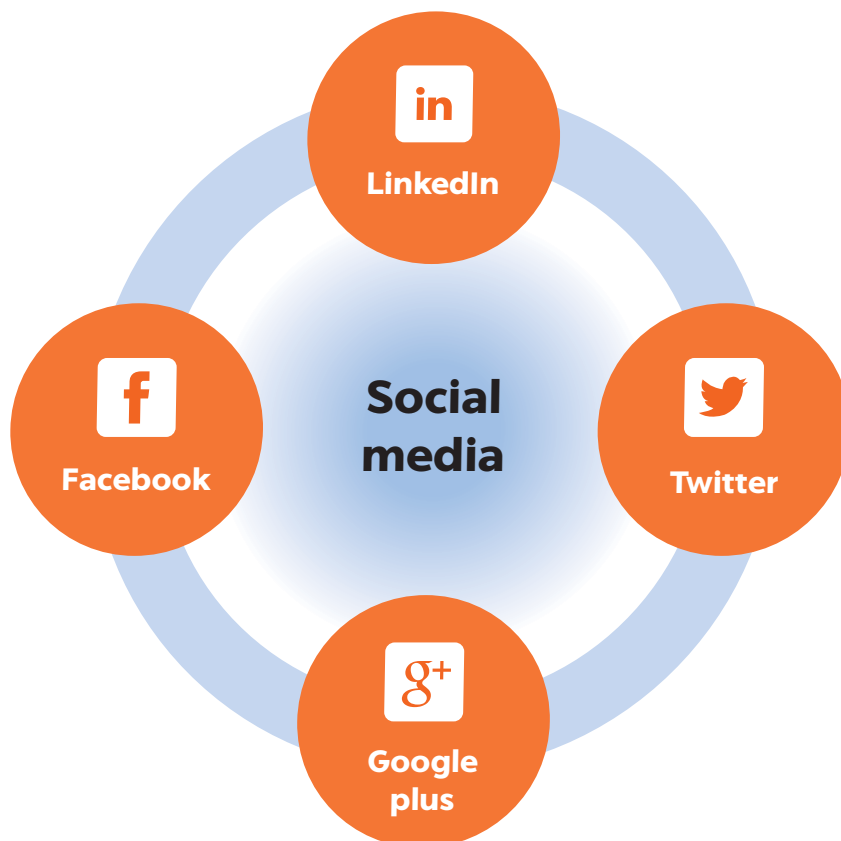
These sites include professionally oriented social networking sites such as LinkedIn (<https://www.linkedin.com/>) and social sites such as Facebook, Twitter, and Google Plus (figure 4.1). When negative information surfaces, further digging will depend on the nature of the negative information and the perceived risk level.

For important licenses, it is advisable to consider directly contacting prior employers, business partners, and educational institutions for further information on professionalism, general character, and conduct.

### Public and private companies

Much will depend on whether the legal entity is a public or private company – investigating the latter will require much more attention and resources. The major difference between privately held companies and publicly traded companies is that at least a portion of the shares or securities of a public company have been sold publicly through an initial public offering (IPO). This gives the public (as opposed to company insiders) an opportunity to purchase an ownership (or equity) stake in the form of stock, which serves as a source of financing to grow the company. Private companies, by contrast, have decided not to access the public markets for financing, and therefore ownership remains in the hands of selected shareholders. To offer stock to the public, a company typically must

**FIGURE 4.1**  
Social media to check



register on a stock exchange, thereby subjecting itself to the legal rules of an official securities regulator.

This difference is important in background checks because public companies that operate in markets with developed and reliable securities regulatory systems must meet obligations for regular and systematic public disclosure of information related to company structure, voting rights, and financial statements. A public company is therefore obligated to disclose certain documents related to financial accountability and transparency in managerial decision making, the disclosure of which is subject to some degree of regulatory compliance monitoring and sanctions for noncompliance. This does not mean that all public companies comply reliably with all such obligations, or that supervising agencies are entirely effective in compliance oversight and enforcement. It does, however, provide some additional transparency and safeguards for investor protection, which do not apply to nonpublic or closely held companies.

### Checking public companies

When checking public companies, the following steps can be useful:

- *Confirm the listing on public exchange websites.* Verify the information submitted in the company's application on whether and where the company is publicly listed by going to the website of the appropriate securities regulatory agency. These agencies can be found on the public website of the International Organization of Securities Commissions (IOSCO), which provides an alphabetical country list of such agencies.<sup>10</sup> Once the relevant agency is found, one can go to the web page of that national agency to learn how to access information filed by the companies it regulates. Translation may be necessary.
- *Access the public filings.* Public filings can reveal a wealth of detailed information about the integrity of a company. For example, many public non-US companies are listed on exchanges in the United States that are regulated by the US Securities and Exchange Commission (SEC).<sup>11</sup> The SEC's website is searchable by company name, location, and other identifiers. Once a company is found, the searcher can click to have direct access to reports filed by it. Among the more useful documents are annual reports (10-Ks) and quarterly reports (10-Qs). Appendix C provides detailed guidance on retrieving these reports.
- *Check public filings for derogatory information.* Securities regulators often require companies to disclose whether they have been subject to sanctions (such as debarment or exclusion) or are under investigation. Companies have a strong incentive to report accurately and promptly because inaccurate statements may subject them to discipline by the regulator or to costly civil lawsuits.

If a company is listed on a reputable stock exchange or capital market, there may be less reason to spend time on detailed checks. To achieve and maintain a listing, the company is subject to numerous regulatory requirements that tend to improve the integrity and transparency of the enterprise. Some guidelines recognize this fact in their structure. For example, EITI Requirement 2.5(f) (iii), on beneficial ownership disclosure, requires publicly listed companies to disclose

the name of the stock exchange and include a link to where the stock exchange filings are listed (EITI 2016) rather than requiring disclosure of the actual individuals holding the shares.

### Checking private companies

Information on nonpublic companies is more difficult to retrieve than information on public companies. The following list provides some starting points:

- *Business registration information.* In most countries, most companies must be registered to do business. It may be useful to search for the registration documents to compare them with what the applicant submitted (for further information, see appendix J).
  - If the country in which the company (or parent company) is registered is known, start by consulting Wikipedia's list of national company registries.<sup>12</sup> This list is organized by country, and it contains lists of government agencies and specifies the languages in which records are kept. Although the accuracy of this list cannot be guaranteed because it is not officially verified, it is a useful starting point. Further research can be conducted to look for evidence of business registration and ownership.
  - Open Corporates is a respected site providing beneficial ownership data and information on private companies, including primary public sources from 105 jurisdictions and some 85 million companies.<sup>13</sup> The data are searchable by company name, country, and directors.
- *Company websites.* A company's own website is worth consulting to ensure that all statements on the application are consistent with public information and statements made by the company. What follows are some tips:
  - *Whois.com* provides valuable information about company websites, such as the name of the domain owner, when the domain was established, and the expiration date.<sup>14</sup> If a company's web domain is new or will expire shortly after creation, the company may have been established for scam purposes.
  - If a company's website has a policy page and terms of use/conditions and privacy pages, it is likely a professional and legitimate website. Sham sites often will lack these.
  - If a phone number for information on the company is provided, a call to number would reveal whether a person answers and gives the appropriate information about that business.
  - If no website is found by name search, a consolidator site such as *kompass.com*<sup>15</sup> would offer a search by name and location.
  - If a company does not have a website, that fact alone may be suspicious because of the importance of an online profile for businesses with a sizable turnover.
- *Physical company sites.* The physical location of a company's headquarters should also be verified. If suspicions surface, electronic and physical means could be used to determine whether the company exists at the geographic address it has supplied. Websites such as Google Earth, Google Maps, and Bing Maps can provide maps or photographs of many sites.<sup>16</sup> If the country in which the application is being made has an embassy or consulate near the

headquarters of the foreign company, the personnel at the country's embassy could provide local information or conduct a walk-by or drive-by to see if the company appears to be operating at the address supplied. If the company is there, it should be noted whether the physical plant is consistent with its purported business activities. There have been cases of a single physical location serving as the alleged place of business for hundreds of shell companies. Finally, consideration should be given to whether the company might be part of a joint venture.

### Language barriers

If information appears to exist only in a language not spoken by agency personnel, a first and cheap way to confirm the relevance of the information is to use a free translation service on the Internet, such as Google Translate,<sup>17</sup> where it is possible to cut and paste text for translation. This may yield some basic clues on the nature of the information, though it is not likely to reveal much more. It may be enough to determine whether it is worthwhile to consult a translator.

Global companies may have websites in the languages of the countries in which they operate, but others may have websites only in the language of the home country, particularly state-owned enterprises (SOEs). This can complicate searches if the home country language is not widely spoken. For example, the websites of some Chinese companies active worldwide may exist only or primarily in Chinese. This problem can sometimes be mitigated by the fact that some of the larger companies may be listed on public stock exchanges, and so certain documents can be accessed through the public stock exchange websites. Moreover, many Chinese firms trade through the Alibaba website, a large sales services platform for Chinese businesses engaging in international commerce that also enables customers and business partners to submit comments and ratings for companies.<sup>18</sup>

### Other internet sources

*Company financial information websites.* Major search engines such as Google and Yahoo have finance pages that may be useful for gathering company data on both private and public firms. A search such as “yahoo + finance + company name + country” may be useful. Information in English may be found on websites such as Yahoo Finance, even if the applicant is not listed in English-speaking countries and the website of the regulatory agency of the home country has no English version. Company ownership information may or may not be available.

*Sector or industry associations and websites.* It may be helpful to develop a short list of the most reliable and useful websites in the particular sector or industry concerned and always check them first. In addition to organizations for business in general, each industry typically has its own groups. Determining whether a company is a member in good standing of such groups could indicate the legitimacy of the company (for examples of websites of such groups in the mining sector, see appendix D).

*Chambers of commerce.* In many countries, the business community bands together to provide some form of self-regulation through local or national groups, often known as chambers of commerce. Although such organizations

may be formed primarily for promoting business, they also perform some function of verifying the existence of companies, thereby acting as a possible starting point for checks on the reputation of a business.<sup>12</sup>

*Commercial databases on a fee basis.* When even more information is needed, the many commercial websites that specialize in consolidating data on companies could be consulted. But because these websites can be expensive, it is prudent to first ensure that the results will go beyond what has been uncovered through other means and will include the categories of information that may be crucial to making an integrity risk decision. Box 4.3 lists some practical tips for using commercial consultants.

## FOLLOWING UP ON NEGATIVE INFORMATION

If negative information surfaces and it is important to ascertain with greater certainty the background of an individual, the best method is to contact prior employers, business partners, and the educational institutions the individual attended directly to verify the information listed. The Internet is a cheap and convenient starting point, but it is no substitute for thorough checking with authoritative sources. For more routine checks by mail or secure email, it is useful to consider standardized form letters for routine checks of prior employment or attendance at academic institutions.

Internal guides or protocols for telephone interviews may be useful as well. Agency personnel performing checks should be aware that in certain countries, some employers will not provide any data beyond confirmation that a person was employed there and the dates of employment out of fear that additional statements could subject the employer to legal liability. If possible, it may be useful for agencies to negotiate information-sharing memoranda of understanding (MOUs) with counterpart agencies in other countries to facilitate obtaining information.

## Sample checklists for follow-up

Tables 4.2 and 4.3 are examples of checklists that could be used for criminal and legal background checks on natural persons and legal persons, respectively. These checklists also incorporate the steps for reviewing beneficial ownership. The levels identified correspond to the degree of risk/importance of the license, ranging from level 1 for least risk/low importance to level 3 for high risk/mission-critical. In practice, a system could have only two levels, or it could have four or more levels. The important thing is to have a defined process that uses investigative resources wisely based on the integrity risks presented in the context of particular licenses.

Each licensing agency needs to create its own checklist after carefully considering which factors present a risk in the particular context. The information in tables 4.2 and 4.3 is merely an illustration and should not be viewed

### BOX 4.3

#### Practical tips for obtaining company information

What follows are some practical tips based on the experience of an African country where fewer than 12 companies control more than 80 percent of an extractive subsector:

- Single company reports drafted by private consulting firms that specialize in companies in certain regions (such as South Asia) can be a good value-for-money option.
- Good-quality reports may cost between \$100 and \$400, depending on the scope of the report.
- Packages (such as 10 reports with certain types of data plus an alert service) can also be negotiated.

**TABLE 4.2 Checklist for natural persons**

REQUIRED DOCUMENTATION			
<ul style="list-style-type: none"> <li>• <b>LEVEL 1: ALL APPLICANTS</b></li> <li>• <b>LEVEL 2: LICENSE APPLICANTS IN MEDIUM-RISK SECTORS OR RED FLAGS DETECTED</b></li> <li>• <b>LEVEL 3: LICENSE APPLICANTS IN HIGHER-RISK SECTORS</b></li> </ul>			
	BASIC FOLLOW-UP	SECONDARY FOLLOW-UP	
<b>LEVEL 1</b> <i>Basic biographical data</i> <ul style="list-style-type: none"> <li>• Name(s)</li> <li>• Date of birth</li> <li>• Place of birth</li> <li>• Addresses and phone numbers (business and personal)</li> <li>• Citizenship</li> </ul>	Request documentation	None	
<b>LEVEL 2 AND 3</b>	<b>CRIMINAL HISTORY</b> <i>Any past criminal convictions:</i> <ul style="list-style-type: none"> <li>• Ever convicted of fraud against a government or state entity                             <ul style="list-style-type: none"> <li>- financial fraud of any kind</li> <li>- payment of an illegal gratuity</li> <li>- corruption, collusion, bid-rigging, or any other anticompetitive activity</li> <li>- money laundering</li> <li>- participation in criminal organizations</li> <li>- income and excise tax evasion</li> <li>- bribing any public official, foreign or domestic</li> <li>- drug trafficking offenses</li> <li>- extortion</li> <li>- bribery of judicial officers</li> <li>- bribery of officers</li> <li>- secret commissions</li> <li>- criminal breach of contracts</li> <li>- fraudulent manipulation of stock exchange transactions</li> <li>- prohibited insider trading</li> <li>- forgery and other related offenses</li> <li>- falsification of books and documents</li> </ul> </li> </ul>	Inspect Certificate of No Record or police clearance.  Collect permission for criminal records check.  Analyze positive answers.	<b>Level 2:</b> If suspicious, pass certificate to the relevant law enforcement agency to check authenticity.  <b>Level 3:</b> Step 1: Request independent YES/NO check by relevant police/judicial agency (through passing data, certificate, and permission). - If NO, stop. - If YES, request details and proceed to steps 2-4.  Step 2: Conduct media / open source Internet checks.  Step 3: Request check by reputable outside vendor.  Step 4: Obtain certified copy of applicant’s criminal record.
	<i>Criminal investigations:</i> <ul style="list-style-type: none"> <li>• Any prior investigation by law enforcement agency for any of the above offenses</li> <li>• Any current investigation or charges pending</li> </ul>	Analyze positive responses.	None, unless red flags merit denial. <b>Level 3:</b> Step 1: Conduct media / open source Internet checks.  Step 2: Make case-by-case decisions.
	<b>LEGAL: ADMINISTRATIVE/CIVIL HISTORY</b> <ul style="list-style-type: none"> <li>• Administrative/civil adjudications:</li> <li>• Ever been found to have engaged in unprofessional or unethical conduct</li> </ul>	Conduct media search for negative information.	<b>Level 2:</b> Step 1: Conduct media / open source Internet checks.

*continued*

TABLE 4.2 continued.

REQUIRED DOCUMENTATION		
• LEVEL 1: ALL APPLICANTS		
• LEVEL 2: LICENSE APPLICANTS IN MEDIUM-RISK SECTORS OR RED FLAGS DETECTED	BASIC FOLLOW-UP	SECONDARY FOLLOW-UP
• LEVEL 3: LICENSE APPLICANTS IN HIGHER-RISK SECTORS		
<ul style="list-style-type: none"> <li>Any prior debarment or exclusion from competing for licenses or procurement contracts</li> </ul>	<p>Analyze positive responses.</p> <p>Obtain documents concerning adjudication or debarment.</p>	<p>Step 2: Make case-by-case decisions and/or proceed to level 3.</p> <p><b>Level 3:</b></p> <p>Step 1: Conduct media / open source Internet checks.</p> <p>Step 2: Investigate with relevant authorities.</p> <p>Step 3: Make case-by-case decisions.</p>
<p><i>Biographical data:</i></p> <ul style="list-style-type: none"> <li>Names and any aliases</li> <li>Immediate family members</li> <li>Significant business partners</li> <li>Close personal contacts</li> </ul>		<p>Conduct a social media check.</p>
<p><i>Employment history:</i></p> <p>List employment for last five years.</p>	<p>Verify current employment.</p>	<p>If doubtful, verify further back.</p>
<p><i>Education:</i></p> <p>Last level of education attained</p>	<p>Provide copy of degree/certificate.</p>	<p><b>Level 2:</b> If authenticity appears doubtful, check with the institution.</p> <p><b>Level 3:</b> Request certified copy or check with the institution.</p>
<p><i>Employment history:</i></p> <p>List employment for last 10 years.</p>	<p>Verify current employment and previous employment.</p>	<p><b>Step 1:</b> Verify five years back.</p> <p><b>Step 2:</b> Speak with supervisor or responsible person at current and immediate past job.</p>
<p><i>References:</i></p> <ul style="list-style-type: none"> <li>Three personal references from those who can attest to good character and verify basic data</li> <li>Reference data to include: name, contact address, phone, nationality, how long known, and relationship to contact</li> </ul>	<p>Contact at least one reference.</p>	<p><b>Step 1:</b> Contact two or more references.</p> <p><b>Step 2:</b> Check social media and open Internet sources.</p> <p><b>Step 3:</b> Check for contact with PEPs and sector-specific COI persons.</p>
<p><i>Qualifications:</i></p> <p>List any professional certificates/licenses.</p>	<p>Provide copy of certificate.</p>	<p><b>Step 1:</b> Inspect certificate.</p> <p><b>Step 2:</b> Contact issuing authority.</p>
<p><i>Professional associations:</i></p> <p>List membership in any professional associations and date joined.</p>	<p>Provide contact information for organization.</p>	<p><b>Step 1:</b> Contact organization to confirm membership.</p> <p><b>Step 2:</b> Use open Internet sources to check reputation, nature, and purpose of organization.</p>

Note: COI = conflict of interest; PEPs = politically exposed persons.

as comprehensive, or even necessarily advisable, depending on the specific context. Each agency must chart its own course and then refine that course as it develops experience with different approaches and applicants. Even when risks are identified, if economic conditions are unfavorable, it may be necessary to relax the criteria to take into account the paramount interest, which is ensuring exploitation of resources without delay. Nonetheless, certain basic checks should be conducted, economic conditions aside, to guard against the greatest risks.

Finally, a simple tick-box approach for gathering data is merely a tool to start the analysis and help to arrive at reasoned conclusions about an integrity risk. The checklist is not an end in itself. A sufficient number of checked boxes should not lull evaluators into a false sense of security if, for example, a nonlisted indicator or the big picture still raises suspicions.

### Tracking results

Once the criminal and legal background checks have been completed, it may be useful for the agency to make a form on which to record the key results in summary form. This could consist of a checklist of yes/no questions such as “Are there any allegations or indications that the person has been involved in any

**TABLE 4.3 Checklist for legal persons**

REQUIRED DOCUMENTATION			
LEVEL 1: ALL APPLICANTS			
LEVEL 2: LICENSE APPLICANTS IN MEDIUM-RISK SECTORS OR RED FLAGS DETECTED			
LEVEL 3: LICENSE APPLICANTS IN HIGHER-RISK SECTORS			
	BASIC FOLLOW-UP	SECONDARY FOLLOW-UP	
LEVEL 1	<i>Legal status and existence of legal entity:</i> <ul style="list-style-type: none"> <li>Names, legal entity type (corporation, partnership, sociedad anonima, LLC, cooperative, etc.)</li> <li>Date of registration or formation</li> <li>Place of registration or formation</li> <li>Identity of all related branches agent offices, subsidiaries, and parent companies</li> </ul>	Random spot-check requests of copy of registration documents	Case-by-case analysis
	<i>Address:</i> Physical location	None	
	Names of persons in positions of legal ownership or control	Request identity document of at least one owner.	None
LEVEL 2	<i>Legal status and existence of applicant entity:</i> <ul style="list-style-type: none"> <li>Formation documents (articles of incorporation, bylaws, etc.)</li> <li>Entity status (active; inactive, dissolved)</li> </ul>	Inspect formation documents. If entity is not in “active” status, inquire.	If doubts, request certified or notarized copy of formation documents from issuing jurisdiction.
	<i>Addresses:</i> <ul style="list-style-type: none"> <li>Principal place of business</li> <li>Registered offices, branches, agent offices, subsidiaries, and parent companies</li> <li>Photo conforming actual existence</li> </ul>	Inspect photos.	
	<i>Agents:</i> Name and address of a registered agent (for purposes of accepting service of process and other legal secretariat duties)		

*continued*



TABLE 4.3 continued.

REQUIRED DOCUMENTATION		
LEVEL 1: ALL APPLICANTS		
LEVEL 2: LICENSE APPLICANTS IN MEDIUM- RISK SECTORS OR RED FLAGS DETECTED		
LEVEL 3: LICENSE APPLICANTS IN HIGHER-RISK SECTORS	BASIC FOLLOW-UP	SECONDARY FOLLOW-UP
<i>Beneficial owners:</i> <sup>a</sup>		
<ul style="list-style-type: none"> <li>• Copy of legally recognized identity documents, name, functional title</li> <li>• Contact details, date of birth, and addresses of all persons in positions of legal ownership or control (shareholders, owners, etc.). If these are legal persons, the same information is required until all natural persons are identified.<sup>b</sup></li> </ul>		
<i>Is the company listed on a public exchange? If so, which one?</i>		
Look for public filings by the company.		
<ul style="list-style-type: none"> <li>• <i>Good standing:</i></li> <li>• Certificate of Good Standing to Do Business (or similar document)</li> <li>• <i>Regulatory compliance:</i></li> <li>• Good record of compliance with regulatory obligations such as payment of taxes and fees and mandatory reports filed</li> <li>• <i>Sources:</i></li> <li>• Appropriate regulatory agencies in home jurisdiction</li> <li>• Chamber of Commerce</li> </ul>		
Examine documents. <span style="float: right;">Contact applicant's references or other state or national agencies.</span>		
Names of persons in top three managerial or officer positions (CEO/president, vice presidents, CFO/treasurer, etc.) Names of persons in top five managerial or officer positions (CEO/president, vice presidents, CFO/treasurer, etc.) Names of all persons on board of directors or other governing body		
Request identity documentation of each person.		
Check with issuing government agency. Follow steps for natural persons above.		
<b>LEVEL 3</b>	<i>Address:</i>	
	Require detailed physical address, including photo of the physical location.	
	<b>Step 1:</b> Conduct open source Internet checks: <b>Step 2:</b> Consult blacklists (World Bank, EU, GFAC list). <b>Step 3:</b> Consult public filings or other sources for private companies	
<i>Criminal or debarment actions:</i>		
<ul style="list-style-type: none"> <li>• Entity ever convicted of criminal offense</li> <li>• Entity under investigation or charged</li> <li>• Entity ever debarred or excluded from competing for licenses or contracts for public procurement</li> </ul>		
<i>Administrative/civil adjudications:</i>		
Entity ever found to have engaged in unprofessional or unethical conduct		

Note: CEO = chief executive officer; CFO = chief financial officer; COI = conflict of interest; EU = European Union; OFAC = Office of Foreign Assets Control (US); PEPs = politically exposed persons.

a. See chapter 3 for an explanation of beneficial ownership.

b. For example, if the company is owned by Natural Person 1, Natural Person 2, and Legal Person 3, the applicant must provide all further information on Legal Person 3; and if Legal Person 3 is owned by Natural Person 4, Natural Person 5, and Legal Person 6, it must provide all information until the level of ownership by all natural persons.

criminal activity or other disreputable activity that raises questions as to his or her integrity or good reputation?” Applicants for whom negative information has surfaced present some risk and may require additional investigation.

## NOTES

1. For a sample list of disqualifying offenses, see the list used by Canada in public procurement (Government of Canada 2017).
2. Nigerian Minerals and Mining Act of 2007 (<http://www.nassnig.org/document/download/5798>) and Nigerian Minerals and Mining Regulations, 2011.
3. See statistics maintained by the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery, such as in *Liability of Legal Persons for Foreign Bribery: A Stocktaking Report* (OECD 2016).
4. The terminology for police clearance varies. One useful website ([http://www.eslrecruitme.com/obtain\\_cbc.html](http://www.eslrecruitme.com/obtain_cbc.html)) has collected the various phrases from many countries (in the original languages).
5. For further information, see UK Home Office (2017).
6. See, for example, Transparency International (2014).
7. See EU Single Market, Internal Market Information System, [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](http://ec.europa.eu/internal_market/imi-net/index_en.htm).
8. See EU Single Market, Internal Market Information System, [http://ec.europa.eu/internal\\_market/imi-net/about/index\\_en.htm#maincontentSec3](http://ec.europa.eu/internal_market/imi-net/about/index_en.htm#maincontentSec3).
9. For examples of such protocols developed by procurement experts in the state of New York, visit <http://www.ogs.state.ny.us/procurecounc/BestPractices.asp>; <http://www.ogs.state.ny.us/procurecounc/pdfdoc/Bestpractice.pdf>; <http://www.ogs.ny.gov/bu/pc/Docs/Guidelines.pdf>; <http://www.osc.state.ny.us/vendrep/webresources.htm>.
10. IOSCO public website: <http://www.iosco.org/about/?subsection=membership&memid=1>. IOSCO publishes a list of warnings, contributed by members, on firms and individuals who have attempted to operate in a jurisdiction where they are not authorized. See [http://iosco.org/investor\\_protection/?subsection=investor\\_alerts\\_portal](http://iosco.org/investor_protection/?subsection=investor_alerts_portal).
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12. [https://en.wikipedia.org/wiki/List\\_of\\_company\\_registers](https://en.wikipedia.org/wiki/List_of_company_registers).
13. <https://opencorporates.com/>.
14. <http://www.whois.com/>.
15. <https://www.kompass.com/selectcountry/>.
16. In some countries, privacy laws limit the availability of this electronic information.
17. <https://translate.google.com/>.
18. <http://www.alibaba.com/>.
19. Two examples of websites that gather data on chambers of commerce are the World Chambers Network (<http://chambertrust.worldchambers.com>) and World Chamber of Commerce Directory (<https://www.chamberdirectoryonline.com/>).

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## Conflicts of Interest

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Government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. . . . Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

— Justice Louis Brandeis, dissenting opinion,  
*Olmstead v. United States*, 277 U.S. 438 (1928)

The third pillar of integrity screening is conflicts of interest (COIs). A transparent system for preventing and managing COIs is essential to the integrity and credibility of any licensing system. A COI arises “when a public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities” (OECD 2005, 7).

License application systems should be designed to detect and manage COIs in the screening of license applicants as well as in the officials of the licensing agency and any other officials with a decision-making role in the process. Safeguards to prevent, mitigate, or eliminate COIs should be implemented through enforceable laws and regulations in a manner that limits the use of discretion and is subject to enforcement by a sufficiently independent oversight authority. This chapter identifies COIs and then outlines policies to address them in the context of licensing.

### DEFINING TYPES OF CONFLICTS OF INTEREST

Beyond its core definition, the view of what constitutes a COI varies widely across countries and sectors, depending on many factors, which include the size of both the sector and the country. For example, avoiding a possible conflict of interest can be complicated in small countries and small sectors where personal contacts among officials, associates, and their families are common. This is one reason that international standards and best practices provide

**BOX 5.1****Actual, apparent, and potential conflicts of interest**

**Actual/real:** Where there is in fact an *unacceptable possibility of conflict* between a public official's interests as a private citizen (private-capacity interests) and his or her duty as a public or civil servant (official duty), a conflict of interest (COI) can be said to exist.

**Apparent:** An “apparent” COI can be as serious as an actual COI because of the *potential for doubt to arise* about the official's integrity and the integrity of the organization of the official. To detect this potential, ask, “Does official X appear to have a COI?”

**Potential:** In contrast to the above, a “potential” COI may exist where an official has private-capacity interests that *could cause a COI to arise at some future time*.

Source: OECD (2015,13).

**Key Concept:**

If the value of a license is high enough, it will be important to reach beyond the officials with influence over that sector because it is reasonable to expect some risk of cross-sector corruption.

only general principles that must be tailored to national laws, regulations, or procedures. There is often a fine line between conflicts that should be monitored or mitigated rather than prohibited. Research by the Organisation for Economic Co-operation and Development (OECD) provides some useful guidance, summarized in box 5.1, on how to distinguish between actual, apparent, and potential COIs.

Although some COIs could possibly be resolved by mitigation and monitoring, some may be so serious that absolute prohibition is the only credible solution. Even if a COI may not turn into an actual conflict, such as when an official with authority to grant or deny licenses encounters a decision that pits personal gain against official duty or other interests, the public perception of such circumstances can harm the credibility or reputation of the licensing agency. And this harm can damage the sector and be costly to the country.

Each situation should be scrutinized by determining the facts, applying the law and policy, and making distinctions among actual, apparent, and potential conflicts. The third example shown in

box 5.2 makes it clear that limiting checks to a single sector may not be sufficient. If the value of a license is high enough, it will be important to reach beyond the officials with influence over that sector because it is reasonable to expect some risk of cross-sector corruption. Much will depend on context and case-by-case analysis within the framework of announced rules and policies.

Once the risks are assessed, a determination should be made as to what further actions are needed to mitigate the risks and make the appropriate recommendations.

**COIs IN INTEGRITY SCREENING**

The obligation to detect and manage COIs related to license applicants falls on both the applicants and the licensing agencies. For both, the COI portion of integrity screening should start with identifying whether an applicant is connected to a politically exposed person (PEP)<sup>1</sup> or a person of influence (POI)<sup>2</sup> within both the licensing country and a foreign country. To make these determinations, it is essential that objective and fairly precise definitions of the terms “PEP” and “beneficial owner” be adopted.

**Defining the key terms**

As a practical matter, if license applicants are expected to declare their status as a PEP or beneficial owner or related party, the license application must provide clear and precise definitions so applicants need not be left

guessing as to their status, and so they can provide additional information and documentation if necessary. It would therefore be useful to include the definitions of *politically exposed person* and *beneficial owner* in the license application. A lack of clear and objective definitions of these terms will confuse applicants, and result in the application of subjective standards that are arbitrarily and selectively applied in ways that will perpetuate abuse and corruption. The ability of officials to effectively conduct a uniform COI analysis across all applicants depends on the existence of sufficiently precise definitions of what constitutes beneficial owners and PEPs in their sectors.

Because the definitions of these terms are likely to differ among countries, licensing regulations and license application instructions should make it clear that the applicable definitions are those of the licensing country. Thus an objective definition of domestic PEPs that eliminates or substantially removes the need for discretionary interpretation would be advantageous. As countries differ significantly in how position titles are used in various branches of government (such as civil service, judiciary, parliament, cabinet, military, diplomatic service, and state-owned enterprises), discretion may be needed to determine whether a foreign official would be considered a PEP in the licensing country.

Those responsible for making the decision to apply uniform standards will need some guidance. One factor may be whether the foreign official is classified as a PEP under the laws of his or her own home country, provided that the country has adopted a clear definition of what constitutes a PEP. Where it may be difficult to ascertain whether a foreign official is a PEP in his or her home country, consideration could be given to whether the equivalent position of authority would be considered a PEP in the licensing country. Unfortunately, to date many countries have not yet adopted a clear definition of a domestic PEP because no international standards specifically require it. However, it is essential for effective regulatory implementation and enforcement.

### Assessing the degree of risk

If review of a license applicant's background indicates there is a link between the applicant and PEPs or POIs, the licensing agency would then assess the degree of risk, including actual, apparent, and potential conflicts. When the license applicant is a PEP, or a POI linked to a PEP (for example, as a family member or close associate), there is a heightened risk that public duties and private interests may result in an official using his or her position

#### BOX 5.2

### Types of conflicts of interest and responses: Three examples

**Actual COI.** A deputy minister of mines in the licensing country is the beneficial owner of a company applying for a mineral license. > *This circumstance justifies denial of the license.*

**Possible, apparent, or potential COI.** The deputy minister of transportation (a politically exposed person or PEP) is the chairman of the board of the parent company of the entity applying for a mineral license (controlled by the Ministry of Mines). > *These circumstances may warrant thorough analysis and mitigation measures.* More analysis would be needed to determine whether there is a conflict.

**Possible, apparent, or potential COI.** The minister of sports favors the company owned by the wife of the minister of culture for an exclusive license to operate all the food concessions in a national football stadium. One can imagine a scenario in which, in exchange, the minister of sports will favor the company owned by the wife of the minister of culture to receive a license to run a program to collect and conserve local artifacts. > *These circumstances may warrant thorough analysis and mitigation measures.* Again, more analysis would be needed to determine whether a conflict exists.

or authority for private gain (Heggstad, Frøystad, and Isaksen 2010, 13; OECD 2005).

Because some PEPs tend to hide their identities underneath complicated layers of legal entities (corporate vehicles) and to misuse power (van der Does de Willebois et al. 2012), a higher degree of scrutiny is warranted when PEPs or POIs are identified as beneficial owners of license applicants. Whatever method is used, a careful analysis of the risks is necessary, and where the risks are high and the ability to mitigate is low, procedures should include automatic disqualification.

Assessing COI risks requires identifying ownership, specifically identifying

- The beneficial owners of all applicants
- Which beneficial owners meet the beneficial owner definition of “significant” pursuant to any threshold of influence or share ownership
- Which beneficial owners are PEPs in accordance with the national definition of a PEP.

Licensing agencies will need to use a variety of information sources to identify and verify beneficial owners and PEPs, particularly for foreign license applicants. New public resources useful for doing this are proliferating because of the increase in international initiatives aimed at improving the ability of all countries to identify beneficial owners and PEPs. Table 5.1 lists some such initiatives, and appendix F provides additional examples.

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**Key Concept:**

Where the COI risks are high and the ability to mitigate is low, procedures should include automatic disqualification.

**TABLE 5.1 Selected international and national initiatives for identifying beneficial ownership**

<p><i>Extractive Industries Transparency Initiative (EITI)</i> Beneficial Ownership Disclosure Requirement 2 <a href="http://eiti.org">http://eiti.org</a></p>	<ul style="list-style-type: none"> <li>• Although this EITI requirement will take technically take effect in 2020, it is likely that between now and then, countries seeking EITI certification will be posting certain information on public websites.</li> <li>• Such information will include a legal framework and fiscal regime related to the extractive sector (2.1); license allocations (2.2); register of extractive licenses (2.3); extractive contracts (2.4); beneficial owners and politically exposed persons related to extractive sector licensees (2.5); and information related to state participation in the extractive sector (2.6).</li> </ul>
<p><i>OpeningParliament.org</i> <a href="http://openingparliament.org">http://openingparliament.org</a></p>	<ul style="list-style-type: none"> <li>• Aimed at connecting civic organizations engaged in monitoring and in supporting transparency in parliaments and legislative institutions.</li> <li>• Provides space for international collaboration on efforts to improve access to parliamentary information.</li> <li>• Initiative results from conference of Parliamentary Monitoring Organizations of the National Democratic Institute, Sunlight Foundation, and Latin American Network for Legislative Transparency.</li> </ul>
<p><i>Global Beneficial Ownership Registry</i> <a href="http://thecommonwealth.org/sites/default/files/inline/1AnOpenGlobalBeneficialOwnershipRegisterACSBriefing.pdf">http://thecommonwealth.org/sites/default/files/inline/1AnOpenGlobalBeneficialOwnershipRegisterACSBriefing.pdf</a></p>	<ul style="list-style-type: none"> <li>• International initiative launched in the wake of the Panama Papers revelations to create a free beneficial ownership information resource to tackle corruption, money laundering, and the use of companies for criminal purposes.</li> <li>• Led by Transparency International, Open Corporates, Open Contracting Partnership, The B Team, World Wide Web Foundation, and Global Witness.</li> </ul>
<p><i>National initiatives</i> Italy: Association Open Polis <a href="http://politici.openpolis.it">http://politici.openpolis.it</a> [in Italian]</p>	<p><i>Covers current and former Italian officials</i></p> <ul style="list-style-type: none"> <li>• Information provided: name and picture; date and place of birth; level of education and profession of politician; dates of appointment; official's role; political party and external affiliations; employment; memberships (such as corporation, trade/labor union).</li> <li>• Searchable by name or public institution and free of charge.</li> </ul>

*continued*

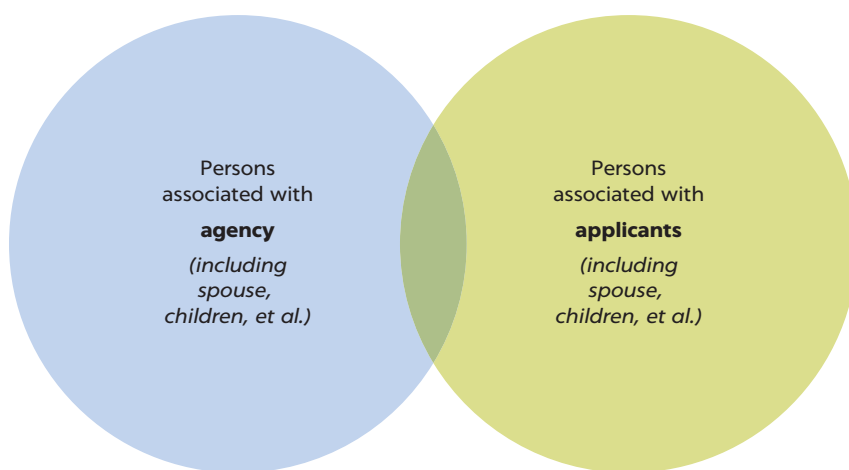


TABLE 5.1 *continued.*

Pakistan: Open Parliament <a href="http://openparliament.pk">http://openparliament.pk</a> [in English]	<i>Covers elected members of national and regional assemblies</i> <ul style="list-style-type: none"> <li>Information provided: name and picture, current position, political affiliation, address, phone and email contacts, biography, education, and profession.</li> <li>Asset disclosures (“net worth”) for past three years available.</li> <li>Available in English and can be used online or downloaded.</li> </ul>
Chile: Legislative Observatory <a href="http://observatoriolegislativo.ec">http://observatoriolegislativo.ec</a> [in Spanish]	<i>Covers members of parliament</i> Information provided: curriculum vita, gender, profession, phone, email, blog, parliamentary activity, etc. Website on members of parliament is managed by a citizens’ initiative.

FIGURE 5.1

### Relationships presenting conflicts of interest



### COIs: OFFICIALS WITH A ROLE IN LICENSING

In addition to applicants, conflicts of interest apply to the obligations of officials entrusted with a role in the licensing process (figure 5.1). Any situation or circumstance that may influence or appear to influence any decision of an official involved in the licensing process, or may appear to cause an official to put another interest, such as financial gain or family ties, ahead of the public interest function of the agency, creates a potentially damaging COI. Reasonable regulations should be adopted to ensure that these officials’ actions are free from improper influence and any motive for private gain.

Systems and procedures to mitigate these risks should start with specifically designed rules of professional ethics to which all officials are bound. The foundation of such risk mitigation will be clear prohibitions and guidelines for officials in three core areas:

- Dealings with related persons
- Gifts and other items of value
- External activities.

Table 5.2 sets out the basic contours that a set of prohibition, implementation, and enforcement mechanisms could take in these three areas.

**TABLE 5.2 Conflict of interest (COI) prohibitions and enforcement mechanisms**

PROHIBITION	IMPLEMENTATION AND ENFORCEMENT MECHANISMS
<p><i>Related persons</i> Prohibition against involvement in decisions on applications of related persons (related by family ties, business ties, or other strong bonds, including relationships to legal persons)</p>	<ul style="list-style-type: none"> <li>• Absolute prohibition should be stipulated in law.</li> <li>• Penalties for violation should be serious and credibly dissuasive.</li> <li>• Obligation for staff member to immediately recuse himself or herself from any role in the case and to inform the supervisor should be enforced.</li> </ul>
<p><i>Gifts</i> Prohibition against gifts, favors, benefits, or items of value</p>	<ul style="list-style-type: none"> <li>• Legally enforceable obligation is to refuse any “gifts, favors, or benefits” of any value.</li> <li>• Immediate obligation is to report any offer to direct supervisor or integrity agency or office.</li> <li>• Mandatory procedures should be followed to ensure that details regarding the offer are maintained on file and considered in future background checks of the company or entity that made such an offer.</li> <li>• Penalties for violation should be serious and credibly dissuasive.</li> <li>• Monitoring should be conducted through the use of annual asset disclosure reporting or a similar procedure.</li> </ul>
<p><i>External activities</i> Prohibition against outside activities that could give rise to a real or apparent COI through receipt of income, favors, or benefits while employed at the licensing agency.</p>	<ul style="list-style-type: none"> <li>• Obligation is to report to supervisor or integrity agency or office and obtain written permission before participating in any outside activity that may give rise to a perceived COI.</li> <li>• Penalties for violation should be serious and credibly dissuasive.</li> <li>• Absolute prohibition should be contained in law.</li> <li>• Monitoring should be conducted through the use of annual asset disclosure reporting or a similar procedure.</li> </ul>

### Related persons

Because of the many opportunities for improper influence by powerful officials in the licensing process, COI screening calls for scrutiny of the relationship of applicants to officials of the licensing agency or other officials who may have decision-making roles in the licensing process.

It is necessary to delineate what degree of relationship should be considered improper for both natural and legal persons. For example, family relations within one degree are usually covered, but what about cousins? Half-siblings? Persons who reside in the household but are not blood relatives?

For legal persons, determining relationships may be easier because any relationship likely involves a potential financial interest. If a person has such an interest, it would be improper to participate in any agency matter touching on that legal entity. An agency may wish to prohibit employees from owning shares in companies in a certain industry. In all of these cases, an agency may decide to develop more specificity or have a general definition that leaves decisions to analysis based on specific risks.

To determine whether a license applicant (person or entity) or its beneficial owners have any connection to any personnel involved in the licensing process, agencies might use a regularly updated list or database system against which the names of license applicants and their beneficial owners would be screened to certify the lack of such link. Furthermore, the COI Declarations listed in box 5.3 later in this chapter could be used to identify a narrower list of persons or officials employed by or associated with the agency with whom some relationship risk may arise from a preexisting relationship with persons or entities operating in the sector.

Systems and procedures to eliminate or mitigate and monitor potential COIs related to officials or employees of a licensing agency must be constantly updated. Without such systems, the licensing agency risks serious damage to its reputation and credibility and opens itself to charges of favoritism and corruption.

### **Gifts and other items of value**

The next important prohibition is on receipt of gifts and any other items of value by officials in the licensing process. A clear policy on gifts should be stated publicly in order to expressly prevent personnel from soliciting or accepting benefits of any kind from persons or entities doing business with the licensing agency. Such benefits could take many forms, including hospitality, free trips, honoraria, or discounts on goods or services. Receipt of anything of value could call into question the integrity of that official by creating the appearance that he or she may favor the giver.

To avoid this situation, a blanket prohibition may be the best policy. One option might be a policy that says: It is prohibited for agency personnel to accept or solicit gifts, favors, or benefits of any kind from persons making applications to or doing business with the licensing agency.

Some agencies permit personnel to accept gifts of negligible value. Such an approach should include a rule stipulating a low threshold value below which gifts may be accepted under certain conditions. For example, it might specify that all such gifts of negligible value must immediately upon receipt be reported to an ethics officer, so that details of the gift and other relevant details (such as name of giver, circumstances, and value) are maintained on file as a mitigation measure or in the event of future COI issues.

### **External activities**

The third prohibition concerns the external activities of licensing officials. Clearly stipulated policies stated in terms of what is prohibited are useful, especially ones that specify what types of external activities or employment may give rise to a conflict of interest with licensing duties. If a licensing official were simultaneously to receive income from another source, such as a second job, that situation could create the appearance that the official's loyalty is divided. Moreover, because of time constraints, the official may be unable to fulfill his or her commitment to the licensing agency. For these reasons, it is advisable to have clear policies on outside employment (including similar activities such as advising or consulting).

Although certain activities can be prohibited, other external activities that are less likely to give rise to a COI should be permitted but still monitored. It is common practice for many agencies to obligate personnel to obtain written permission from an ethics officer before engaging in any outside activities that may give rise to a conflict of interest or the perception of one. In such cases, staff are generally required to provide a detailed written description of such activities and all remuneration or benefits expected. The ethics officer should analyze each situation on a case-by-case basis and provide written confirmation of the decision (approving participation in the proposed activity or denying permission) and the basis for the decision. This documentation should be maintained on file.

## IMPLEMENTATION OF COI POLICY

All license applicants and officials of the licensing agency should be thoroughly informed on COI policies and procedures to enable effective compliance and equitable enforcement. These policies and procedures should be easily available to the public and to applicants and officials. Awareness-raising and training programs based on such policies should be introduced proactively.

### Messaging and awareness raising

Ongoing messaging should be carried out through the relevant ethics or anticorruption publications and broader media campaigns to regularly remind the appropriate persons of the importance of compliance as well as the existing procedural obligations and reporting mechanisms.<sup>3</sup>

Different countries have adopted different approaches to awareness raising. For example, in France extensive training is offered to public officials on their reporting obligations and available mechanisms. In Poland, anticorruption publications are aimed at civil servants and entrepreneurs, and approximately 560 training events have been held for over 13,000 civil servants to discuss topics addressed in extensively distributed handbooks. In Malaysia, the approach includes a road show publicizing the provisions of the Anti-Corruption Act, the development of a drama based on a successful anticorruption operation, and public recognition of reporting persons (Razali 2013).

### COI disclosure forms

Personnel and officials of the licensing agency, along with any other officials with substantive roles in the decision-making processes related to licensing, should also be required to complete annual conflict-of-interest disclosure forms. The information required in a COI disclosure form should be tailored to the sector and include questions that would require disclosures of direct family members, professional history, and current position, as well as other information relevant to assets and interests that may give rise to conflicts. Similar forms should be completed by officials prior to their appointment or hiring to official positions to eliminate those from consideration for whom certain COI risks may be too difficult to mitigate.

Each COI disclosure form should include a declaration that all information provided is complete and truthful, as well as agreement that any information provided by the applicant can be transmitted to officials of the licensing agency for purposes of the license application. The COI declaration or disclosure must be dated and signed by the applicant and should specify the penalties for the provision of false or incomplete information, including exclusion from the licensing process as well as license revocation in the event a license is granted. Some information may already be available in countries in which officials are obligated to file regular asset disclosure forms. Ideally, the COI disclosure form would include the information outlined in box 5.3.<sup>4</sup>

### Internal ethics enforcement

Additional rules of professional ethics should be applicable to officials of the licensing agency and any others with substantive roles in the process.

**BOX 5.3****Conflict-of-interest (COI) disclosure form for public officials*****Personal information***

Name; date and place of birth; ID (number and copy); residence address; phone, email; social security number/tax ID; family status and composition; education (institution, year(s), degree(s) obtained); membership in civic and social groups or clubs, as well as participation in similar other unpaid activities

***Professional information***

- Ministry/department/unit
- Role/position
- Brief description of tasks

***Property and COI information***

- Real estate in which a beneficial interest is held (excluding the principal family home)
- Holdings of shares and like instruments, including holding companies and subsidiary companies
- Any beneficial interest held in a family or business trust or a nominee company and any interest held as a trustee of a family or business trust established under a law
- All directorships currently held, whether a director's fee is paid or not

- All current business and professional partnerships and similar arrangements
- All investments: bonds, debentures, savings, or investment accounts in financial institutions
- Each valuable asset or amount of cash held
- Current salary and income from all appointments, employment, and investments, specifying income type, source, and amount
- All "reportable gifts"
- Current financial liabilities, loans, mortgages, etc.
- Other personal interests that could constitute a potential conflict of interest: previous relevant employment or positions held (such as in business ventures, professional bodies or unions, nongovernmental organizations, or community organizations), continuing rights of return to previous employment or position, or standing offers or agreements about future employment, etc.

All the information on identification and interests should also be requested for family members in the same degree of detail as for the main declarant.

For example, internal ethical rules should obligate officials and employees to immediately and proactively declare to a supervisor or ethics officer any potential COI that arises regarding any official duties, responsibilities, or activities, and they should recuse themselves, where appropriate, to mitigate potential risks. Failure to do so should carry serious and effectively dissuasive sanctions.

When a potential conflict is declared, a decision is made about how to mitigate it. All information on the conflict or potential conflict should be documented, including all relevant decisions and actions (which may include monitoring measures). If the potential conflict is not discovered until after a license is issued, unraveling the situation is likely to become highly problematic.

The official designated as responsible for implementation and enforcement of the policy should ensure that all staff within the licensing agency are sufficiently informed, receive adequate training, and have access to further information and advice when necessary. Because it is impossible to provide

examples of every potential COI, it should be clear to staff to whom they can address questions or concerns, both confidentially and informally. Thus the name (or names) of the designated resource person should be listed prominently where the policy is publicized and within the licensing agency.

These designated resource persons can provide guidance in a friendly and confidential manner. If necessary, the designated person could provide formal advice and follow-up on the case. In the event the designated person gives specific advice on a conflict and the employee ignores it, the agency may then have grounds to apply sanctions. The employee would not be able to claim that he or she was unaware of the conflict. Most important, this advice, both informal and formal, can prevent conflicts from occurring.

## **STRATEGIES UPON DETECTING POTENTIAL CONFLICTS OF INTEREST**

There is a large body of literature on how to manage COIs, and this manual does not attempt to summarize that knowledge. Suffice it to say that a licensing agency should first reflect and decide on an approach, and then commit that approach to writing and make it known within the agency. The following steps, based on OECD studies (OECD 2005), provide some useful options for resolving such conflicts:

- Establish the relevant facts.
- Apply the relevant law and policy.
- Distinguish between “actual/real,” “apparent,” and “potential” conflict situations.

### **What makes a COI unacceptable?**

It is important to recognize that some conflicts may not be unethical or prohibited. Some may be unavoidable and can be appropriately managed or reduced to an acceptable level. However, officials must recognize that any “other” activity or interest can potentially create conflicts, whether real or apparent. An ability to recognize the risk for potential conflicts and to recognize how personal, financial, and other relationships could be perceived by others are essential skills in managing conflicts. It is necessary for licensing agencies to have clear and written policies on conflicts of interest, but it is likely that the application of such policies will require the use of discretion to ensure they are reasonable but effective.

What makes a COI unacceptable? It is fully legitimate to have secondary interests. It is only when a secondary interest takes priority over a primary interest—that is, when the conflict is not minimized and the primary interest is sacrificed—that the risk of criminal or morally unacceptable behavior becomes apparent. Conflicts are not intrinsically wrong; rather, COIs represent situations in which two conflicting interests collide.

### **How can conflicts be resolved short of disqualification?**

Conflicts can be solved in many ways, such as by a waiver, recusal, or divestiture.<sup>5</sup> Procedures for mitigation are another area in which countries have adopted different solutions. Often (as in the United States and Norway), once the COI is

identified, the agency officer must notify the contractor/applicant, provide some information, and allow the contractor/applicant a reasonable opportunity to respond.<sup>6</sup> If the agency decides to disqualify the contractor/applicant, then he or she can appeal the decision directly to the agency or its supervising entity through either administrative entities (such as the General Accountability Office in the United States and the Compliant Board for Public Procurement in Norway) or more traditional judicial avenues.

Some systems allow the contractors/applicants themselves to take appropriate action to remedy the conflict. Such actions would be subject to scrutiny and oversight to ensure that the conflict has been fully and effectively remedied. In other words, the existence of a COI would not automatically disqualify an applicant because he or she is allowed to resolve the COI by agreeing to some restrictions related to future eligibility.<sup>7</sup>

Some countries use a certification to prevent a COI. In this case, the law authorizes the regulatory agency to demand a signed “nonimpediment” affidavit verifying the absence of a conflict of interest. Should the declaration be inaccurate or incomplete, it could be used as evidence for disqualification. In highly critical sectors or sectors, in which corruption risks are high and there are plenty of applicants, a COI of any kind may result in automatic disqualification.

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**Key Concept:**

Some systems allow the applicants themselves to take appropriate action to remedy a conflict, but subject to scrutiny and oversight to ensure that it has been fully and effectively remedied.

### Cases requiring automatic prohibition

Certain situations are credibly resolved only through prohibitions. Consideration should be given to defining in a law the most serious conflicts of interest that should result in automatic exclusion from obtaining a license in the sector. The law should include a list of indicators, elements, and criteria for manifest and absolute prohibitions—that is, in cases with unacceptable risks that are extremely difficult to mitigate.

Cases of definite ineligibility or disqualification should be spelled out clearly in the law so that decisions can be taken quickly and (in principle) irrevocably. Clarity in drafting will facilitate interpretation of the law’s provisions, improve the certainty of the law, and make it more difficult for corrupt officials to ignore the law. Other types of secondary conflicts may prompt the procuring agency to apply more discretionary analysis or ad hoc review, with the possibility that the bidder could take action and mitigate the risks, as discussed earlier. For these milder cases, discretionary authority would be needed to allow case-by-case determinations.

### Screening for conflicts of interest related to PEPs and POIs

The extent and application of PEP and COI screenings for individual sectors should be based on the potential COI risk and the potential damage to the sector presented by a PEP or POI holding a license. Because resources for such an investigation are always limited, a risk-based, cost-effective approach should be considered for the three levels of licenses:

- *Low-value, low-risk licenses.* Where the number of licenses granted is rather large (or unlimited) and the value of an extensive PEP/POI screening is likely to be low because of the low potential consequences of a COI risk, a simplified search or screening process is a possibility.



- *Intermediate-value licenses with some risk.* A higher level of scrutiny would be applied than for low-value licenses, with targeted follow-up if potential conflicts arise.
- *High-value, high-risk licenses.* All applicants would be thoroughly screened for a potential COI, including respective beneficial owners, and the identity of PEPs would be disclosed because they pose a higher risk of corruption and damage to the sector.

Some examples of these approaches may be helpful. Suppose the wife of the minister of culture is seeking to bid for an artisanal mining license for semiprecious stones to sell in a small retail shop. Although there may be no apparent or direct conflict, the fact that an applicant is the wife of a minister should be disclosed in the application process, even though mining may be apparently unrelated to her husband's sphere of authority. In this example, disclosure may be important if the country is small and influential people may know one another personally. Every country differs in size and therefore in the extent of spheres of influence (who knows who, and who can exert influence over whom). To return to the example, suppose the applicant's spouse is the minister of mines. In this case, there is a strong reason for disqualification on grounds of conflict of interest.

Yet another scenario illustrates a tender for a higher-risk license. Suppose, instead of applying for a small license, the application is to compete in the tender for large-scale diamond mining operations. Because this factor would present a higher corruption risk because of the higher-value license, the licensing agency should screen all applicants extensively for possible COIs and ties to those who may be PEPs, including family members and associates.

## **ADMINISTRATIVE AND LEGAL ASPECTS OF THE COI SYSTEM**

When formulating COI policy, policy makers and the agency involved in extractive licensing should conduct a thorough assessment of the existing applicable laws, regulations, and other professional codes of conduct or standards. Many governments have codes of conduct that generally prohibit conflicts of interest and set out the minimum standards of conduct and integrity to be complied with by all officials. Nonetheless, consideration should be given to whether the codes are sufficiently specific in view of the potential harm unmitigated conflicts of interest are likely to cause in critical sectors.

In the extractive sectors where corruption risks are known to be higher, it may be desirable to consider whether the rules are sufficiently stringent and tailored to the sectors and whether stronger absolute prohibitions may be more appropriate. Higher standards in terms of conflicts of interest are often applied to critical integrity agencies and officials—for example, to judiciary and law enforcement officials, in light of the importance of ensuring high integrity standards and the potential risk and serious consequences where integrity standards are eroded or even perceived to be weak.

Next, policy makers must choose a definition of *conflict of interest* and enact that definition in binding laws or regulations. A number of countries have developed codes of conduct or ethics for specific sectors and government service functions that may be useful. For example, the United Kingdom recently updated



its regulations on public procurement with guidance on combating corruption and preventing conflicts of interest. It defines a *conflict of interest* as “any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the concession contract award procedure.”<sup>8</sup>

Similarly, it may be useful to define prohibited conflicts of interest in language such as: Agency personnel should be prohibited from any involvement in decisions concerning applications from persons to whom they are related (by family ties, business ties, or other strong bonds, including relationships to legal persons).

Whatever the exact policy, it should be applied with fairness and clarity. Good practice safeguards in preventing abuse of discretion include requiring that discretionary decisions (1) be articulated in a text that summarizes the factors, analysis, and justification on which the decision is based and (2) be subjected to review and signature approval by at least two levels of officials. The agency may wish to have a mechanism to receive COI complaints from outside parties.

Once detected, conflicts of interest must be managed quickly and thoroughly, while always bearing in mind the delicate balance between individual and public and market interests. This means that although conflicts of interest must be avoided or managed fairly, the degree of prohibition must be proportionate—that is, it should involve as little intrusion as possible to preserve all the legitimate elements and consequences. In other words, the prohibitions should not be so invasive as to create unreasonable or disproportionate obstacles to trade development and business opportunities.

In addition, the procedure must fairly protect the right of the allegedly conflicted party to challenge the *prima facie* decision. This could occur as a request for reconsideration within the decision-making agency or through a separate administrative or judicial system. A system that allows for administrative review and appeals procedures can also serve as an effective tool for preventing and deterring abuse of discretion. Procedures for determination must be fair and balanced so that applicants can appeal decisions they believe are arbitrary, capricious, abusive, or irregular. Such appeals should be to an independent and competent supervising authority (either administrative or judicial).

In addition to these measures, it is crucial to have strong collaboration and coordination with all the relevant players, in both the public and private sectors,<sup>2</sup> who are allowed to contribute effectively to discussions on policies and implementation. The Extractive Industries Transparency Initiative (EITI) incorporates this principle by requiring broad-based oversight of the EITI reporting process by a multistakeholder group that includes government, companies, and the effective participation of civil society (EITI 2016).

An example of collaboration on industry good practices from a related sector is the Regional Forest Law Enforcement and Governance initiatives, which address issues related to illegal logging. Cohosted by both producer and consumer governments and the World Bank, in partnership with major stakeholders from civil society and the private sector, such ministerial-level political processes have aimed to mobilize international commitment from producer, consumer, and donor governments to increase efforts to combat illegal logging as well as the associated trade and corruption in the forestry sector. All of these are facets of the legal framework, which is the topic of the next chapter.

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**Key Concept:**

Once detected, conflicts of interest must be managed quickly and thoroughly, while always bearing in mind the delicate balance between individual and public/market interests.

## NOTES

1. Generally, PEPs include individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. As noted elsewhere, each agency will need to craft its own precise definition.
2. POIs are individuals who, although they may not be PEPs for all intents and purposes, possess the status and ability to influence a certain sphere relevant to the licensing decision.
3. Good practices in the prevention of corruption and regulation models in the public sector can be found in UNODC (2010).
4. For further details on COI disclosure forms, see OECD (2005).
5. For a discussion of options for intervention in managing the conflicts of interest of public officials, including counseling and registration, restriction, removal, waiver, and resignation, see ICAC (2004).
6. US Federal Acquisition Regulation (FAR), § 9.504.
7. US FAR § 9.505-6, 9.505-7. The contractor can submit a request to the agency head to approve a mitigation plan (FAR § 3.1104), or if the COI could not be mitigated, the contractor could also submit a request to the agency head to waive the conflict (FAR § 9.503).
8. See [http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi\\_20160273\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi_20160273_en.pdf).
9. In Resolution 3/2, the UN Convention against Corruption (UNCAC) Conference of the States Parties underscores the role that the private sector should play in preventing and fighting corruption.

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## Policy and Legal Framework

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If we desire respect for the law, we must first make the law respectable.  
—Justice Louis D. Brandeis

Efforts to refine a licensing system should be aimed at improving governance of the extractive sectors in order to attract the applicants most likely to support sustainable development. Numerous studies have correlated higher rates of foreign direct investment (FDI) with lower perceived rates of corruption (Olken and Pande 2012; Smarzynska and Wei 2008; Udenze 2014). Improvements in licensing systems can support more productive extractive sectors when consistent with international obligations to reduce corruption<sup>1</sup> and illicit financial flows (IFFs),<sup>1</sup> if accompanied by preventive measures to promote transparency and accountability in the management of public finances.<sup>2</sup> The Extractive Industries Transparency Initiative (EITI) beneficial ownership disclosure requirements are based on recognized good practices of regulatory transparency and accountability, which are tailored for practical application to mitigate common risks that undermine the productive development of extractive sectors.

To comply with these various standards, a licensing system should be built on recognized rule-of-law principles, based on recognized principles of integrity and effective regulatory implementation, and contain adequately transparent safeguards to ensure accountability. The importance of a legal framework to ensure the integrity of a licensing system and its effective implementation should not be underestimated. Before laws or amendments to laws are drafted, key policy decisions should be agreed with the appropriate policy-level officials in order to guide the drafting of the legal framework. The necessary policy decisions will form the basis for amending or drafting new laws or regulations as needed. Policy decisions should be made in the following areas:

- Sequencing of major regulatory decisions in the licensing process
- Mechanisms for transparency and accountability safeguards in licensing decisions by regulatory officials and the related compliance oversight system
- Information to be publicly disclosed along with the general system for disclosure

- System for regular reviews of the effectiveness of licensing procedures
- System for dispute resolution and appeal procedures
- Identification and prioritization of the main risks to be mitigated.

## ACCOUNTABILITIES AND SAFEGUARDS

Defects in the legal framework—such as inadequate transparency, accountability, and integrity safeguards—guarantee the opening of legal loopholes that will enable corruption and abuse by preventing detection. Therefore, the first step to ensure the integrity of a licensing system is to closely examine the existing legal framework to identify and rectify any deficiencies. Legally enforceable safeguards that require accountability and transparency at all levels of decision making are necessary to prevent decisions that may prioritize the personal interests of officials ahead of the interest of the country. When safeguards to ensure high ethical and integrity standards in regulatory decision making are not legally enforceable, adherence will be voluntary making compliance monitoring ineffective, and corruption exceedingly difficult to prevent or detect.

Countries with a high level of corruption in the extractive sectors usually lack basic, mandatory, and legally enforceable standards, procedures, and safeguards to ensure integrity, transparency, and accountability in the regulatory governance and oversight systems. A common deficiency where such laws may exist is that they may be poorly or defectively implemented. Many important integrity and corruption prevention standards may be contained in codes of conduct, freedom of information acts, sunshine acts or other laws of general application that apply across all ministries and agencies and set forth clear, mandatory, and legally enforceable minimum standards, safeguards, as well as procedures for implementation and enforcement. For example laws that:

- Require the transparent adoption of rules or regulations that ensure public consultation in the adoption of regulations (notice-and-comment procedures) and conduct of officials and agencies in rule- and regulation-making activities
- Define and prohibit conflicts of interest, illicit enrichment, abuse of authority, and abuse of discretion in regulatory decisions and actions by officials and agencies
- Require certain meetings by officials and agencies to be open to the public and include public notice requirements for the establishment, operation, and dissolution of informal bodies providing advice to officials or agencies (that is, advisory committees, task forces, boards, commissions, councils, panels, working groups, etc.)
- Prohibit and prevent abuse of discretion by officials or agencies, provide clear procedures for citizens to pursue judicial review of agency actions and decisions, and provide legal remedies for those harmed by arbitrary or capricious actions or decisions or abuse of discretion by an agency or official
- Permit courts to order the payment by the state to successful plaintiffs in civil actions against an agency or official challenging inappropriate actions or decisions for legal fees, court costs, litigation expenses, and, where appropriate, punitive damages to those who win in court litigation against an agency or official.

Where these and other general laws and systems applicable to all government institutions to ensure integrity, transparency, and accountability do not yet exist, such safeguard provisions should be included in sector-specific laws and regulations to ensure high standards of ethics in regulatory governance of the extractive sectors. When such laws do exist, general provisions may need enhancements in specific sectors or sub-sectors where corruption risks may be higher.

It is also common to find legal conflicts, gaps, or ambiguities in various laws related to the licensing process. Where provisions setting forth the critical decisions in the licensing process are scattered among several different laws that are not effectively harmonized, the precise functional authority and accountabilities of responsible officials are likely to be unclear or ambiguous. This gives rise to legal loopholes that enable corruption, inappropriate manipulation or influence of the process, and avoidance of transparency safeguards.

In countries with weak or fragile rule-of-law foundations, it can be difficult to detect corruption in the form of inappropriate political influence, manipulation of laws, or even human error. This is often the case where serious deficiencies and gaps in the formal procedures for lawmaking exist, including law drafting, as well as processes for formal review and consultation, for example, a lack of systematic reviews of all new laws or amendments to ensure high standards of technical legal quality or a lack of harmonization (domestication) of new laws with existing laws. Where these important functions are lacking, the laws produced are often of poor technical quality, and are thus, full of loopholes and legal ambiguities that result in poor implementation and perpetuate manipulation and abuse.

These and other legal defects are common in countries that rely heavily on foreign experts to draft laws because those experts (sometimes wrongly) assume the existence of clear, adequate, and transparent procedures for public consultation and for harmonizing or domesticating laws into the existing systems. A lack of adequate processes for conducting systematic reviews to ensure quality in technical legal drafting and harmonization or domestication of laws is common in countries where effective access to a comprehensive and reliably accurate official version of all laws is lacking, and it often results in laws that contain direct legal conflicts, ambiguities, gaps, and inconsistencies that are easily amenable to manipulation or corruption.

Provisions of law should clearly define the *types and categories* of licenses (such as sector, commodity, and extractive versus exploration), specify the *rights and obligations* that are generally applicable, describe *mandatory criteria* for obtaining each type of license, and indicate the decision-making procedures for each phase leading to the *grant, renewal, or denial* of licenses. These provisions should include all sequential and procedural steps, including any bidding or auction procedures, and clearly specify the official or agency responsible for implementing and ensuring full compliance with each step.

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**Key Concept:**

When provisions in licensing laws are poorly written and contain legal ambiguities and contradictions, effective implementation and enforcement become selective and arbitrary, making it easy for corrupt actors to manipulate the licensing process.

## Decision-making roles and responsibilities

The law should also stipulate the regulatory agency (and, where appropriate, the designated official) authorized to issue enforceable implementing regulations that set forth the necessary details and procedures for obtaining and regulating licenses and appealing decisions of officials. Furthermore, the law should describe the decision-making processes in sufficient detail to ensure that officials with any role in the licensing process can be held legally accountable for improper decisions and actions.<sup>3</sup> Officials with ultimate responsibility for any

**Key Concept:**

Laws that are insufficiently clear on decision-making roles and responsibilities in licensing create a risk of overlapping functions, which in turn creates opportunities for inappropriate influence, abuse, and corruption.

discretionary decisions in the process, to be made individually or jointly, should be clearly identified in the law by title, position, and agency, and all legal ambiguities should be removed from all provisions relating to the roles and responsibilities of all involved in decisions, as well as the basis on which such decisions are made, oversight procedures, and the legal obligation to publish the decision.<sup>4</sup>

**Limiting regulatory discretion**

Numerous studies have indicated a correlation between reducing the discretion of officials and lower rates of corruption (Klitgaard 1991; Rose-Ackerman 1997). Although a licensing system will invariably necessitate some discretion, any decision making (for example, the decision to grant, renew, or deny a license, as well as the decision to sign concession contracts) should be kept to a minimum. A good licensing process will be one in which discretionary decision making is eliminated where it is not absolutely necessary, it is clearly limited where necessary, and the criteria and other factors on which discretionary decisions are made (technical and otherwise) are spelled out as clearly as possible.

In keeping with the general principles of regulatory effectiveness, integrity, transparency, and accountability as elaborated in UNCAC provisions as well as EITI requirements,<sup>5</sup> licensing decisions should be publicly accessible in a timely manner, including the laws and regulatory procedures on which the decisions are based and the justifications for policy determinations. Thus the results of all discretionary decisions in the licensing process should be publicly accessible shortly after they are made, together with a summary of the justification and findings that support each decision.

The limits of discretion should be clearly defined and subject to compliance oversight and review to protect against overly broad use of discretion or abuse. Effective oversight procedures should always include ensuring that at least one or more officials review critical decisions for compliance with the applicable laws and procedures and that all critical decisions or actions include a full and written justification documenting all factors on which the decision was made. All relevant factors surrounding the decision must be made public, maintained as official records, and appropriately archived. Oversight should not be the function or responsibility of any official who reports to the official responsible for the making the discretionary decision.

Such safeguard procedures are necessary not only to serve as checks and balances against both human error and the inappropriate application of discretion by any official, but also to demonstrate that the basis for decisions made adheres to laws, regulations, and procedures in the event of a legal challenge. Such procedures will go a long way toward bolstering the credibility and transparency of a licensing system and ensure against risks of misuse or abuse of discretion as well as human error.

Deviations, exemptions, or exception procedures should be allowed only when risks have been assessed to be low or subject to adequate mitigation procedures. Applicable laws should stipulate the basis on which any allowable deviations, exemptions, or exceptions to the general licensing procedures are permitted, as well as the factors on which these may be allowed. They should also specify who decides when such procedures can be followed.

## Balancing integrity and flexibility in regulatory procedures

The most important licensing obligations, safeguards, and procedures that are not likely to be frequently amended should be contained in enforceable laws to ensure transparency and accountability and to reduce the risk of noncompliance, while more detailed administrative arrangements are best stipulated in enforceable regulations that are easier to modify when needed. Enshrining important procedures and transparency safeguards in law (as opposed to regulations) can help mitigate the risk of circumventing procedures without detection and prevent elimination or weakening of safeguard procedures by a single agency or official unilaterally. Examples of such elements would include:

- Application processing and decision-making systems
- Functional responsibilities
- Integrity safeguard systems
- Definitions of the different types of licenses
- Mandatory criteria
- Any prohibitions or criteria for automatic exclusion of applicants.

This arrangement can help make the law and regulatory procedures more cohesive, effective, and sustainable. Table 6.1 provides some examples of common deficiencies in legal frameworks.

**TABLE 6.1** Effective versus ineffective legal frameworks for a licensing system

	EFFECTIVE SYSTEM	INEFFECTIVE SYSTEM
Legal framework (enforceable laws and regulations)	Laws and regulations governing the licensing system contain harmonized provisions to avoid legal conflicts and unnecessary ambiguities and are consistent with transparency and accountability to ensure effective implementation.	Laws and regulations governing the licensing system have not been harmonized and contain conflicting legal provisions, ambiguities, or gaps that undermine transparency and accountability and perpetuate inconsistent interpretation.
Review, approval, and final decision-making processes	<p>Descriptions of the review, approval, and final decision-making processes</p> <ul style="list-style-type: none"> <li>• Are clear and consistent with principles of integrity, transparency, and accountability</li> <li>• Eliminate gaps, duplicative roles, and vague provisions to reduce arbitrary and selective interpretation</li> <li>• Precisely specify each functional step or level of review and decision making</li> <li>• Are clear about functional responsibility for monitoring compliance with mandatory steps, criteria, and exceptions</li> <li>• Ensure that exception procedures are precisely defined, clearly limited, and stipulated in legal frameworks that articulate the circumstances in which they are permitted, taking into consideration that exceptions should be allowed only when (1) lower risks have been documented and (2) decisions to permit exceptions are subject to adequate oversight, including effective transparency and accountability safeguards.</li> </ul>	<p>Descriptions of the review and approval processes and the final decision-making process, including functional authority, are unclear, undermining transparency and accountability and making the system amenable to manipulation and corruption.</p>

*continued*



TABLE 6.1 *continued.*

	EFFECTIVE SYSTEM	INEFFECTIVE SYSTEM
Documentation requirements	There are enforceable provisions that <ul style="list-style-type: none"> <li>• Define the minimum documentation required to make an application</li> <li>• Obligate applicants to submit additional documentation or information required by an authority</li> <li>• State that incomplete documentation or information or refusal to provide information will result in license denial or revocation.</li> </ul>	Minimum application documentation and information requirements are not stipulated, increasing the risk of overly broad use of discretion.
Conflicts of interest	<ul style="list-style-type: none"> <li>• Prohibits employees of licensing or regulatory agencies from holding another government position</li> <li>• Prohibits government officials from applying for or being beneficial owner of a license holder</li> <li>• Contains sufficiently dissuasive sanctions for noncompliance, with clear responsibility and accountability for enforcement.</li> </ul>	Lacks prohibition and clear definition of serious conflicts of interest, which gives rise to corruption because of arbitrary and selective enforcement.
Politically exposed persons (PEPs)	States clear and objective definitions of foreign and domestic PEPs in an enforceable legal instrument, removing or significantly reducing discretionary interpretation.	Lacks objective and legally enforceable definitions of foreign and domestic PEPs, increasing the likelihood of arbitrary and selective applications and increasing the risk of corruption.
Publication requirements	Clearly sets out requirements on the information, documentation, and decisions that are to be made public, enhancing the transparency and accountability of the licensing system.	Lacks clear requirements on what documents, information, data, and decisions are to become public, reducing the transparency and credibility of the licensing system.
Interagency and international information sharing	Has a legal framework that authorizes the licensing agency to obtain and share information with other domestic and foreign officials or agencies. This framework enhances the effectiveness and efficiency of the licensing system by expanding the ability of officials to verify information beyond that which is publicly accessible.	Lacks provisions allowing information sharing, which severely limits access by licensing officials to information that would be useful in integrity checks.
Timing of checks	States when in the overall process integrity checks must take place.	Lacks provisions on when specific checks are to be conducted and is therefore likely to be inefficient.
Appeal procedures	Provides appeal procedures that can serve as an effective check against overly broad use of discretion, provide a cost-effective dispute resolution mechanism, and ensure fair and equitable decision making (can also provide guidance on interpretation of rules that improve predictability).	Lacks provision for expedited appeal procedures, reducing the ability of applicants to challenge decisions. Court litigation becomes the only option, and it is extremely expensive and time-consuming for both applicants and the licensing agency.

## INFORMATION SHARING, PUBLIC ACCESS, AND CONFIDENTIALITY

The law should clearly articulate what information and documentation should be publicly accessible, when in the process such disclosures should be made, and which officials are responsible for ensuring effective public access. Compliance with the new EITI beneficial ownership disclosure requirements (summarized in table 6.2) is indispensable for countries committed to reducing corruption in their extractive sectors. An effective licensing system should ensure that the requisite information, data, and documentation acquired for compliance with EITI Requirement 2 are publicly disclosed or otherwise made publicly accessible. This applies to all information and documentation obtained for



**TABLE 6.2 EITI Requirements 2, 3, and 4**

<b>EITI REQUIREMENT 2: LEGAL AND INSTITUTIONAL FRAMEWORK, INCLUDING ALLOCATION OF CONTRACTS AND LICENSES</b>		
<b>LICENSES</b>	<b>BENEFICIAL OWNERSHIP<sup>a</sup></b>	<b>STATE-OWNED ENTERPRISES (SOEs)<sup>b</sup></b>
<ul style="list-style-type: none"> <li>• Description of process for transferring or awarding license</li> <li>• Technical and financial criteria used</li> <li>• Information about license recipients, including consortium members where applicable</li> <li>• Nontrivial deviations from the applicable legal and regulatory framework governing license transfers and awards</li> <li>• List of all applicants for licenses awarded through a bidding process</li> <li>• Names of license holders</li> <li>• Coordinates of licenses (or description of license area where coordinates not available)</li> <li>• Date of license application, date of award, and duration of license</li> <li>• Commodity being produced for production licenses</li> <li>• Contracts and licenses that provide terms attached to the exploitation of oil, gas, and minerals</li> </ul>	<ul style="list-style-type: none"> <li>• Names of beneficial owners</li> <li>• Nationality</li> <li>• Country of residence</li> <li>• Identity of beneficial owners who are PEPs</li> <li>• National identity number</li> <li>• Date of birth</li> <li>• Residential or service address</li> <li>• Contact details</li> <li>• Legal and share ownership of companies</li> <li>• If publicly listed company or wholly owned subsidiary, name of the stock exchange on which it is listed</li> </ul>	<ul style="list-style-type: none"> <li>• Rules and practices regarding financial relationships between government and SOEs</li> <li>• Rules and practices governing transfers of funds between SOEs and the state, including retained earnings, reinvestment, and third-party financing</li> <li>• Level of government and SOE ownership in mining, oil, and gas companies operating in the country, including those held by SOE subsidiaries and joint ventures</li> <li>• Any changes in level of ownership</li> <li>• Details on terms attached to equity stake, including level of responsibility for expenses at various phases of project cycle (for example, full-paid equity, free equity, carried interest)</li> <li>• Terms of the transactions and details of valuation and revenues in cases of change in government or SOE ownership</li> <li>• Details on loans or loan guarantees if provided by government or SOE</li> </ul>
<b>EITI REQUIREMENT 3: EXPLORATION AND PRODUCTION</b>		<b>EITI REQUIREMENT 4: REVENUE COLLECTION</b>
<ul style="list-style-type: none"> <li>• Overview of extractive industries, including significant exploration activities</li> <li>• Production <ul style="list-style-type: none"> <li>– Total production volumes</li> <li>– Value of production by commodity</li> <li>– Commodity values by state or region (where relevant)</li> </ul> </li> <li>• Exports <ul style="list-style-type: none"> <li>– Total export volumes</li> <li>– Value by commodity</li> <li>– Exports by state or region (where relevant)</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>• License fees</li> <li>• Rental fees</li> <li>• Entry fees</li> <li>• Other consideration for licenses or concessions</li> </ul>

Source: EITI 2016.

a. EITI defines *beneficial owner* as a natural person who directly or indirectly ultimately owns or controls a corporate entity or joint venture.

b. Defined by EITI as a wholly or majority government-owned company engaged in extractive activities on behalf of a government.

licenses and the licensing process, beneficial ownership identification, and state-owned enterprises.

EITI Requirements 3 and 4 mandate the public disclosure of data and information related to exploration and production. Thus, the legal framework should clearly delegate the responsibility for systematically collecting the information and documentation that must be made publicly available, identify the accountable agency or official, and specify the deadline by which such documents and decisions should be made public to avoid undue delays. The law should prohibit granting or renewing any license when the identity of the beneficial owners is insufficiently documented, when the necessary documents cannot be obtained, or when there has not been full and effective compliance with procedures in the integrity-checking process.

Systems that enable licensees or applicants to submit beneficial ownership identity or data on politically exposed person (PEP) status directly to a public website or register may be useful. The law should also be clear on which agency

or official is accountable and ultimately responsible for verifying the accuracy and credibility of information submitted by applicants because beneficial owners and PEPs aiming to conceal their status and identity are unlikely to submit full or accurate information.

For registries on public websites, it is important to build in sufficient security systems against hacking, as well as, design, and operationalize a backup system should the public website falter. In this regard, the law should contain clear provisions that allow, as a temporary measure, a designated agency to make documents publicly accessible on request, in a timely manner, and free of excessive bureaucratic barriers and excessive access costs, as well as ensure that the information is systematically updated and reliably accurate.

In addition, the law should specify the types of data and information that should remain confidential because of legally mandated privacy protections or commercial secrecy. Although practices may differ among sectors, decisions on what information would be subject to public disclosure (or not) should take into consideration the EITI (and other applicable) disclosure requirements and weigh confidentiality issues and any possible risks against the overall benefits, including integrity gains. Enforceable legal provisions should clearly state what information must always be disclosed, identifying the agency responsible for timely disclosure of the information and specifying how it is to be made accessible.

The legal framework also should authorize the licensing agency to obtain additional information (including confidential information) relevant to assessing and verifying the integrity, reputation, technical qualifications, and compliance with other mandatory criteria of applicants. Any confidential, including proprietary, information obtained for such purposes and protected by privacy laws should not be shared further except in accordance with privacy laws or with the express written consent of the holder or owner of the information. The basic rules and mechanisms by which such information can be shared should be specified in law to ensure that confidential information is not inappropriately disclosed. Finally, the law should stipulate sanctions for the unauthorized disclosure of protected information, authorize the licensing agency to request relevant information from foreign counterpart agencies when needed, and authorize the sharing of such information with foreign counterparts, subject to confidentiality protections.

## POLITICALLY EXPOSED PERSONS

International standards—both those of the Financial Action Task Force (FATF) and EITI<sup>6</sup>—broadly define *politically exposed persons* as those who occupy positions in which the corruption risks are likely to be higher and who therefore merit closer monitoring. The PEP concept in the international standards is a guideline that countries must harmonize domestically by adopting laws that set forth criteria for what constitutes a PEP in the country context.

The FATF standards<sup>7</sup> recognize three categories of PEPs:

- *Domestic PEPs.* Individuals who are or have been entrusted domestically with prominent public functions, such as heads of state or of government; senior politicians; senior government, judicial, or military officials; senior executives of state-owned corporations and important political party officials.

- *Foreign PEPs*. Individuals who are or have been entrusted with prominent public functions by a foreign country, such as heads of state or of government; senior politicians; senior government, judicial, or military officials; senior executives of state-owned corporations and important political party officials.
- *International organization PEPs*. Persons who are or have been entrusted with a prominent function by an international organization, such as members of senior management or individuals who have been entrusted with equivalent functions (directors, deputy directors, and members of the board or equivalent functions).

The FATF also provides guidance on individuals related to PEPs and close associates:

- *Family members of PEPs*. Individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.
- *Close associates of PEPs*. Individuals who are closely connected to a PEP, either socially or professionally.

Each country's own legal definition of *domestic PEPs* should, to the greatest extent possible, reference objective criteria in defining the PEP threshold relating to criteria such as category of class of employment, grade level, or job title, as well as cover all necessary and various branches of government defining a PEP threshold using objective criteria such as category or class of employment, grade level, or job title. In this way, all officials will then know whether they are a PEP, and officials who must identify PEPs can do so according to a fair and uniform standard. Eliminating the need for discretionary interpretation will reduce the opportunities for arbitrary and selective application and enforcement, as well as avoid unnecessary bureaucratic delays in a licensing process.

The international obligation to identify international organization PEPs applies to individuals at the higher levels of the organizations, including employees at the deputy director level and above as well as all board members (FATF 2013, 5). An objective definition of a *foreign PEP* is more difficult because countries and international institutions use a wide array of job titles and employment classes with little commonality. Thus a certain degree of discretion will be required to determine whether a foreigner or international organization official qualifies as a PEP. Guidance might include considering whether the position held by a foreign official would be considered a PEP under the law of the licensing country, as well as whether the official's position is classified as a PEP under that country's law.

## **AUTHORIZATION, CERTIFICATION, AND NOTIFICATION OF ASSESSMENTS**

The legal framework should be clear and precise on the minimum standards for application intake, document collection, analysis and research, production of initial findings on integrity issues in the licensing process, as well as the required decisions and actions for all steps in the process.

The legal framework should also require a written summary of integrity and background check assessments that documents the research, resulting findings, recommendations and justifications on which they are based, identification of the significant risks, and any additional information that should be considered in the final licensing decisions. The law should require officials to fully document and certify compliance with the basic requirements and other mandatory, objective, or discretionary criteria and verify the absence of information related to automatic disqualification factors (or prohibitions) or document any such evidence identified. Officials with any significant role in the steps and processes should be required to certify by date and signature that all information has been provided and that all criteria and requirements needed to move to the next stage of the decision-making process have been met.

## ADMINISTRATIVE APPEAL PROCEDURES

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### Key Concept:

Article 9(1)(d) of the UN Convention against Corruption recognizes the use of appeal procedures as a safeguard against corruption by encouraging an “effective system of domestic review including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established . . . are not followed.”

Administrative appeals procedures are widely recognized as effective safeguards against corruption in instances when one official has the power to make decisions granting or denying certain benefits, contracts, or licenses and when systematic oversight or supervision of the decision-making process is limited. Such appeals enable an aggrieved party to obtain an expedited and cost-effective review (by an administrative law judge) of a regulatory official's decision or action if that party believes the decision or action was not consistent with applicable law or regulations. To be effective safeguards, such appeals must be reviewed by administrative law judges who are sufficiently independent from the control and influence of the head of the regulatory agency and are knowledgeable about the applicable laws, regulations, and related regulatory processes. Decisions by an administrative law judge can still be appealed through the regular courts.

Where the application of discretion is unavoidable, administrative appeal procedures, together with publication of decisions, can enhance the result in credible, equitable, consistent, and predictable decisions by officials for two reasons. First, officials vested with discretionary decision-making authority know that if their decisions do not adhere to the applicable laws, regulations, and processes fairly, those decisions may be subject to official review. Second, decisions resulting from an administrative appeal procedure can be useful to regulatory officials to ensure that future actions and decisions are predictable, reliably consistent, and fair.

Where hearings of the appeal process are open to the public and the resulting decisions made are publicly accessible, advantages accrue to both applicants and officials alike because precedential decisions and actions can serve as a valuable secondary source of guidance to the interpretation of laws and regulations. The process is valuable to ensuring that decisions are based on principles of fundamental fairness, are grounded in valid justification, and adhere to all applicable laws or regulations. In this way, it is more likely that all decisions by officials will not exceed the limits of discretionary authority, and it minimizes the risk of inconsistent, arbitrary, or capricious decision making, as well as corruption and even human error.

## TIMING OF CHECKS

Finally, the legal framework should specify the time period within which integrity checks should be completed. For example, if the licensing process includes a bidding or short-listing process, regulations might provide for limited integrity checks to occur before that process begins. The applicable laws should specify the overall process while granting authority to the responsible agency to set forth more detailed procedures and steps in the form of enforceable regulations. When such procedures are not set forth in a way that makes it clear they are mandatory and legally enforceable, the result may be a high risk of corruption, abuse, or manipulation of the process.

## NOTES

1. UN Convention against Corruption (UNCAC) Article 5(1) contains requirements for corruption prevention measures aimed at promoting the rule of law, proper management of public affairs and public property, integrity, and transparency.
2. UNCAC Article 9(2).
3. Pursuant to UNCAC Article 8(2).
4. UNCAC Article 10(a) requires states to adopt “procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration.”
5. UNCAC Article 13(d) requires states to ensure that the public has effective access to information.
6. See boxes I.2 and I.3 in the introduction for descriptions of EITI and FATF, respectively.
7. The FATF defines *politically exposed persons* in the glossary of its *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF 2018).

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## Implementing the Regulatory Process

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At the foundation of our civil liberty lies the principle which denies to government officials an exceptional position before the law and which subjects them to the same rules of conduct that are commands to the citizen.

— Justice Louis Brandeis, dissenting opinion,  
*Burdeau v. McDowell*, 256 U.S. 465, 477 (1921)

Anyone designing or improving a licensing regulatory process may find it worthwhile to map the proposed steps in a flow chart. Integrity checks are part of a larger licensing process, which includes technical and financial background checks and other administrative processes and also may include competitive bidding or short listing. Therefore, the timing of the integrity check must be logically integrated and sequenced among the other necessary processes.

In sectors in which exploration or extraction licenses involve bidding or short listing, a two-step integrity check could be used: an initial minimum integrity check in the early stages, followed by a set of more extensive checks at later phases or only for short-listed candidates. Avoiding more extensive and more expensive integrity checks on those not short listed is an effective cost savings strategy.

Once the design is determined, it is necessary to adopt written operating guidelines detailing the procedures required for all internal processes. Although these guidelines need not be made public, they should be consistent with all provisions in the legal/regulatory framework. They should set forth all the mandatory internal steps, procedures, and protocols and include guidance and recommended factors for consideration when discretionary decisions are necessary. They also should spell out more detailed administrative procedures that may not be specified in the law or enforceable regulations, and they should be reviewed and approved by the head of the agency, including the internal integrity unit (such as the ethics office, internal audit unit, or inspector general), prior to adoption.

Both the implementing regulations and the internal procedures should indicate the time expected to undertake the various steps in order to obligate officials to act on applications with reasonable efficiency. Provisions should ensure that all applicants are officially informed about the status of

**TABLE 7.1 Sequencing steps in integrity checks**

STEP	ACTIVITIES AND GOALS
1	Intake and previous applications <ul style="list-style-type: none"> <li>• Assign intake number.</li> <li>• Make initial classifications (types of license, risk category, etc.).</li> <li>• Determine whether applicant has applied previously for a license (and analyze any results).</li> </ul>
2	Initial risk assessment and basic due diligence <ul style="list-style-type: none"> <li>• Determine the extent of further due diligence likely needed to know whether the integrity risk is acceptable by verifying the identity of the applicant (first degree of applicant ownership and background checking) to uncover any red flag indicating negative information.</li> <li>• If negative information is minimal or absent, no further due diligence may be required, and one could skip to step 4.</li> </ul>
3	In-depth background checks and further due diligence <p><i>This step is necessary only if significant information surfaced in step 2 and the agency has determined that this license is in a category that merits more thorough checks.</i></p> <ul style="list-style-type: none"> <li>• Compile a more detailed file on the applicant, broadening the pool of information in order to make a better-informed decision on whether the integrity risk is acceptable.</li> </ul>
4	Final risk assessment <ul style="list-style-type: none"> <li>• Taking into account the results so far, weigh all the information and determine whether the integrity risks are acceptable or the applicant should be excluded from consideration.</li> <li>• Summarize the known information on a findings-and-recommendations form.</li> </ul>
5	Conclusion and notification <ul style="list-style-type: none"> <li>• Officially note the conclusion and, if necessary, notify the applicant.</li> </ul>

applications in a timely manner. Exception procedures should be available to accommodate circumstances in which additional time is needed for deeper integrity checks when certain red flags or risks appear. However, time limits should also be mandatorily applicable to the exception procedures to avoid allegations of unequal treatment of applicants. Table 7.1 offers a possible template for an integrity check.

### STEP 1: INTAKE AND REVIEW OF PREVIOUS APPLICATIONS

#### Key Concept:

Finding that a prior entry or files lacked negative information should not be viewed as a reason to do no further checking. Companies and their management can change rapidly over time.

The first step upon receipt of an application is to assign it a unique identification number and record the date and time it was received. The application form itself should require applicants to submit sufficient information and data for the agency to initiate the background check. Forms should contain a standard sworn statement that requires applicants to certify, by signature and date, the truthfulness, accuracy, and completeness of the information. This statement should appear at the start or end of the main application form and should contain the warning that providing false, inaccurate, or incomplete information could result in automatic rejection, immediate cancellation of a license, or civil or criminal penalties.

After confirming that the client has completed the application and sufficiently verifying the identity of applicant, it is important to check through existing agency files to determine whether the applicant has previously submitted applications and review any records on past performance or previous applications. If there was a history, was past performance satisfactory? The absence of negative information should be noted, as should any negative information for follow-up.

Finding that a prior entry or files lacked negative information should not be viewed as a reason to do no further checking. Companies and their management can change rapidly over time, so fresh information is important. Similarly, a blemished entry, such as a prior notation that an applicant was disqualified, should not automatically deter consideration of future applications. In both cases, applicants should be considered objectively on a case-by-case basis.



For example, a small firm whose application for a large concession was rejected because of certain risks associated with larger, more important concessions might be suitable for a smaller license that presents fewer risks. Throughout the process of planning an integrity check system, promoting efficient and useful economic development must remain at the forefront.

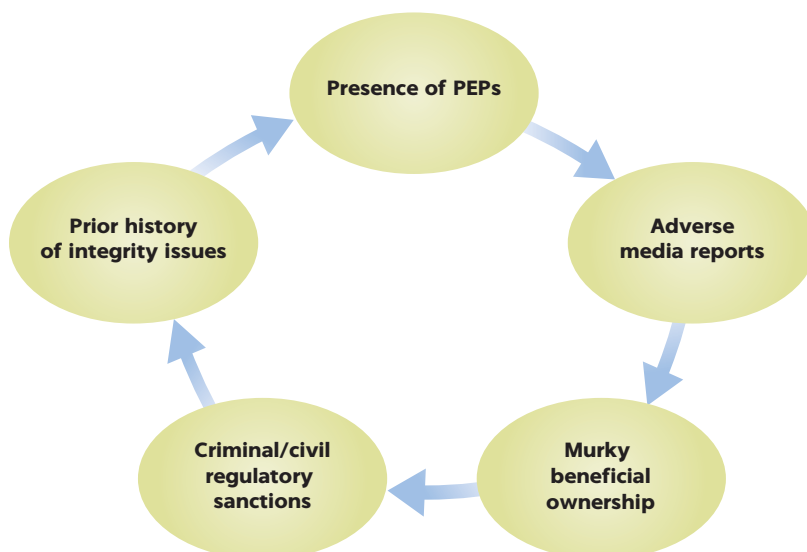
## STEP 2: INITIAL RISK ASSESSMENT AND BASIC DUE DILIGENCE

Step 2 should include a determination as to whether an application requires further scrutiny that is, whether an in-depth due diligence review should be applied, or whether the application can move directly to step 4, the final risk assessment. Step 2 would include both a first review of the application for accuracy and completeness of the information and documents submitted and an initial risk assessment or classification. It should be an abbreviated process and not consume too much time.

This step, which likely will include some initial checks based on open media and Internet sources, may produce some initial findings or recommendations for areas of deeper checking, research, or verification. These should be noted on the findings report form. Figure 7.1 illustrates some of the more common red flags that should signal caution.

If no adverse information or red flags emerge, the integrity screening may end here for applicants seeking lower-value licenses of lesser importance. If material negative information is revealed, efforts should be made to verify the accuracy of that information. For example, if the Internet site of another public agency states that the applicant firm has been debarred or excluded there, the verifying agency should then contact the agency posting the data and, in addition, consult the applicant.

**FIGURE 7.1**  
Common red flags for during integrity checks



Note: PEPs = politically exposed persons.

In each case, an assessment should be made as to whether any adverse information is serious enough to warrant immediate disqualification or whether there is room for corrective action by the applicant in order to justify further scrutiny of the application.

Corrective action may be an option, depending on the seriousness of the issue. For example, a recent failure to pay taxes or a recent lapse in a license to do business could be remedied in short order. If a defect is more serious, such as a criminal conviction of a principal in the firm, the verifying agency may need to undertake additional review and do a risk analysis. Some applicants may withdraw when confronted with derogatory information about their integrity.

Once the first-line agency official has undertaken an initial risk assessment and made his or her recommendation, an additional person or a supervisor within the agency should check the resulting file. Review by a second person minimizes the chances of error or malfeasance in the conclusion.

### **STEP 3: IN-DEPTH BACKGROUND CHECKS AND FURTHER DUE DILIGENCE**

Internal procedures should set forth the basic protocols for this phase. Any red flags identified previously should be further investigated, and selected information, based on careful research to weigh its value and importance, should be verified. These processes are detailed in chapter 3 on beneficial ownership, chapter 4 on criminal and legal backgrounds, and chapter 5 on conflicts of interest.

It is necessary to apply professional judgment based on both pure common sense and specialized knowledge of the sector. The aim is to uncover any factors that could separately or collectively give rise to potential risks that would be difficult to mitigate or would damage the sector. In many cases, there will be no obvious factors that warrant automatic disqualification, so the positive factors and the negative factors will have to be weighed alongside one another.

### **STEP 4: FINAL RISK ASSESSMENT**

This step summarizes the known information and explains the findings and conclusions. For certain applicants, the background check will uncover information that indicates serious risks if a license were granted or renewed. There must be a predefined system of guidelines for internal decision making related to the kinds of red flags that are sufficiently serious to result in disqualification. This could include a list of automatic or objective factors that would always warrant disqualification. These factors should be listed in law or regulation, putting the public on notice that those who present such factors need not apply. If such a list does not exist, it should be compiled by officials as they acquire experience with assessing license applications. Meanwhile, some kind of risk rating system should be designed by which specific risks can be weighted and rated for each application.

It is important to ensure that the most relevant information from the integrity-checking process is noted in the findings report and documents the conclusions and justifications that serve as the basis for the recommended subsequent steps. The aim is to determine whether the integrity risks found are

acceptable or should result in exclusion, or whether acceptable risks can effectively be mitigated. Even adverse information that does not justify disqualification on its own may be important for assessing the totality of the risks and relevant circumstances or for use in the future if new risks arise.

## STEP 5: CONCLUSION AND NOTIFICATION

This step consists of making an official decision and notifying the applicant of the result of the final risk assessment. The agency should maintain clear and organized records of the checks and all supporting documentation (including any irregularities), identify sources of information by name and contact, and be prepared to have its work checked by an independent person.

The agency responsible for these functions should expect occasional challenges to decisions and even to the decision-making process and procedures. The higher the value of a license, the more likely it is that challenges will occur. Thus it is essential to maintain a clear paper trail of all the processes, procedures, and steps applied in the decision-making process so that the responsible agency can defend and justify all actions and decisions as well as the integrity of the integrity-checking system itself.

It is worth considering the extent to which and under what circumstances applicants should be called for additional discussions or meetings to verify information prior to any formal decisions. Notifying applicants of decisions in a timely manner can reduce the likelihood of legal challenges and help ensure equitable treatment of applicants. These procedures should be conducted within publicly specified reasonable time frames to lend credibility and transparency to the processes.

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### Key Concept:

It is essential to maintain a clear paper trail of the decision-making process so that the responsible agency can defend its decisions and preserve the reputation of the integrity-checking system itself.

## SEQUENCING OF INTEGRITY CHECKS

Cost and benefits should be considered when determining what steps of the integrity-checking process are conducted at each point in the licensing process. The integrity check is a small part of the larger process of technical, financial, and administrative checks. To reduce the costs of integrity checks, attention should be given to exactly when in the licensing process the integrity checks are conducted. The timing of integrity checks may vary, depending on the method of allocating licenses or on the specific type of license. In a first-come, first-served system, the integrity checks need to be conducted in a time-efficient manner. In a system that includes short-listing and bidding processes, some screening must be done at the outset to ensure that the short list or those entitled to submit formal bids includes only those meeting high integrity standards.

In certain extractive sectors in which an exploration license is required prior to an extraction or exploitation license, a more extensive integrity-checking process at the exploration stage may be justified, particularly for larger-scale mining in which a high front-end investment is required to commence exploration. Under this approach, when a request to convert an exploration license to an extraction license is received, the integrity background check information need only be updated.

In smaller-scale mining sectors, where less investment is necessary for the exploration phase and fewer exploration licenses are expected to result

in extraction licenses, the timing and extent of integrity checks should always be based on the actual risks of the mining activity as well as the country-specific risks.

### **Advantages of early and initial integrity checks**

If an agency waits until after a company is notified of a decision to grant a license or concession before recommending integrity checks, there is always a chance that a serious risk or automatic disqualification may be uncovered at a late stage in the process. On the other hand, conducting thorough checks on all applicants in the earliest stages may be costly and time-consuming.

Thus, in licensing procedures in which it is not possible to conduct extensive integrity checks on all applicants at the earliest stages, an abbreviated checking process may be more effective, with the more thorough checks undertaken later, perhaps following a short-listing process but before decisions are communicated to applicants. In the scheme set out in table 7.1, that may mean completing steps 1 and 2 (through the initial risk assessment). If significant information of concern emerges in step 2 and the applicant is made aware of it and acknowledges that the firm may pose serious integrity risks, the applicant may decide to withdraw from the process. This would save time and resources in the long run.

In summary, an agency should regularly monitor the licensing process as it evolves to identify the most effective and efficient way to integrate or improve the timing or sequencing of integrity-checking components (see chapter 8 on documenting and monitoring effectiveness).

## **ANALYSIS OF NEGATIVE INFORMATION**

Because many kinds and degrees of negative information about an applicant or its beneficial owners surface during steps 1 and 2 of an integrity due diligence check, standards should be incorporated that will ensure respect for due process to ensure that all applicants are treated equally. Maintaining records and statistical data on the various types of negative information encountered in the course of many applications will produce an important resource that could be used to improve the quality and objectivity of the risk analyses that feed into the findings, recommendations, and ultimate decisions.

The types of negative information most commonly encountered will likely correspond to the specific sector or subsector. Tracking the kinds of negative information or risks that may have surfaced in cases in which licenses were granted or renewed and correlating this with the licensee's performance—such as on an annual basis—would be valuable information for those conducting the technical background checks. Such information could greatly help officials understand more objectively (based on statistical data) what types of risks tend to result in the higher or lower performance of the licensee. In particular, such analyses would help identify the kinds of risks faced at each end of the spectrum—that is, those risks that, when identified, should always (or almost always) result in denial of the license and those risks that might be considered of lesser concern. For example, a recent conviction in a neighboring jurisdiction of the chief executive officer of the applicant firm for paying bribes to obtain licenses and laundering the proceeds might be an

automatic disqualifier, whereas the firm's failure to pay a small amount of taxes may not.

Although professional experience and common sense are important, a statistical, risk-based analysis can ensure that a certain degree of objectivity and rational analysis are incorporated into decisions so they are not entirely based on personal discretion. This is perhaps most important in decisions in which the risks fall into the medium range on the risk spectrum. In addition, some risk factors may initially be considered rather serious, but certain other factors may arise that mitigate the seriousness. What follows are some examples that may be useful in assessing the impact of some common types of negative information and risks.

### **Consequences of possible criminal conduct**

If screening reveals that an applicant (or one of the applicant's key beneficial owners) has been recently convicted, charged with, or investigated for criminal offenses, a range of responses are possible—from no action at all to automatic disqualification. Disqualification might apply in cases of recent convictions for financial fraud, money laundering, or corruption. However, if the incident occurred long ago, even a conviction like one of those may be treated as merely one of many circumstances to be weighed. Factors that might be considered in determining how to weigh the information could include:

- The exact nature of the offense or allegation
- How recent is the offense (how much time has passed since the incident)
- The seriousness of the offense (such as the difference between a \$100 fraud and a \$100,000 fraud)
- Other circumstances surrounding the offense
- The outcome of the investigation (especially dismissal versus conviction)
- Any sanctions applied and the status of satisfaction or discharge (such as penalties completely paid, prison term served and completed, and any other temporary or permanent penalties such as debarments or injunctions)
- Explanations or extenuating circumstances provided by the applicant
- Relevance of the offense to the proposed position of the individual
- Any efforts at rehabilitation or remediation.

Decisions about the licensing consequences of alleged criminal incidents require judgment and prudence. The nature, recentness, and certainty of the offense are often most decisive. Certainty in this context refers to what degree of suspicion or confirmation was found. This may range from merely an unconfirmed report all the way to a criminal conviction. Obviously, a conviction and prison sentence would deserve considerable weight, whereas an allegation leading to the opening of an investigation that was later closed may be accorded less weight.

The specific nature of the alleged offense will be highly relevant as well. Which offenses will matter for the integrity of potential licensees? How will the agency decide to designate that category? Will it be a rigid or flexible approach response? Looking for guidance from the "fit and proper" tests used for financial

sector licenses, some countries list in their laws specific offenses considered more serious. Various approaches are explored in more detail later in this chapter.

Even if an offense is listed as relevant, discretionary judgment will have to be exercised when factors indicate that a criminal investigation was begun but did not result in a conviction. For example, if there is an allegation that an applicant murdered his wife, but research reveals that the prosecutor later dismissed that charge and charged another suspect who was convicted, the allegation may have little relevance to the integrity of the applicant.

By contrast, allegations of theft or fraud (particularly financial fraud), even where an acquittal resulted, may carry sufficient weight to cause concern in most sectors. Because criminal convictions require proof by a very high standard (such as “beyond a reasonable doubt” or by “intimate conviction”), failure of the prosecution to achieve a conviction may not always mean that further scrutiny is not warranted. Perhaps there was substantial evidence of wrongdoing anyhow, and, if so, that should figure into whether an applicant has sufficient integrity to hold an important license.

### **Consequences of financial conduct and responsibility**

This factor revolves around whether a person or entity conducts his or her financial affairs in a responsible way. Much of this checking may already have been done during the financial review of whether the applicant has the financial wherewithal to hold the license productively. However, even if financial responsibility was reviewed during the financial check, it overlaps with integrity and may warrant attention in the integrity context, especially for significant beneficial owners.

A person’s conduct in terms of financial responsibility indicates whether that person will be able to conduct financial affairs related to the license in a prudent manner, and this could be relevant to all sectors. Financial history and credit-worthiness are standard components of similar background checks in procurement processes and in “fit and proper” tests for financial licenses. This check should apply to key persons in a legal entity as well as to the legal entity itself, and all information should be evaluated carefully in the context of the particular license. Useful factors may include whether the person

- Pays debts as they fall due
- Has ever declared bankruptcy
- Is subject to unpaid legal money judgments
- Has good credit references or formal credit ratings (in countries with credit rating agencies).

### **Consequences of possible civil misconduct**

Adverse actions or settlements in civil proceedings can be relevant to a person’s personal or professional ethical standards and general character. Because there are so many types of civil proceedings and actions, there are many variations and possible outcomes. Generalizations are not easy, and so a case-by-case examination and analysis are warranted. Some of the same factors examined for criminal conduct may be applied, such as how recent the

incident or conduct was and whether it was a serious matter. Sound judgment and analysis should be applied to make reasoned decisions about potential risks in the sector.

### **Adding to the balance: Degree of responsibility and pertinence**

It is crucial to incorporate effective safeguards and clear standards in the licensing process to ensure that similarly situated persons are treated the same way. This is particularly important when several officials will be interpreting laws and regulations, and making decisions on whether license applicants meet specific criteria. These standards will reduce the risks of corruption and ensure the credibility of the licensing system.

It is also important to recognize that not all persons in a company are equally important in assessing the overall integrity and corporate governance of an applicant company. Those with more responsibility and decision making authority will tend to have a greater impact. Thus integrity criteria may be applied in differing degrees, depending on the importance of the role and function of a person within a company. For example, one would not disqualify an applicant company solely because within the last year a junior employee was fired by the company after he was convicted of hiring someone to murder his wife. However, in a different example for the same company: if the chief executive officer was charged with money laundering in connection with hiding the proceeds of an organized crime ring engaged in homicide, this may indeed be a reason to cease considering that firm.

Guidance from the financial sector's Basel Core Principle standard of "fit and proper" is useful. Fitness and propriety can be a somewhat elastic standard, depending on the level of professional responsibility or function (bank clerk compared with board member compared with chief financial officer, et al.). A person whose background contains some derogatory information may be satisfactory for a low-level position but would not be fit for a top-level job.

Some examples of circumstances that may support disqualification or license denial if uncovered might include whether a person has done the following (OICU-IOSCO 2009):

- Demonstrated a lack of willingness to comply with legal obligations, regulatory requirements, or professional standards, or has been obstructive, misleading, or untruthful in dealing with regulatory bodies or a court
- Breached fiduciary obligations<sup>1</sup>
- Perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices
- Been reprimanded, disqualified, or removed by a professional or regulatory body in matters related to the person's honesty, integrity, or business conduct
- Been involved in a serious or persistent failure to manage personal debts or financial affairs satisfactorily in circumstances in which such a failure caused loss to others
- Had substantial involvement or a role in the management of a business or company that has failed, where that failure was occasioned in part by deficiencies in management
- Had a poor reputation in any business or financial community or any market

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#### **Key Concept:**

Integrity criteria may be applied in differing degrees, depending on the importance of the role and function of a person within a company.



- Been the subject of civil or criminal proceedings or enforcement actions in relation to the management of an entity or to commercial or professional activities that caused harm or reflected negatively on the person’s competence, diligence, judgment, honesty, or integrity.

This list for the financial sector may be more stringent than what would be required for licensing decisions in some other sectors. Nonetheless, it provides clear examples of factors and circumstances that must be considered in making risk-based decisions on integrity standards. Licensing agencies could consider these criteria and calibrate them appropriately, depending on the risk environment.

## EFFECTIVE IMPLEMENTATION OF THE INTEGRITY SCREENING SYSTEM

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### Key Concept:

Countries must demonstrate that the chosen regulatory licensing process effectively meets international requirements.

Once the standards for assessing the integrity of applicants have been adopted, they should be implemented in a manner consistent with principles of due process, transparency, and accountability to reduce opportunities for undue influence, manipulation, and corruption. Such a system is key to improving the quality of governance and productivity in the sector. A significant benefit is that the country will likely attract the higher-quality investors often deterred from investing in sectors where perceptions of corruption are high.

### Meeting international standards

Looking at the big picture, the adoption of international standards and monitoring systems that result in publicly accessible reports on compliance effectiveness is a response to growing international concern about illicit financial flows (IFFs) and corruption. As a result, pressure to improve the integrity, transparency, and regulatory governance of critical sectors is likely to continue. Countries should strive to credibly demonstrate that their decision-making process for licensing is fair and transparent based on the legal and regulatory frameworks and operational implementation. This means that

- All applicants are being assessed and treated in a fair and equitable manner
- Risks of corruption are being effectively mitigated
- The resulting decisions are being made in the interests of the country rather than to serve the private interests of corrupt officials.

The concept of integrity due diligence assessment began in the financial sector with the fitness and propriety principle (pursuant to the Basel Core Principles for Banking Supervision),<sup>2</sup> but the concept has proven quite important in other sectors as well. International standards in the area of anti-money laundering and countering the financing of terrorism (AML/CFT) have incorporated and built on the Basel “fit and proper” requirement for licensing, and the new beneficial ownership disclosure requirements of the Extractive Industries Transparency Initiative (EITI) also build on and tailor these principles for application to extractive sectors. None of the existing international standards mandates a specific model or specific legal framework, but countries must show that whatever process for regulatory licensing they choose, it must effectively meet the international requirements.



## Objective criteria for automatic exclusion

To ensure fitness and propriety, many countries include in the relevant law the objective criteria by which applicants for a license can be automatically excluded. For example, some countries specify that a person convicted of money laundering, negligent homicide, and certain other serious offenses is not eligible to serve as a member of the management board of a licensed bank or other financial institution (Stroligo 2007, 5). Another approach might automatically exclude those convicted of a “serious crime,” which is a term often defined in national legislation, such as in the predicate offenses for the crime of money laundering. A third approach might be the automatic exclusion of applicants convicted of any crime carrying a sentence of more than a certain number of months or years in prison, which is in effect a different way of defining which crimes are “serious.”<sup>3</sup>

Criteria for automatic exclusion may be tiered so that higher standards are applied to those with more senior positions, roles, or functions. Such decisions should be made on the basis of the risks of the specific sector. For example, in some systems managers must not have certain criminal records; but for shareholders who want to acquire or increase their ownership share or control of an entity (where prior regulatory approval is required), such applicants need only meet the more general standard of “no known facts” that raise doubts about their personal reliability (Stroligo 2007).

The advantage of laws and regulations that define certain circumstances, crimes, and conditions that would result in mandatory exclusion is that the regulator is less likely to be accused of unfair treatment or engaging in favoritism. The drawback of such specific regulations is that it may be difficult to foresee all situations and circumstances. Some would argue that better outcomes are achieved through more flexibility on the part of the regulator. If flexibility is combined with transparency and a well-defined process, the overall system is likely to be perceived by the public, and particularly potential investors, as credible, fair, and equitable. Such systems are more likely to attract investors that operate on the basis of higher integrity standards.

Some countries choose to provide regulators with guidelines on the use of discretion to evaluate candidates on a case-by-case basis. This guided discretion approach is followed by the Financial Conduct Authority (FCA), the financial services regulatory agency of the United Kingdom (FCA 2916). The FCA, in conjunction with the Prudential Regulatory Authority, is responsible for checking fitness and propriety.<sup>4</sup> In such a system, however, checks-and-balances safeguards must be applied to officials empowered to make discretionary decisions to effectively monitor for, prevent, and promptly remedy abuses of discretion. Pursuant to the UK system, persons who occupy certain positions or perform a “controlled function” must meet higher integrity standards than those applicable to others. The term “*controlled functions*” generally refers to what others call “significant influence functions,” meaning the functions exercised by those empowered to make business decisions that would have a critical impact on a company. These persons would include directors, significant managers, and a limited number of customer-dealing functions.

The risk-based approach of UK regulators results in background checks that direct more resources toward assessing those in more senior roles or roles that present greater risk (FCA 2015). The regulator should take into account all relevant matters but “consider the circumstances only where relevant to the

requirements and standards of the regulatory system,” leaving the regulator free to examine the whole situation and the proposed function of the person (FCA 2016). The regulator should demand broad and candid disclosure from applicants (FCA 2015). For example, regulatory references, qualification certificates, credit checks, criminal record checks, and directorship checks would be a standard basis on which to begin the check (FCA 2015). Although these checks may appear to set a high bar, reports indicate that only about 3 percent of applicants fail to meet the test, meaning that 97 percent pass it (Noonan and Cruise 2013).<sup>5</sup> That percentage may not reflect the additional percentage of applicants with integrity issues who removed themselves from the process. However, each agency must determine the appropriate balance between the level of scrutiny of integrity standards, the need to license market participants, and the potential costs to the country of enabling those with lower integrity standards to operate in critical markets.

## NOTES

1. A fiduciary duty is a duty to act in the best interest of another party. For example, a board member of a corporation has a fiduciary duty to the shareholders; a trustee has a fiduciary duty to the trust’s beneficiaries; and an attorney has a fiduciary duty to the client.
2. See Bank for International Settlements ([http://www.bis.org/list/bcbs/tid\\_25/index.htm](http://www.bis.org/list/bcbs/tid_25/index.htm)) to access the Basel Core Principles guidelines.
3. For example, Austrian law specifies that a new credit institution license shall not be granted if a proposed manager of the institution has been charged with committing an intentional act punishable by a prison term exceeding one year (see Stroligo 2007, 9).
4. The Prudential Regulation Authority (PRA) is a subsidiary of the Bank of England and is responsible for the regulation and supervision of banks, building societies, credit unions, insurers, and major investment firms. The FCA is responsible for firms not regulated by the PRA, such as financial advisers, insurance brokers, and most asset managers.
5. Reportedly, the data were confirmed by the FCA, and 7,000 applications were withdrawn by employers; see Brinded (2014).

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## Documenting and Monitoring Effectiveness

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One of the great mistakes is to judge policies and programs by their intentions rather than their results.

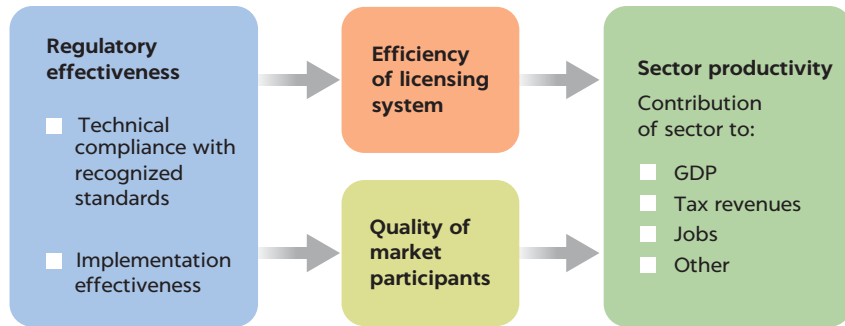
— Milton Friedman

Efforts to improve licensing systems should be ongoing and systematic to achieve conformity with preventive measures contained in the United Nations Convention against Corruption (UNCAC) which requires states to “periodically evaluate legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.”<sup>1</sup> Documenting, monitoring, and evaluating the various components of a licensing system on a regular basis can help identify where improvements can be made in the system. The best way to make a system more effective is to examine what is working and what is not and adjust accordingly. Continual adjustments and improvements are critical because criminals and those operating with low integrity standards will constantly seek new ways to obtain licenses and avoid being eliminated by the existing screening systems.

Monitoring and evaluation should focus on the effectiveness of integrity screening and on license productivity. Although there are no standard measurement indicators for sector productivity, a country can choose indicators that correlate with identified priorities. These could include, for example, the extent to which the sector or subsector contributes to the gross domestic product (GDP), the quality of its market participants, tax revenues, and job creation (figure 8.1). The basis for this analysis would be an internal data bank of the licensing agency.

### INTERNAL DOCUMENTATION

Building an easily searchable system of documentation, filing, and records is essential to an effective integrity-checking process. Electronic systems can reduce human error and improve systemic monitoring to promote ongoing improvements, but where electronic systems are not affordable or feasible, other

**FIGURE 8.1****Flow chart: Regulatory effectiveness supports sector productivity**

options can be found. Although creating and maintaining an easily searchable system may initially require up-front costs, the longer-term benefits will be well worth the investment because such a system will enable staff to conduct background checks more efficiently and more thoroughly, ultimately reducing operating costs.

Internal records systems are important for maintaining and documenting integrity check results and findings for the following reasons:

- Most licenses are of finite duration, and so issues and risks uncovered in the initial screening process can be easily updated and evaluated in acting on applications for renewals. This means that where background checks were previously conducted on an applicant (person or entity), subsequent integrity checks on the same person or entity can be a more limited update rather than repeating previous searches.
- Because individuals and companies tend to specialize in specific sectors or subsectors, applications are often received multiple times from the same persons or companies—that is, the “repeat players.”
- Because companies can merge or go bankrupt, many individuals that operate in the sector can reappear as beneficial owners and key players may reappear on subsequent applications.
- Maintaining documents and the results of background check records is important to maintain the relevant facts in the event of administrative or legal challenges, particularly for denials or disqualification of applicants. Such data protect the credibility of the agency.

## MONITORING THE QUALITY OF EXISTING LICENSEES

Monitoring the overall quality of existing licensees—their regulatory compliance, productivity, etc.—can be useful if it is based on a system of selected indicators and a simple rating system. Indicators and a rating system should be chosen on the basis of what factors and criteria related to licensees are considered important for the sector or subsector. Evaluating quality will only be worthwhile if assessment of the criteria and indicators can be done in

**TABLE 8.1** Rating quality indicators

CRITERIA	QUALITY RATING		
	HIGH	MEDIUM	LOW
<i>Regulatory compliance record</i> <ul style="list-style-type: none"> <li>• No payments outstanding</li> <li>• Track record of timely payments</li> <li>• Tax and revenue obligations</li> <li>• Employment and payroll taxes</li> <li>• Import and export duties</li> <li>• Immigration obligations compliance</li> <li>• Health and safety</li> <li>• Sector regulatory compliance               <ul style="list-style-type: none"> <li>– Compliance record</li> <li>– Administrative fines or penalties</li> <li>– Criminal penalties for regulatory matters</li> </ul> </li> </ul>			
<i>Productivity</i> <ul style="list-style-type: none"> <li>• Current production</li> <li>• Expected annual growth</li> <li>• Local employment impact</li> <li>• Environmental impact</li> <li>• Other</li> </ul>			
<i>Legal</i> <ul style="list-style-type: none"> <li>• Adverse lawsuits</li> <li>• Criminal actions</li> <li>• Corruption</li> <li>• Adverse civil actions</li> </ul>			
<i>Reputation</i> <ul style="list-style-type: none"> <li>• Local</li> <li>• International</li> <li>• Community</li> <li>• Professional organizations</li> </ul>			
<i>Other</i> (relevant criteria appropriate to the sector and country context)			

ways that are not overly burdensome in terms of time and resources. Thus, agencies will need to carefully weigh the costs and benefits when choosing indicators of effectiveness. Examples of some useful indicators and a simple rating system, which can be tailored or expanded, are suggested in table 8.1.

Regular monitoring of licensees is useful for tracking performance over time. This information is valuable in the license renewal process—for example, in considering whether certain conditions might be attached to a renewed license if a licensee falls short of expectations or where evidence indicates a track record of regulatory infractions or raises other serious risk factors.

The seriousness or frequency of regulatory infractions, as well as a licensee's response in terms of remedial measures, can be a clear indicator of a licensee's investment in compliance systems, such as attention to safety or environmental risks. The timeliness and effectiveness of a company's remedial measures may indicate investment in compliance, which can be useful information in decisions on license renewals or adjusting the terms of concession contracts.

## EFFICIENCY AND COST-EFFECTIVE INTEGRITY CHECKS

In most countries, the financial resources needed to support integrity due diligence functions are far from unlimited, so cost monitoring will help to ensure that the resources that are available are used to target the larger risks. Even where ample resources are available, the efficient and effective use of resources is always important because budget environments can change quickly, especially in sectors where commodity prices are not stable. Thus the strategic use of resources can result in cost savings that could be allocated to upgrading database (hardware or software) systems, search tools, information resources, or other tools. At the same time, although the efficiency of the integrity due diligence system is important, efficiency should be balanced with ensuring thoroughness and quality.

By monitoring costs, agencies can better understand how much time and resources certain types of checks are likely to take. Monitoring is therefore an important help in planning. Information collected from monitoring can contribute to more efficient decisions on the sequencing of research and verification and on which factors warrant deeper digging.

Monitoring the quality of search sources is valuable to identify which search sources tend (more often than not) to produce the most useful information, as well as how long it takes to obtain such information. Collecting such data over time can help in refining effectiveness of background checking strategies and protocols in view of the value of information and the collection costs.

Completion of standardized data report forms can help in tracking the time and resources required in the background checking process. The following items are worth tracking:

- Overall time required from starting background check to completing report form
- Time spent on individual components of background checks
- Time and costs spent on research, verifying information, and obtaining needed documentation, as well as the quality of information obtained
- Time required for analysis of information and data collected
- Identification and rating of sources to identify which yield higher or lower value in terms of importance of information obtainable, reliability and credibility of information, speed in producing information, and whether payment is required.
- Other notable challenges, costs, and delays encountered.

Tracking such data need not be overly formal or time-consuming. It should include holding regular meetings of the analysts performing the checks because they will know better than anyone which information sources proved to be helpful and productive and which less so. The aim should ultimately be to ensure that the experience acquired in the background-checking process is continually fed into ongoing improvements of the licensing system. Officials can use this information to refine and improve procedures to maximize the value produced from resources.

## MONITORING RISK ASSESSMENT DECISIONS

A background check is challenging because it is intended to uncover negative and possibly suspicious information that certain applicants can be adept at hiding. The process becomes easier as experience is accumulated and shared among those undertaking this challenging work. Officials responsible for assessing and evaluating the information and documentation will often have to apply their best professional judgment to whether the information obtained is credible, reliable, and complete.

Because risk assessment decisions are far from an exact science, it is extremely important to recognize and share lessons learned. Training can be useful for acquiring basic knowledge, but expertise gained through practical experience conducting checks and assessing systems and results to ensure ongoing quality improvements is the best way to build institutional capacity. The value of capacity and experience can be supported and retained by monitoring risk ratings and licensing decisions and correlating this information with licensee performance. For example, it is helpful to track identified risks—negative or derogatory information that emerged in the background-checking process where the applicant was granted a license—to assess how consequential they turned out to be in terms of the licensees' overall performance. Monitoring and evaluating such information can elevate the quality of risk decisions by helping analysts better understand, more objectively, what types of risks tend to result in higher or lower licensee performance.

In particular, such analyses will help identify the kinds of risks that should be placed at the extremes (high and low) of the risk spectrum: those risks that, when identified, should always (or almost always) result in denial of license, and those risks that could be of lesser concern. Although professional experience and common sense are always important, a simple statistical risk-based analysis will ensure that a certain degree of objectivity and rational analysis are incorporated into decisions so that they are not entirely based on personal discretion.

A monitoring-and-evaluation system could also track the effectiveness of the design of risk mitigation measures to determine the extent to which the identified risks were actually mitigated. Also, such evaluations can help inform subsequent decisions to apply (or not apply) mitigation measures because many aspects of decisions related to risk are invariably subjective. The collection and analysis of such information can help to improve risk decisions and deepen understanding of the relative degrees of risk.

## MONITORING REGULATORY EFFECTIVENESS

General information from the media that reveals frequent suspicions and allegations of corruption can be indicators that a licensing regulatory system is ineffective. Where and when such media reports occur, it is helpful to collect data to analyze objectively the precise facts that have given rise to negative public perceptions or suspicions in order to identify the weaknesses in the system. When there is a widely held perception of corruption, the licensing system itself may lack adequate safeguards and processes to prevent, detect, or effectively challenge the use of overly broad discretion in decision making in the granting of licenses.

There are different ways to assess regulatory effectiveness against a variety of principles. The methods suggested in tables 8.2 and 8.3 focus on evaluating the regulatory effectiveness of the integrity and transparency standards mandated by Extractive Industries Transparency Initiative (EITI) Requirement 2 because these standards provide a basis for an objective assessment of effectiveness and identification of weaknesses (EITI 2016).<sup>2</sup> The suggested indicators can be used to assess and monitor compliance and incremental improvements toward full compliance if examined on a periodic basis. However, the results are likely to be more objective if a functionally independent group or unit (such as an integrity agency or civil society organization) conducts or plays a role in the monitoring process.

The EITI Requirements set forth standards of disclosure that reflect the basic principles of ensuring integrity, transparency, and accountability in the licensing process (EITI 2016). Effective compliance with these principles necessitates adopting them in enforceable legal instruments as fairly permanent obligations—such as by delegating responsibility to designated officials to ensure that such principles are systematically respected—and specifying what actions can be taken when they are not. Obligations that are so important to the integrity, transparency, and accountability of the licensing system should be written into laws rather than regulations to ensure they cannot be easily or unilaterally amended or repealed without the agreement of several officials and deliberation of a country’s legislative body.

Other requirements that may warrant more frequent technical amendments could be set forth as obligations of officials but contained in enforceable regulations. Where EITI standards are not adopted as the legal obligations of officials, they become voluntary acts. As such, citizens, license applicants, or other parties cannot effectively hold officials accountable for noncompliance or ineffective compliance.

Tables 8.2 and 8.3 illustrate a method for self-assessing, self-monitoring, and self-tracking progress toward full compliance. Monitoring and assessing compliance effectiveness can be done using a variety of rating systems. The system in the example sets forth an option for assessing technical compliance and implementation effectiveness using the EITI Requirements on information disclosure related to extractive sector-licensing systems.

Because assessing technical compliance and achieving effective implementation are different, the use of two different rating measures may be appropriate, or something similar to the option suggested in tables 8.2 and 8.3. The rating scales here are based on similar rating systems that have been found to be useful in assessing compliance effectiveness with international standards for anti-money laundering and countering the financing of terrorism (AML/CFT) pursuant to the AML/CFT Evaluation Methodology adopted by the Financial Action Task Force (FATF 2017).

**TABLE 8.2 Assessing technical compliance and implementation effectiveness**

TECHNICAL COMPLIANCE ASSESSMENT RATING	DEFINITION OF RATINGS APPLIED TO BOTH TECHNICAL COMPLIANCE AND IMPLEMENTATION EFFECTIVENESS	IMPLEMENTATION EFFECTIVENESS RATING
Fully compliant	Minor improvements needed	Highly effective
Largely compliant	Moderate improvements needed	Largely effective
Partially compliant	Major improvements needed	Partially effective
Noncompliant	Fundamental improvements needed	Not effective



**TABLE 8.3 Methodology for monitoring and evaluation of legal framework and effectiveness of implementation**

TECHNICAL COMPLIANCE ASSESSMENT OF LEGAL FRAMEWORK	RATING	ASSESSMENT OF IMPLEMENTATION EFFECTIVENESS	RATING
1. Do provisions of law set forth a sufficiently clear description of the licensing process, including: <ul style="list-style-type: none"> <li>• License awards</li> <li>• License transfers?</li> </ul>		Does the public have effective access to sufficient details of the processes for award and transfer of licenses?	
2. Do provisions of law (or enforceable regulation) set forth with sufficient clarity the technical and financial criteria on which licensing decisions are based?		Does the public have effective and timely access to sufficiently detailed technical and financial criteria on which licensing decisions are based?	
3. Do provisions of law obligate clearly delegated officials to ensure effective public access to information on the recipients of licenses, including: <ul style="list-style-type: none"> <li>• License awards</li> <li>• License transfers</li> <li>• Consortium members?</li> </ul>		Does the public have effective and timely access to information on the recipients of licenses (both licensing awards and transfers), including consortium members?	
4. Do provisions of law obligate clearly delegated officials to ensure timely public access to deviations from legal and regulatory requirements for license awards and transfers?		Does the public have effective and timely access to information on deviations from legal and regulatory requirements for license awards and transfers?	
5. Do provisions of law obligate clearly delegated officials to ensure effective and timely public access to the comprehensive list of all applicants for licenses awarded through a bidding process?		Does the public have effective and timely access to the comprehensive list of all applicants for licenses awarded through a bidding process?	
6. Do provisions of law obligate clearly delegated officials to make the names of all license holders publicly accessible in a timely manner?		Does the public have effective and timely access to the names of all license holders?	
7. Do provisions of law obligate clearly delegated officials to ensure timely public access to the coordinates of licenses (or a similar description of the area covered by the license)?		Does the public have effective and timely access to the coordinates of all licenses (or a description of the area)?	
8. Do provisions of law obligate clearly delegated officials to ensure timely public access to the <ul style="list-style-type: none"> <li>• Dates of license applications</li> <li>• Dates of award</li> <li>• Duration of licenses?</li> </ul>		Does the public have effective and timely access to the dates of license applications, dates of award, and duration of licenses?	
9. Do provisions of law obligate officials to ensure effective and timely public access to production data on all commodities produced?		Does the public have effective and timely access to production data on all commodities produced?	
10. Do provisions of law obligate clearly delegated officials to ensure effective and timely public access to the contract terms of all exploitation licenses?		Does the public have effective and timely access to the contract terms attached to exploitation licenses?	

*continued*

TABLE 8.3 *continued.*

TECHNICAL COMPLIANCE ASSESSMENT OF LEGAL FRAMEWORK	RATING	ASSESSMENT OF IMPLEMENTATION EFFECTIVENESS	RATING
<p>11. <i>Beneficial ownership</i>: Do provisions of law obligate clearly delegated officials to ensure effective and timely public access to the following information about all beneficial owners of licensees:</p> <ul style="list-style-type: none"> <li>• Name(s)</li> <li>• Nationality</li> <li>• Country of residence</li> <li>• Designation of beneficial owners that are politically exposed persons (PEPs)</li> <li>• National identity numbers</li> <li>• Date of birth</li> <li>• Residential or service address</li> <li>• Contact details</li> <li>• Legal and share ownership in companies</li> <li>• Names of stock exchanges on which publicly listed companies and wholly owned subsidiaries are listed?</li> </ul>		<p>Does the public have effective and timely access to following information of all beneficial owners of licensees:</p> <ul style="list-style-type: none"> <li>• Name(s)</li> <li>• Nationality</li> <li>• Country of residence</li> <li>• Designation of beneficial owners that are PEPs</li> <li>• National identity numbers</li> <li>• Date of birth</li> <li>• Residential or service address</li> <li>• Contact details</li> <li>• Legal and share ownership in companies</li> <li>• Names of stock exchanges on which publicly listed companies and wholly owned subsidiaries are listed?</li> </ul>	
<p>12. <i>State-owned enterprises (SOEs)</i>: Do provisions of law obligate clearly delegated officials to publicly disclose the following information on SOEs:</p> <ul style="list-style-type: none"> <li>• Rules and practices regarding financial relationships between government and SOEs</li> <li>• Rules and practices governing transfers of funds between SOEs and the state (including retained earnings, reinvestment, and third-party financing)</li> <li>• Governments' and SOEs' level of ownership in extractive companies operating in the country, including those held by SOE subsidiaries or joint ventures</li> <li>• All changes in level of government share ownership of extractive companies</li> <li>• Details on terms attached to equity stake, including level of responsibility for expenses at various phases of project cycle (such as full-paid equity, free equity, carried interest)</li> <li>• Terms of transactions, details of valuation, and revenues in cases of change in government or SOE ownership</li> <li>• Details on all loans or loan guarantees provided by government or SOEs?</li> </ul>		<p>Does the public have effective and timely access to the following items on SOEs:</p> <ul style="list-style-type: none"> <li>• Rules and practices regarding financial relationships between government and SOEs</li> <li>• Rules and practices governing transfers of funds between SOEs and the state (including retained earnings, reinvestment, and third-party financing)</li> <li>• Governments' and SOEs' level of ownership in extractive companies operating in the country, including those held by SOE subsidiaries or joint ventures</li> <li>• All changes in level of government share ownership of extractive companies</li> <li>• Details on terms attached to equity stake, including level of responsibility for expenses at various phases of project cycle (such as full-paid equity, free equity, carried interest)</li> <li>• Terms of transactions, details of valuation, and revenues in cases of change in government or SOE ownership</li> <li>• Details on all loans or loan guarantees provided by government or SOEs?</li> </ul>	
<p>13. Do the relevant legal provisions obligate clearly delegated officials to disclose publicly and in a timely manner each of the following:</p> <ul style="list-style-type: none"> <li>• An overview of the extractive industries that includes significant exploration activities</li> <li>• Total production volumes</li> <li>• Value of production by commodity</li> <li>• Commodity values by state and region</li> <li>• Total export volumes</li> <li>• Value by commodity</li> <li>• Exports by state or region (where relevant)?</li> </ul>		<p>Does the public have effective and timely access to each of the following:</p> <ul style="list-style-type: none"> <li>• An overview of the extractive industries that includes significant exploration activities</li> <li>• Total production volumes</li> <li>• Value of production by commodity</li> <li>• Commodity values by state and region</li> <li>• Total export volumes</li> <li>• Value by commodity</li> <li>• Exports by state or region (where relevant)?</li> </ul>	
<p>14. Do the relevant legal provisions obligate clearly delegated officials to publicly disclose the following in a timely manner:</p> <ul style="list-style-type: none"> <li>• License fees</li> <li>• Rental fees</li> <li>• Entry fees</li> <li>• Other consideration for licenses or concessions?</li> </ul>		<p>Does the public have effective and timely access to the following?</p> <ul style="list-style-type: none"> <li>• License fees</li> <li>• Rental fees</li> <li>• Entry fees</li> <li>• Other consideration for licenses or concessions?</li> </ul>	

## NOTES

1. UN Convention against Corruption (UNCAC) Article 5(3).
2. This is not to say that the EITI standards are the only ones that could be used. A country could choose to assess its regulatory effectiveness against other standards.

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## Recommendations for an Improved System

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This chapter lists policy recommendations for implementing an improved system of integrity due diligence for the extractive sectors, followed by a thematic preview of an improved system from a country's perspective.

### RECOMMENDATIONS

- 1. Undertake a corruption risk analysis of the extractive sectors.** This analysis should
  - Include a risk analysis of corruption risks in each commodity sector and subsector
  - Include a risk analysis for each type of license
  - Be based on available data and information that can support the conclusions
  - Identify and prioritize the risks and include findings and recommendations to mitigate them
  - Be conducted as frequently as needed, based on changes, developments, or growth (or declines) in the extractive sectors that can materially affect identified risks, including giving rise to new risks not mitigated under existing procedures.
- 2. Undertake a critical analysis of the legal framework**—that is, undertake an analysis of the entire legal framework related to licensing. This would include all laws, regulations, processes, and procedures relevant to licensing, with a focus on corruption risks and the effectiveness of safeguard systems and procedures to mitigate them.
- 3. Fully and effectively comply with all EITI disclosure requirements.** Amend relevant laws to make compliance with the EITI Requirement #2 on beneficial ownership disclosure a legally mandatory and enforceable obligation of responsible officials. This should include an obligation to: (a) verify and disclose identifies of the beneficial owners and PEPs operating in relevant sectors; (b) implement effective processes for systematic identification and verification of beneficial owners and PEPs into the decision-making process for licensing, along with other integrity checks, such as criminal and legal background checks and conflict of interest checks.

4. **Budget available resources efficiently by targeting priority risks.** When integrating integrity background checks into the licensing process, carefully consider the depth and breadth of the checks necessary based on risk assessments to ensure that the available resources are effectively targeting the identified risks. In sectors and subsectors and for types of licenses in which the risks are lower, integrity checks may be more limited, but they should be deeper and wider when they concern areas in which the risks justify more extensive checking.
5. **Adopt clear definitions.** Adopt definitions of *beneficial ownership* and *politically exposed persons* that are as precise and objective as possible and correspond to the risks and types of applicants or participants in the sectors and subsectors. Reduce the amount of discretion necessary to apply these definitions as much as possible.
6. **Establish efficient and effective procedures for obtaining domestic information.** Establish standard procedures for requesting and verifying information, documents, and data related to applicants from domestic agencies (both criminal law enforcement agencies and regulatory agencies) that may be in possession of information relevant to the integrity of applicants.
7. **Establish efficient and effective procedures for obtaining foreign information.** Establish standard procedures for requesting and verifying information, documents, and data with counterpart officials abroad, including through the use of signed memoranda of understanding (MOUs) where a spontaneous exchange of information is not possible.
8. **Ensure that domestic agencies are authorized to share information with international counterparts.** Ensure that the relevant laws, regulations, and (where necessary) MOUs provide domestic agencies with the authority to share information related to the integrity of extractive license applicants with counterpart agencies and officials in other countries to the extent that protections related to the privacy of personal or confidential information will allow.
9. **Use public sources.** Utilize public information sources as much as possible to reduce the costs of integrity background checks, while giving sufficient attention to the credibility of those sources.
10. **Use public debarment or blacklists.** Use debarment and blacklists where necessary and maintain and regularly update an internal database of such lists.
11. **Establish protocols for handling negative information.** Develop, maintain, and update protocols for following up on negative information uncovered by integrity checks, with clear guidelines in terms of factors that justify automatic exclusion.
12. **Define and classify conflicts of interest.** Define conflicts of interest as precisely as possible to identify those that should result in automatic exclusion of license applicants. Bear in mind that these classifications may differ based on the risks of the sector or subsector. Further identify other conflicts of interest that may be of concern or mitigated and maintain information on mitigation methods that can be applied.
13. **Adopt safeguards to prevent misuse of discretion.** Ensure the adoption and effective implementation of adequate safeguards to guard against the abuse or

misuse of discretion by officials, particularly in areas in which application of a certain degree of discretionary judgment is necessary.

- 14. Establish a system of administrative appeals.** An administrative appeals system would provide for expedient and cost-effective domestic review. Such a system would allow aggrieved parties to challenge licensing decisions and the actions of officials where there is reason to believe laws, regulations, or procedural rules are not being followed.
- 15. Adopt a system for monitoring effectiveness.** A system for ongoing monitoring and evaluation of the licensing regulatory system would measure both progress toward effective compliance with EITI requirements and the effectiveness of the overall licensing system. The larger aim would be to improve the integrity and governance of the extractive sectors and subsectors. Such a system should include findings that result in recommendations for strengthening the sectors' governance.
- 16. Establish a publicly accessible beneficial ownership registry.** Such a registry would list all beneficial owners associated with all participants in the various extractive sectors. It must be systematically updated and certain information independently verified if the information in the registry is to be relied upon in licensing decisions. The date on which all information is entered should be visible so users can ascertain whether it is reliable and current.

## THEMATIC PREVIEW: AN EFFECTIVE INTEGRITY SYSTEM

What will an improved licensing integrity system look like when it is up and running?

First, the licensing agency will be operating on the basis of a transparent and clearly articulated legal framework in which the roles, powers, duties, and procedures are accessible to the public and clearly defined in writing. Each official with any role in the process will have received training on conflicts of interest and who specifically to consult when issues arise. All officials will also be well aware of what beneficial ownership is and how it is being documented within the agency. Training will have included the concept of politically exposed persons (PEPs) and special issues that will arise when they are part of the beneficial ownership chain.

From the perspective of a background checker in the agency, the following steps will be taken. When the government decides to offer a license, the licensing agency will have made a preliminary determination of the integrity risk category of the particular license, ranging from low to high. The law, the applicable regulations, and the license application form will all require applicants to provide a range of specific data covering their beneficial owners and any criminal, civil, and regulatory history. Applications will require the signature of applicants, with a clear warning that any information provided that is false or incomplete can be treated as a criminal offense, and applicants will be required to sign and date the form, acknowledging that the applicant confirms that all information and documentation provided are complete and accurate.

The degree of detail required from applicants will depend on the risk classification for that license or licensee. For example, those applying for higher-value

licenses and applicants linked to PEPs will have been asked for more documentation than applicants for unlimited low-value licenses. Applications that do not contain all the necessary information will be rejected.

Next, the agency will perform the integrity checks to the degree warranted by the initial risk classification and adjust for any additional risk factors that surface during the process. The background checkers will follow the processes outlined in chapters 3, 4, and 5 of this manual. The process will start with a thorough check of beneficial ownership, down to the level of natural persons. In addition to owners, persons in positions of control such as senior managers and directors will be checked. For licenses and potential licensees deemed higher risk, this process will involve demanding that the applicant and the applicant's relevant personnel obtain a police clearance from the relevant countries as well as performing the independent checks as required. Any criminal, civil, or administrative adverse information will be noted, verified, and documented. If negative information is minimal or absent, no further diligence will be required.

The licensing system will include a component to identify and manage conflicts of interest, covering connections between applicants, PEPs, and government officials with links to licensing decisions.

In cases in which potentially significant information surfaces that reflects negatively on the integrity of the applicant, including questions about fitness and propriety to hold a license, analysts will need to undertake an in-depth background check using the most probing methods described in each of the checks, including consulting outside sources such as regulatory and enforcement agencies. Once the facts are known with adequate certainty, the agency will judge whether the integrity risks are acceptable, or whether those risks are so high that the applicant should be excluded from consideration for the license.

The results of the integrity checks will then be integrated with the results of the relevant technical and financial checks. Every step in the process will be documented on template forms that require the dates and signatures of each person who played any role or took any actions in the intake, research, analysis, and reaching findings, decisions, or recommendations, as well as in determining whether an application should be granted or denied. This ensures the accountability of all officials involved and can also help to identify weaknesses in the system where improvements may be useful.

Finally, the agency must officially note its conclusion, provide notice to the applicant, and perform any other necessary follow-up under its procedures.

While the integrity checking system is operating, the licensing agency will continually evaluate the system with the goal of ongoing improvement and efficiency. What could be modified to result in a higher-quality market entrant? How could the integrity checking system both remain effective and lower its costs? Are the risk assessments working in an optimal way? Finally, is regulatory effectiveness being achieved?

In summary, an effective integrity checking system will help ensure that only responsible persons are entrusted with licenses, thereby paving the way to shared prosperity.



## Resources for Learning about Beneficial Ownership

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The results obtained by a person checking and tracing beneficial ownership will be only as good as that person's fundamental understanding of various corporate vehicles, such as corporations, partnerships, trusts, cooperatives, and foundations. This appendix is an annotated collection of free resources that may help in developing or refreshing one's knowledge on these topics.

**Open Learning Campus, World Bank. "Beneficial Ownership Transparency." <https://olc.worldbank.org/content/beneficial-ownership-transparency>.**

A video explains the importance of tracking the beneficial owner; a second video defines a *beneficial owner*, and two modules detail a case study and the G20 High-Levels Principles on Beneficial Ownership Transparency. This information is helpful for understanding the basic concepts of beneficial ownership and gaining an overview of case studies. The website also contains a "quiz" to assess how much information you absorbed.

**Organisation for Economic Co-operation and Development, Investment Division, Directorate for Financial and Enterprise Affairs. "Identification of Ultimate Beneficiary Ownership and Control of a Cross-Border Investor." March 2007 (10 pages). <https://www.oecd.org/investment/investment-policy/41481081.pdf>.**

This report suggests how to identify the beneficial owners of corporations and companies when they are involved in complicated cross-border machinations. The report begins by describing each corporate vehicle and briefly explaining how they can be drawn into corruption. Next, the report addresses some common mechanisms used to hide beneficial owners, such as intermediaries and nominees (including hedge funds and trusts), flee clauses, and bearer shares. For sources of information on beneficial ownership, the report recommends company records, company registries, intermediaries, and reliance on the police power of the legal system.

**Natural Resource Governance Institute. "Briefing: Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies" by Aaron Sayne, Erica Westenberg, and Amir Shafaie. August 2015 (24 pages).**

[http://www.resourcegovernance.org/sites/default/files/documents/nrgi\\_beneficial\\_owners20150820.pdf](http://www.resourcegovernance.org/sites/default/files/documents/nrgi_beneficial_owners20150820.pdf).

This briefing explores the options countries have in collecting, publishing, and using information on the beneficial owners of oil, gas, and mining companies. It provides background on how beneficial ownership works in the extractive industries and why it matters. The briefing also offers governments, companies, and civil society members a framework for deciding what information to publish, and it considers the critical question of what more disclosure could realistically achieve.

**Natural Resource Governance Institute. “Briefing: Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractives Licensing” by Erica Westenberg and Aaron Sayne. May 2018. <https://resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption>.**

This briefing outlines good practices in implementing measures to reduce corruption in the extractive sectors and provides sample legal provisions that could improve legal frameworks.

**Small Biz U. “Choosing a Legal Structure for a Business.” Online tutorial. <https://www.ncsbc.net/workshop.aspx?ekey=560370154>.**

This comprehensive online tutorial describes the types of businesses that can be formed in the United States. It outlines the structure of the businesses and the legal requirements and the pros and cons of each type. Although the tutorial focuses on the United States, the explanations of how to set up corporations, limited liability companies, and sole and general proprietorships could help those in many common law countries.

**Transparency International. “Policy Brief: Ending Secrecy to End Impunity: Tracing the Beneficial Owner.” February 2014. [http://www.transparency.org/whatwedo/publication/policy\\_brief\\_02\\_2014\\_ending\\_secrecy\\_to\\_end\\_impunity\\_tracing\\_the\\_beneficial](http://www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial).**

This short policy brief defines a *beneficial owner*, describes the problems associated with a failure to identify a beneficial owner, and provides suggestions for how to determine the ultimate owner of a company. It points out that knowledge of how a company is controlled is vital to understanding what looking for a beneficial owner entails. Publicly held companies are usually controlled by their shareholders, whereas private companies may have a board of directors or one ultimate owner. This brief helps identify and assess the underlying causes of corruption in mining sector awards—the risks that create opportunities for corruption and undermine the lawful, compliant, and ethical awarding of mining sector licences, permits, and contracts.

**World Bank, Stolen Asset Recovery Initiative. *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* by Emile Van der Does de Willebois et al. 2011. <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> or in print.**

This publication is broken down into four parts: (1) background information on the report, (2) defining and describing beneficial ownership, (3) defining and describing corporate vehicles, and (4) providing sources for finding the beneficial owner. Part 4 provides possible sources of information on the beneficial owner and how to obtain that information.

## Websites, by Country, Listing Debarred Companies

COUNTRY/ ECONOMY	AUTHORITY	WEBSITE
Australia	Prudential Regulation Authority	<a href="http://www.apra.gov.au/crossindustry/pages/disqualification-register.aspx">http://www.apra.gov.au/crossindustry/pages/disqualification-register.aspx</a>
Austria	Financial Market Authority	<a href="https://www.fma.gv.at/en/category/news-en/?cat=81&amp;filter-dropdown-year=&amp;filter-dropdown-order=date_desc">https://www.fma.gv.at/en/category/news-en/?cat=81&amp;filter-dropdown-year=&amp;filter-dropdown-order=date_desc</a>
Bangladesh	Central Procurement Technical Unit	<a href="http://www.cptu.gov.bd/DebarmentList.aspx">http://www.cptu.gov.bd/DebarmentList.aspx</a>
Belgium	Financial Services and Markets Authority	<a href="http://www.fsma.be/en/Consumers/listedcompanies.aspx">http://www.fsma.be/en/Consumers/listedcompanies.aspx</a>
Canada	Public Works and Government Services Canada	<a href="http://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html">http://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html</a>
Chile	Dirrección del Trabajo	<a href="http://www.dt.gob.cl/1601/w3-article-94445.html">http://www.dt.gob.cl/1601/w3-article-94445.html</a>
European Union	European Union External Action	<a href="http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions_en">http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions_en</a>
France	Financial Markets Authority	<a href="http://www.amf-france.org/en_US/Recherche-avancee.html?formId=BDIF&amp;langSwitch=true">http://www.amf-france.org/en_US/Recherche-avancee.html?formId=BDIF&amp;langSwitch=true</a>
Hong Kong SAR, China	Securities and Futures Commission	<a href="http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/">http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/</a>
Italy	Bank of Italy	Available in Italian: <a href="https://www.bancaditalia.it/competi/vigilanza/provvedimenti-sanzionatori/index.html?com.dotmarketing.htmlpage.language=1">https://www.bancaditalia.it/competi/vigilanza/provvedimenti-sanzionatori/index.html?com.dotmarketing.htmlpage.language=1</a>
Japan	Financial Services Agency	Available in Japanese: <a href="http://www.fsa.go.jp/status/s_jirei/kouhyou.html">http://www.fsa.go.jp/status/s_jirei/kouhyou.html</a>
Liechtenstein	Financial Markets Authority	<a href="https://www.fma-li.li/en/client-protection/warning-notices-and-indications/warning-notices-by-the-iosco.html">https://www.fma-li.li/en/client-protection/warning-notices-and-indications/warning-notices-by-the-iosco.html</a>
Malta	Financial Services Authority	<a href="http://www.mfsa.com.mt/pages/AdministrativeMeasuresPenalties.aspx">http://www.mfsa.com.mt/pages/AdministrativeMeasuresPenalties.aspx</a>
Mexico	National Commission for Security	Available in Spanish: <a href="http://siesp.ssp.gob.mx/emp_sancionadas/">http://siesp.ssp.gob.mx/emp_sancionadas/</a>
New Zealand	Companies Office	<a href="https://www.business.govt.nz/companies/learn-about/searching/disqualified-directors-prohibited-company-managers-search">https://www.business.govt.nz/companies/learn-about/searching/disqualified-directors-prohibited-company-managers-search</a>
Pakistan	Public Procurement Regulatory Authority	<a href="http://www.ppra.org.pk/pakblack.asp">http://www.ppra.org.pk/pakblack.asp</a>
Philippines	Securities and Exchange Commission	<a href="http://www.sec.gov.ph/public-information-2/sec-issuances/decisions/">http://www.sec.gov.ph/public-information-2/sec-issuances/decisions/</a>

*continued*

COUNTRY/ ECONOMY	AUTHORITY	WEBSITE
Poland	Financial Supervisory Authority	<a href="https://www.knf.gov.pl/en/About_us/Public_warnings/index.html">https://www.knf.gov.pl/en/About_us/Public_warnings/index.html</a>
Portugal	Securities Market Commission	<a href="http://www.cmvm.pt/en/Comunicados/ContraordenacoesECrimesContraOMercado/Pages/Serious-and-very-serious-administrative-infractions.aspx">http://www.cmvm.pt/en/Comunicados/ContraordenacoesECrimesContraOMercado/Pages/Serious-and-very-serious-administrative-infractions.aspx</a>
Rwanda	Public Procurement Authority	<a href="http://www.rppa.gov.rw/index.php?id=564">http://www.rppa.gov.rw/index.php?id=564</a>
Singapore	Monetary Authority of Singapore	<a href="http://www.mas.gov.sg/news-and-publications/enforcement-actions.aspx">http://www.mas.gov.sg/news-and-publications/enforcement-actions.aspx</a>
South Africa	Companies and Intellectual Property Registration Office	Looks like this website may be in the development stages still: <a href="http://www.cipro.gov.za/about_us/who_is.asp">http://www.cipro.gov.za/about_us/who_is.asp</a>
Spain	National Securities Market Commission	Available in Spanish: <a href="http://www.cnmv.es/Portal/Consultas/RegistroSanciones/verRegSanciones.aspx">http://www.cnmv.es/Portal/Consultas/RegistroSanciones/verRegSanciones.aspx</a>
Switzerland	Financial Market Supervisory Authority	<a href="https://www.finma.ch/en/enforcement/enforcement-tools/publication-of-final-rulings/#Order=4">https://www.finma.ch/en/enforcement/enforcement-tools/publication-of-final-rulings/#Order=4</a>
Tanzania	Public Procurement Regulatory Authority	<a href="http://www.ppra.go.tz/index.php/blacklisted-firms">http://www.ppra.go.tz/index.php/blacklisted-firms</a>
Trinidad and Tobago	Securities and Exchange Commission	<a href="http://ttsec.org.tt/legal-framework/?_sft_category=decisions">http://ttsec.org.tt/legal-framework/?_sft_category=decisions</a>
Uganda	Public Procurement of Disposal of Public Assets Authority	<a href="https://ppda.go.ug/suspended-providers/">https://ppda.go.ug/suspended-providers/</a>
United Kingdom	Financial Conduct Authority	<a href="https://beta.companieshouse.gov.uk/">https://beta.companieshouse.gov.uk/</a>
United States	General Services Administration	<a href="https://www.gsaig.gov/node/31">https://www.gsaig.gov/node/31</a>

## OTHER SOURCES:

### Lexis Nexis sanctions and watch lists

This list of nearly 1,200 watch lists from over 80 countries also includes the names of the persons and companies that have been sanctioned. The title of the list, the authority creating the list, and the name of the country appear in the compilation.

[https://www.lexisnexis.com/documents/pdf/20150121044131\\_large.pdf](https://www.lexisnexis.com/documents/pdf/20150121044131_large.pdf)

### United Nations consolidated list

The United Nations Security Council maintains a list of all individuals and entities on which sanctions have been placed by the Security Council. Each Security Council committee must provide information on its decisions to sanction individuals and entities, and these are included in the list.

<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

### International Development Banks sanctions list

The website Cross Debarment lists companies cross debarred by the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and World Bank. These multilateral development banks (MDBs) have signed an Agreement for Mutual Enforcement of Debarment Decisions Among Multilateral Development Banks that states that entities debarred by one MDB will also be debarred on the same terms by the other MDBs.

<http://lnadb4.adb.org/oai001p.nsf/Content.xsp?action=openDocument&documentId=D83C994352B4BB6348257AFC0000463E>

The World Bank has its own public list on which more than 200 entities are blacklisted. The list includes entities also barred by other MDBs as per the terms of the Agreement for Mutual Enforcement of Debarment Decisions Among Multilateral Development Banks.

<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>.





## Finding and Using a US Securities and Exchange Commission Form 10-K or 10-Q

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The US Securities and Exchange Commission (SEC) can be an excellent source of information on publicly held companies. All companies that engage in the sale or transfer of securities must be registered with the SEC, whether they are US domestic companies or foreign companies. The SEC also maintains in its online EDGAR database a wealth of documents related to these companies in a searchable format. The forms containing the information most relevant to licensing screening are likely the 10-K or 10-Q, which are the annual and quarterly reports of the entity, respectively. The following describes the best way to search for and obtain the 10-Ks for a particular company using the example of a company recently cited for bribery, Och-Ziff Capital Management.

**Step 1.** Once an entity has been established as the beneficial owner of an applicant or the applicant itself, a searcher can go to [https://searchwww.sec.gov/edgarfsclient/jsp/edgar\\_mainaccess.jsp](https://searchwww.sec.gov/edgarfsclient/jsp/edgar_mainaccess.jsp) to access the full-text search of the EDGAR database. This is a good starting point because, in a search for the filings of a particular company, the name of the company *as shown on the SEC filing* is the only way to access those forms—that is, the common name of the company may not retrieve the company’s filing information. When using this search, it may be necessary to remove common words from the search. For example, a search for the Roust Corporation may return many companies whose name includes “corporation.” If only “Roust” is searched, the company is the second result on the returned results list. The advanced search option should be used to narrow the search to items in the company name only. This will significantly narrow the search results, which makes it easier to locate the company. If several similar company names are returned in a search—for example, “Roust” returns “Roust Inc.” as well as “Roust Trading Ltd.”—it may be necessary to search both of these in the next step to determine which company is at issue.

***If the name of the company as shown on the SEC filing is already known, this step can be skipped.***

*Example:* If a searcher typed “Och Ziff” or “Och-Ziff” in the Company Search (<https://www.sec.gov/edgar/searchedgar/companysearch.html>), the company at issue would not be returned. However, if a searcher types either version into the Full-Text Search box, many forms filed by “Och-Ziff Capital Management

Group LLC” would be returned. This outcome indicates that this is the name under which the company’s SEC filings can be located.

*Approximate time:* 1 minute

**Step 2.** Once the name of the company as shown on the SEC filings is located, the searcher should return to the Company Search. If the searcher types in the full name as it appears on the SEC filing, *including any abbreviations or commas*, the search should return a page containing all of the filings for that company, sorted by date. For example, a search for “Roust Inc,” will not return any results unless the search is precisely typed as “Roust, Inc.” It is possible to then narrow the search by a particular form.

*Example:* In the Company Search type in “Och-Ziff Capital Management Group LLC” and select Search. The results will include several hundred forms filed by Och-Ziff. At the top of the page is a labeled Filter Results. Under Filing Type enter “10-K” and then select Search again. This will narrow the results only to 10-K forms, which is a much more manageable list.

*Approximate time:* 1 minute

**Step 3.** The results returned by EDGAR are sorted by date, with the most recent appearing first. It is probably a good idea to narrow the results as described earlier, but this is not necessary. If you are just checking the 10-K for any information about corruption charges, examining the last three to four years of 10-Ks may be valuable just to see what is listed. Otherwise, select the 10-K for the year you have in mind. Remember that SEC filings are generally filed the year following what the report covers. For example, a 10-K filed in February of 2015 is actually covering fiscal 2014.

*Example:* Based on the information in newspaper articles on the Och-Ziff corruption case, the company first disclosed the SEC investigation in its 2014 SEC filings, so the 10-K filed in 2015 should contain information about the investigation as disclosed by Och-Ziff. In the results, this should be the 10-K filed on March 18, 2014. Select this form.

*Approximate time:* 30 seconds

**Step 4.** Once the form has been selected, a page will appear that shows the several documents associated with this form. When companies file their 10-K, they frequently attach annexes and exhibits to their submissions. The best place to start is with the basic form. If there are references in the form to any of the exhibits and annexes that may be relevant, these documents can be reviewed at that time.

*Example:* Once the 10-K has been selected, select the first document on the submissions page. This document is described as “10-K.” Select the red link to that document.

*Approximate time:* 10 seconds

**Step 5.** Once the document has been pulled up, the best way to find information is to search the document. There are two ways to do this. First, the table of the contents for the 10-K is linked to those sections of the document. By clicking the blue text, the page will be moved down to that section. The best sections for finding information about corruption are Risk Factors (Item 1A) and Legal Proceedings (Item 3). Second, go to the toolbar at the top of your browser and select Edit and then click Find on This Page. The search that appears will enable you to search the text of the web page. Some useful search terms are “FCPA” (Foreign Corrupt Practices Act), “bribery,” “corruption,” “DOJ,” and “SEC.”



*Example:* In the 10-K, select the Legal Proceedings link in blue. It moves to that section of the 10-K that does not reveal much information. Return to the table of contents and select the Risk Factors link. This section is very long and may be difficult to maneuver because it consists of several pages. An easier way to search this document may be to use the Find on This Page option. By typing in “FCPA,” the document moves to each place where FCPA is mentioned. Many mentions are contained in the compliance and regulatory risks sections, where the company is describing the cost of its compliance programs and keeping up with regulatory requirements. The document also contains the following:

Beginning in 2011, and from time to time thereafter, we have received subpoenas from the SEC and requests for information from the U.S. Department of Justice (the “DOJ”) in connection with an investigation involving the FCPA and related laws. The investigation concerns an investment by a foreign sovereign wealth fund in some of our funds in 2007 and investments by some of our funds, both directly and indirectly, in a number of companies in Africa. At this time, we are unable to determine how the investigation will be resolved and what impact, if any, it will have. An adverse outcome could have a material effect on our business, financial condition or results of operations.<sup>1</sup>

This type of information is helpful because it alerts the searcher of the 10-K that Och-Ziff is undergoing investigation for corrupt practices.

*Approximate time:* 10 minutes

**Step 6.** Once information has been pulled from the 10-K, it may be necessary to follow up on some of the information revealed. Because annual reports are released for the previous year, they may not contain the most up-to-date information. In addition, because companies may not be required to describe in detail any allegations against it, there may be some information that is hard to locate or is missing from the document. At this point, it may be helpful to do a more targeted search on the Internet to locate the most recent information about the company. Using the same terms used in the 10-K or more specific searches about the nature of the case—such as [company name] and [charge] and [violated regulation/regulatory agency]—may reveal relevant information about a company that can inform the integrity screening process.

*Example:* Once this information in the 10-K is discovered, a simple Google search on “Och-Ziff FCPA SEC” reveals that in mid-2016 the company settled a case with the SEC for \$412 million, plus personal settlements with the chief executive and chief financial officers. In addition, it reveals that a subsidiary company pled guilty in court to charges of corruption and bribery (<https://www.sec.gov/news/pressrelease/2016-203.html>). This information can be useful for revealing that such companies and any subsidiaries may present an integrity risk if granted a license.

*Approximate time:* 10 minutes

*Total approximate time:* 20 minutes per company (once familiar with the process).

## NOTE

1. To see how this information looks in the original report, see page 28 at <https://www.sec.gov/Archives/edgar/data/1403256/000140325615000034/ozm-20141231x10k.htm>.



## Industry-Specific Resources

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**Transparency International: Mining for Sustainable Development Programme (M4SD), <http://transparency.org.au/our-work/mining-for-sustainable-development/>**

Lisa Caripis. “Combatting Corruption Risks in Mining Approvals: Assessing the Risks in Resource-Rich Countries.” Transparency International, Berlin, December 2017. <http://transparency.org.au/our-work/mining-for-sustainable-development/combating-corruption-mining-approvals-global-report/>. This report is based on case studies in 18 resource-rich countries from Australia to Zimbabwe that identify systemic corruption risks in mining licensing processes and highlights some preventive measures.

Michael Neat. *Mining Awards Corruption Risk Assessment Tool*, 2d ed. Berlin: Transparency International, 2017. <http://transparency.org.au/our-work/mining-for-sustainable-development/macra/>. The MACRA tool helps to identify and assess the underlying causes of corruption in mining sector awards, including the risks that create opportunities for corruption and undermine the lawful, compliant, and ethical awarding of mining sector licenses, permits, and contracts.

**Natural Resource Governance Institute, <https://resourcegovernance.org/>**

Briefing: Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractives Licensing” by Erica Westenberg and Aaron Sayne. May 2018. <https://resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption>. This report highlights practical advice and legal framework options and suggestions to reduce corruption risks in extractive sector licensing.

Aaron Sayne, Alexandra Gillies, and Andrew Watkins. *Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts*. New York: Natural Resources Governance Institute, 2017. <https://resourcegovernance.org/sites/default/files/documents/corruption-risks-in-the-award-of-extractive-sector-licenses-and-contracts.pdf>. Report describes the common red flags of corruption in extractive sector license and contract awards, with examples and illustrations of each.

**U4 Natural Resource Management website, <http://www.u4.no/themes/natural-resource-management/>.**

Olivier Longchamp and Nathalie Perrot. *Trading in Corruption: Evidence and Mitigation Measures for Corruption in the Trading of Oil and Minerals*. Bergen, Norway: Chr. Michelsen Institute (U4 Issue 2017:6), <http://www.u4.no/publications/trading-in-corruption-evidence-and-mitigation-measures-for-corruption-in-the-trading-of-oil-and-minerals/>. This report draws on a database of 60 corruption cases in the trading of oil and minerals and identifies why commodity trading comes with a high risk of corruption. It illustrates corruption risks associated with the commodity value chain and provides case examples and typologies.

**Berne Declaration, NGRI, and SWISSAID, eds. *Big Spenders. Swiss Trading Companies, African Oil and the Risks of Opacity*. Zurich: Berne Declaration; New York: NGRI. Berne: SWISSAID, 2014. Open Oil, <http://openoil.net/>**

Open Oil. “Introducing Aleph: Everything Companies Tell Investors, In One Place.” December 3, 2015. <http://openoil.net/2015/12/03/introducing-aleph-everything-companies-tell-investors-in-one-place/>. The search engine described contains information compiled by Open Oil about various companies working in the oil, gas, and mining sectors. Search the name of a project to find all the relevant documents filed in relation to that project, or search by the name of company and find documents filed by that company as well as documents mentioning the company. These documents include government filings, stock exchange information, EITI reports, contracts, and media mentions. This database could be a good consolidation of several sources of information that could be used to trace the beneficial owner, such as SEC filings, stock exchange requirements, and media reports.

**International Mining Associations, <http://www.miningoilgasjobs.com.au/mining/all-you-need-to-know-about-the-mining---metals-sec/international-mining-associations.aspx>**

Provides a comprehensive list of the major mining associations, including international and regional associations, as well as associations in some of the most important countries.

**Top 10 Global Mining Industry Associations Shortlisted, <http://www.miningiq.com/mining/articles/10-global-mining-industry-associations-shortlisted/>**

List of 10 mining associations that the editor believes make a significant contribution to the development of the industry and provide a voice for all.

**ICMM.com—The International Council on Mining and Metals, <https://www.icmm.com/members/member-associations>**

The International Council on Mining and Metals (ICMM) brings together 23 mining and metals companies, 34 national and regional mining associations, and global commodity associations.

## Identifying High-Risk Countries and Persons

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### **Financial Action Task Force (FATF): High Risk and Non-Cooperative Jurisdictions, <http://www.fatf-gafi.org/countries/#high-risk>**

This site provides a list of countries that have been identified by the FATF as having weak systems for combating money laundering and terrorist financing. They are sometimes called blacklisted countries. Companies operating in these countries may have a higher risk of concealing beneficial owners or misusing corporate ownership vehicles. The FATF is the intergovernmental body for developing and promoting policies to combat money laundering and terrorist financing in more than 35 member jurisdictions.

### **KnowYourCountry, <https://www.knowyourcountry.com/>**

KnowYourCountry is a global research tool designed to provide data and information on money laundering and other risks by jurisdiction. The site is organized by country and includes an overview of major money laundering risks.

### **International Criminal Police Organization, INTERPOL: Wanted Persons Database, <http://www.interpol.int/notice/search/wanted>**

This site maintains the list of persons most wanted by INTERPOL, including persons subject to “Red Notices.” The names of persons can be freely searched against the list. Searchers can ensure that people coming up in the ownership trace of companies are not on this list to confirm lack of suspected criminal involvement.

### **Office of Foreign Assets Control (OFAC), US Department of Treasury: Sanctions List Search, <https://sanctionssearch.ofac.treas.gov/>**

The “OFAC list” is a U.S. Treasury database of people whose assets have been blocked by the Treasury because the US government has deemed them a threat to US national security, foreign policy, or the economy. This may be another good place for searchers to check to ensure that nothing suspicious appears in the ownership chain.

**Offshore Alert, <http://www.offshorealert.com/>**

Large offshore financial database featuring news of court cases, intelligence, and investigations.

**FCPA (Foreign Corrupt Practices Act) Blog, <http://www.fcpablog.com/blog/tag/corporate-investigations-list>**

US-based list of companies under investigation by US authorities that is updated on a quarterly basis.

## Additional Resources on Conflicts of Interest

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### Some resources on conflicts of interest and ways to regulate them

<http://www.u4.no/publications/sitting-on-the-fence-conflicts-of-interest-and-how-to-regulate-them/>

<http://www.cmi.no/file/?971>

[http://www.transparency.org/whatwedo/answer/conflict\\_of\\_interest\\_in\\_public\\_procurement](http://www.transparency.org/whatwedo/answer/conflict_of_interest_in_public_procurement)

### Samples of mining company codes of conduct

Capstone Mining Corporation, <http://capstonemining.com/company/business-ethics/default.aspx>

Coeur Mining, <http://www.coeur.com/company/corporate-governance/char-ters-and-policies/code-of-business-conduct-and-ethics#.V-1kq02QK70>

Goldrich Mining Company, <http://www.goldrichmining.com/corporate/code-of-ethics.html>

Medusa Mining, <http://www.medusamining.com.au/corporate/corporate-governance/code-of-conduct/>

Newmont Mining, <http://www.newmont.com/about-us/governance-and-ethics/code-of-conduct-and-policies/>







## EITI Requirement 2.5 on Beneficial Ownership Disclosure

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### 2.5 Beneficial ownership.

- a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock Requirements for EITI implementing countries exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.
- b) It is required that:
  - i. The EITI Report documents the government's policy and MSG's discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.
  - ii. By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report.
- c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.

- d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.
- e) The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.
- f) Definition of beneficial ownership:
  - i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
  - ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons. Requirements for EITI implementing countries
  - iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed. iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.
- g) The EITI Report should also disclose the legal owners and share of ownership of such companies.



## String Searches

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To raise your skill level at searching the Internet when conducting integrity checks, consult the following self-learning materials:

**MIT Libraries, “Database Search Tips: Overview,”** <http://libguides.mit.edu/database-search>

Guidance on database searching using Boolean operators, truncation, phrases, and stop words. In addition, the site provides guidance on separating keywords and subjects and using different fields.

**MIT Libraries, “Google Search Tips: Getting Started,”** <http://libguides.mit.edu/google>

Guidance on using Google searches to obtain information, including power tips, search operators, and use of Google scholar. Site provides specific information on Google search conventions and common operators.

**Naval Postgraduate School, Dudley Knox Library, “Search Basics,”** <http://libguides.nps.edu/search>

The basics of string searches, including nesting, Boolean operators, phrase searching, truncating and stemming, and refining searches. Search tip sheets address “Phrase, truncator and wildcard search tips” and “Proximity operator search tips.”

**University of Alaska Library, “Boolean Searching,”** <http://library.uaf.edu/ls101-boolean>

Explanation of the basics of Boolean searches and different approaches to Boolean searches. The page demonstrates Boolean searching using examples from Google.

**UW Bothell and Cascadia College Library, “Develop Effective Search Strategies,”** <http://guides.lib.uw.edu/c.php?g=345668&p=2329473>

Guides to database coverage and search highlights, database search functions, database search rules, database commonalities, and web-search versus database search guidelines. Also provides a search strategy builder to initiate searches.

**Princeton University Library. “Google: Basic Search Strategies” Google Guides.” <http://libguides.princeton.edu/c.php?g=84022&p=543130>**

Several guides to database coverage and search highlights, database search functions, database search rules, database commonalities, and web search versus database search guidelines. Site also provides a search strategy builder to help create a search.

## **MOST FREQUENTLY USED SEARCH MODIFIERS**

- “Query”
  - Quotation marks around a search term will return exact matches of the search term. This method is best used with a phrase that should appear together in a work.
  - *Example:* If undertaking a search on money laundering, the most relevant material will be returned if “money laundering” is placed in quotations.
- -Query
  - The hyphen before the term will ensure that the term will be excluded in the returned results list.
  - *Example:* If searching for a particular person, John Smith, and John P. Smith is returned in the results, by searching “John Smith” -P, the searcher will be able to exclude these results.
- Query AND Query
  - Using “AND” within the search will ensure that both of the queries appear within the results on the returned results list.
  - *Example:* If trying to retrieve information on a fraud conviction for a company, searching “Company name” AND “fraud conviction” will return the most specific results.
- Query OR Query
  - Using “OR” within the search will enable the searcher to search multiple terms without being sure which of them is relevant.
  - *Example:* If trying to return information on a company’s background, the searcher can search “Company name” AND “criminal convict!” OR “Regulatory violat!” if uncertain which applies to the company. In addition, many other offenses can be run through a single search in one.
- Quer!
  - Adding the exclamation point to the end of the query will return different variations of the same term.
  - *Example:* In a search for a term such as “conviction,” the searcher can search “convict!” and return results for “conviction,” “convicting,” and “convict.”
- Site:example.com Query
  - Use of this formulation will allow Google to search a specific website rather than any and all websites.
  - *Example:* A searcher could search “site:interpol.com [individual name]” to check whether a particular person is mentioned on the Interpol website. This method could be particularly helpful when a site does not have a very good search engine or it has no search engine.
- Inurl:query
  - Returns only those web pages that have the query in the URL of the website. This may be helpful if a searcher is trying to find the website for a particular company or person.

- Intitle:query
  - Retrieves only those web pages that have the query in the title of the page. This may be helpful if the searcher is looking for a particular page and knows the information is there.
- Inpostauthor:query
  - Returns results that have been written by a specific author.
- +query
  - Returns only the specific word searched for.
  - *Example:* If searching for “California” and do not want to return anything with “CA” instead, search “+California,” which will return only California itself.
- Allintext:
  - Searches only for sites in which the given words are in the text of the page. This may be helpful when the searcher is looking for several search terms located in the same place.
- ~query
  - Adding a tilde to a search term will bring back synonyms for the term.
  - *Example:* The searcher could search “~debar!” and the search will also return results with synonyms for debarment.
- Query w/s query
  - Returns only results that have both search terms within one sentence of each other.
  - *Example:* The searcher can search “[company name]’ w/s debar! OR violat!” to narrow the search results returned.
- Query w/p query
  - Returns only results that have both search terms within one paragraph of each other.
  - *Example:* The searcher can search “[company name]’ w/p debar! OR violat!” to ensure that the terms are sufficiently connected within the document.

## STEP-BY-STEP SEARCH EXAMPLE

The following steps illustrate how to apply these search techniques to a hypothetical case:

**Step 1.** Suppose, for example, Mar Verde has applied for a mining license. The first step would likely be to simply do a Google search to determine whether there is any information that should raise red flags or requires further research. A good starting point may be to simply search the company name and see what comes up. “Mar Verde” can be searched either separately or together in quotations.

**Step 2.** The results are several news articles, the company’s website, and the Wikipedia entry. Because Google will return searches from any websites, when obtaining information about a source it is important to ensure that only the most credible sources are being used. The top response in this search was a *Wall Street Journal* article reporting that Mar Verde had fired two executives in connection with an iron ore mine in Country G.

**Step 3.** The next step is to look further into the goings-on at the iron ore mine in Country G that caused Mar Verde to fire its executives. A search of [“Mar Verde” AND Country G AND iron ore] returns several newspaper articles about a bribery scandal, which occurred with the goal of Mar Verde obtaining an iron mine in Country G. This is the type of information that may be relevant to determining whether a company should be granted a mining license. Based on this information, it appears that executives were fired after several illicit payments came to light from the company’s email accounts. The firing of the officials as well the disclosure of the payments by the company could be considered mitigating factors for the company because they serve as some indication that the company took remedial action, even though the fact of the corrupt payments remains.

Sometimes, however, the information sought may not be that easy to obtain, for several reasons. The event may have occurred several years ago; it may not have received much coverage; or it may not be as obvious as a bribery scandal. In that case, several additional steps must be taken:

**Step 4.** If narrowing the search has not resulted in any information, more general searches may be required. Using a variety of search terms, older or less covered information will also be obtainable through a Google search. In this case, using a string search with the connector “OR” may be helpful. Assume that a branch of ABC Corporation has made an application for a mineral license. Using some of the terms in table 4.1 and the modifiers just described, creating a string search should be possible. To start, try searching “[company/person name] w/p brib! OR corrupt! OR crim! OR violat!”

**Step 5.** This search returns information on John Abc, the owner of ABC Corporation; actions by the ABC Corporation in Country B, Country C, and Country D; and KAC Energy Ltd. Following the link on Country B reveals that ABC Corporation’s work on a manganese mine was suspended when the company failed to carry out social and economic improvements. The article on Country C indicates that African Minerals Limited, the mining branch of ABC Corporation, was closed in 2015. And the article on Country D, from October 2016, indicates that the brother of Country D’s president was forced to resign from his position at a commodities firm when accusations surfaced that he secured benefits for ABC Corporation in Country D.

**Step 6.** Following up on these articles with narrower searches may help to determine the validity of any of these accusations. (Of course, press reports are no substitute for court records.) Follow-up discloses that African Minerals Limited filed for bankruptcy after allegations of bribery. This, in addition to the Country D story, may raise red flags on the integrity risks presented if this company were to hold a mining license.



# UK Companies House for Information on Companies and Directors

## DISQUALIFIED DIRECTOR SEARCH

The Disqualified Director Search allows members of the public to determine whether a particular person has been disqualified from acting as a director or being involved in the formation and running of a company. This is important because by following the instructions of a disqualified person, citizens could open themselves to prosecution or other liability.

**Step 1.** To determine whether a person has been disqualified, go to <https://beta.companieshouse.gov.uk/search/disqualified-officers?q=>. After registering, type in the name of the person, and the list of people with that name or a similar one will appear with information about the disqualification. In addition, an alphabetical search is located here: <https://beta.companieshouse.gov.uk/register-of-disqualifications/A>. It is recommended that the first search option be used when the name of the director is already known.

**Step 2.** The record will contain information about the start and end dates of the disqualification, when it was ordered, the case reference number, the court, the company with which the conduct was associated, and the reason for the disqualification. If no records are returned by the search, then the person has simply not been disqualified. If the searcher would like to confirm that the director is the director of the claimed company, the instructions for performing a search of the company records follow.

## COMPANY RECORDS SEARCH

The Company Records Search provides the public with information about a company's basic information, its filings, and whether they qualify for the small business exception. The public is therefore able to learn more about the company's finances, shareholders, and officers.

**Step 1.** Once an entity has been established as the beneficial owner of an applicant or is the applicant, a searcher can go to <https://www.gov.uk/get-information-about-a-company> to access information about the company. The searcher should search under the Company tab to ensure the best results.

**Step 2.** A list of results will appear, with the most relevant appearing first. Select the name of the company about which information is required.

**Step 3.** To find information in company filings, go to the Filings History tab at the top of the record. Under this tab is information about the latest papers filed with Companies House, including annual returns and confirmation statements. Should there be a large number of filings, the search can be narrowed by type of filing.

**Step 4.** To find information about company directors and persons with significant control (PSCs), go to the People tab at the top of the record. Under this tab, there are two options: officers and persons with significant control. Click on Officers for a list of the company's officers. Click on an individual officer's name to see other companies with which the person is associated.

**Step 5.** The Charges tab may show information about what the company is using to secure borrowing. Not all companies have this tab attached to their record.

**Step 6.** Once information has been pulled from the annual report, confirmation statement, or other part of the company record, follow-up on some of the information revealed may be necessary. Because annual reports are released for the previous year, they may not contain the most up-to-date information. In addition, because companies may not be required to describe in detail any allegations against it, some information may be hard to locate or is missing from the document. At this point, it may be helpful to do a more targeted search on the Internet to locate the most recent information about the company. Using terms used in the form search or more specific searches about the nature of the case—that is, [company name] and [charge] and [violated regulation/regulatory agency]—may reveal relevant information about a company that can inform the integrity screening process.



## Business Registration Data

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Almost all companies must be registered to do business in at least one country. It may be useful to search for the registration documents to compare them with what the applicant submitted.

### GENERAL INFORMATION

If the country in which the company (or parent company) is registered is known, start with Wikipedia's list of national company registries:

**[https://en.wikipedia.org/wiki/List\\_of\\_company\\_registers](https://en.wikipedia.org/wiki/List_of_company_registers).**

The list is organized by country, contains lists of government agencies, and specifies the language in which records are kept. Next, conduct further research to look for evidence of business registration and ownership.

### COMPANY REGISTRIES

Many company registries are available, some at no charge and some for a fee. The best registry to use will depend on where the company was incorporated. Two compilations of company registries follow. They are separated by jurisdiction to make locating the proper company registry easier. A quick check of an official online registry may confirm the existence of the company in the searched jurisdiction.

**Open Corporates, <https://opencorporates.com/>**

Open Corporates is a respected site providing data on private companies, including primary public sources from 105 jurisdictions and some 85 million companies. The data are searchable by company name, country, and directors.

**Canton St. Gallen Commercial Register, Company registration around the world, <http://www.commercial-register.sg.ch/home/worldwide.html>**

This site provides a list of countries and the links to their company registries online. If the place of incorporation for the company is known, this site could be useful in reaching the correct online registry to obtain information. The amount of information available to the public and the price of the information depend on the country.

## **EXAMPLES OF SPECIFIC COUNTRY REGISTRIES**

**UK: Companies House, <http://www.companies.house.gov.uk>; Overseas registries, as of December 11, 2017, <https://www.gov.uk/government/publications/overseas-registries/overseas-registries>**

The U.K.'s Companies House incorporates and dissolves limited companies, registers the information companies are legally required to supply, and makes that information available to the public. Companies House is a UK executive agency, sponsored by the Department for Business, Energy, and Industrial Strategy.

**Dubai: Dubai International Financial Centre, Public Register, 2016, <https://www.difc.ae/public-register>**

This registry contains the company information of all companies listed at the Dubai International Financial Center, including financial institutions, designed nonfinancial businesses and professions (DNFBPs), and exempt companies. The registry does not require registration or payment to access the business information of a company. It provides the address of the company, its business activities, registration number and status of registration, type of entity, and names of company directors, shareholders, and secretaries, among other things.

# Glossary

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**Basel Committee on Banking Supervision** The Basel Committee on Banking Supervision, composed of banking supervisory authorities, was established in 1975 by the Bank for International Settlements (BIS). It provides a forum for cooperation on banking supervisory matters, and in 2006 it published the “Basel Core Principles for Effective Banking Supervision.”

**beneficial owner** The natural person who ultimately owns or controls the corporate vehicle or benefits from its assets, or the person on whose behalf a transaction is being conducted, or both. The term also encompasses those persons who exercise ultimate effective control over a legal person or arrangement.

**conflict of interest** A situation that arises when a person who has discretion or responsibility for making a decision profits personally or otherwise from the exercise of that discretion in making that decision.

**corporation** An artificial person or legal entity created by or under the authority of the laws of a state or nation. It is composed, in some rare instances, of a single person and his successors, but ordinarily consists of an association of numerous individuals who subsist as a body politic under a special denomination. It is regarded in law as having a personality and existence distinct from that of its several members, and it is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years. It acts as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law.

**Extractive Industries Transparency Initiative (EITI)** A global standard to promote open and accountable management of natural resources. The standard addresses the issues of governance in the oil, gas, and mining sectors. It seeks to increase transparency in these industries by requiring countries to report and publish information on the domestic operation of these sectors. The EITI standard covers licenses, beneficial ownership, state-owned enterprises, exploration and production, and revenue collection.

**Financial Action Task Force (FATF)** An intergovernmental body established in 1989 to set standards and promote effective implementation of legal,

regulatory, and operational measures for combating money laundering, terrorist financing, and corruption. The FATF has developed a series of recommendations that form the international standard for maintaining the integrity of the international financial system. It includes a monitoring mechanism to promote the adoption of the recommendations and their successful implementation.

**foundation** A legal entity that consists of a property that has been transferred into it to serve a particular purpose and has no owners or shareholders. Foundations are ordinarily managed by a board of directors under the terms of a foundation document or constitution. Some jurisdictions restrict foundations to public purposes (public foundations); other jurisdictions allow foundations to be established to fulfill private purposes (private foundations). Common law jurisdictions generally permit the formation of companies limited by guarantee (essentially equivalent to a civil law foundation), but regulated by company law. Some of these jurisdictions also permit companies to be limited by guarantee and have shares (hybrid companies). A hybrid functions as a foundation, but it issues shares like a company.

**legal owner** The natural person, legal entity, or combination of both recognized by law as the owner of a corporate vehicle.

**legal person** Bodies corporate, foundations, anstalts, partnerships, associations, or any similar bodies that establish a permanent customer relationship with a financial institution or otherwise own property.

**natural person** An individual person, as compared with a legal entity (also called a legal person).

**partnership** An association of two or more individuals or entities formed for the purpose of carrying out a business activity. In contrast to corporations, traditional partnerships are entities in which at least one partner (in the case of limited partnerships) or all partners (in the case of general partnerships) have unlimited liability for the obligations of the partnership. In a limited partnership, the limited partners enjoy limited liability, provided they do not participate actively in management decisions or bind the partnership. In recent years, certain jurisdictions have introduced limited liability partnerships whereby all partners, regardless of the extent of their involvement in the management of the partnership, have limited liability. For tax purposes, partnerships are deemed to be flow-through vehicles that permit profits and losses to be allocated to and taxed at the partner level.

**person of influence (POI)** In this manual, a person who has an impact or shapes the actions and behaviors of those around him or her. Specifically, this manual refers to those people in a country who may have the ability to use this influence for their own personal gain or the gain of those close to them.

**politically exposed person (PEP)** A person who is or has been entrusted with a prominent public function—for example, a head of state or government; a senior politician; a senior government, judicial, or military official; a senior executive of a state-owned corporation; or an important party official. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. This definition is not intended to cover midranking or more junior individuals in the foregoing categories.

**shell company** A company that has no independent operations, significant assets, ongoing business activities, or employees. Shell companies are not illegal and may have legitimate business purposes.

**trust** A vehicle that provides for the separation of legal ownership from beneficial ownership. It is an arrangement whereby property (including real, tangible, or intangible) is managed by one person for the benefit of others. A trust is created by one or more settlors who entrust property to the trustee or trustees. The trustees hold legal title to the trust property, but they are obliged to hold the property for the benefit of the beneficiaries (usually specified by the settlors who hold what is termed equitable title). The trustees owe a fiduciary duty to the beneficiaries, who are the beneficial owners of the trust property. The trust is not, of itself, an entity having a legal personality. Any transactions undertaken by the trust are undertaken in the name of the trustees. Although the trustees are the legal owners, the trust property constitutes a separate fund that does not form part of the trustees' personal estates. Thus, neither the personal assets nor the personal liabilities of the trustees attach to the trust, and the trust assets are accordingly insulated from any personal creditors of the trustees.

**ultimate beneficial owner** The ultimate natural person controlling or owning an entity.

ECO-AUDIT

*Environmental Benefits Statement*

The World Bank Group is committed to reducing its environmental footprint. In support of this commitment, we leverage electronic publishing options and print-on-demand technology, which is located in regional hubs worldwide. Together, these initiatives enable print runs to be lowered and shipping distances decreased, resulting in reduced paper consumption, chemical use, greenhouse gas emissions, and waste.

We follow the recommended standards for paper use set by the Green Press Initiative. The majority of our books are printed on Forest Stewardship Council (FSC)–certified paper, with nearly all containing 50–100 percent recycled content. The recycled fiber in our book paper is either unbleached or bleached using totally chlorine-free (TCF), processed chlorine-free (PCF), or enhanced elemental chlorine-free (EECF) processes.

More information about the Bank’s environmental philosophy can be found at <http://www.worldbank.org/corporateresponsibility>.



*Time and again, the EITI's experience supporting good governance in resource-rich countries has shown the importance of "getting it right" along all stages of the extractive industry value chain. Ensuring that licenses are awarded in a transparent and responsible manner is a crucial first step where additional guidance is sorely needed. With its emphasis on beneficial ownership disclosure and step-by-step guidance, this manual is a welcome tool for anyone working towards better governance in the extractive industries.*

**Jonas Moberg**  
Executive Director, EITI

*The allocation of licenses in the extractives sector is a foundational determinant of whether citizens will benefit from natural resources or not. This manual is a very important contribution to innovative efforts aimed at improving transparency and reducing corruption during this critical stage of the natural resources decision-making chain.*

**Daniel Kaufmann, President and  
Chief Executive Officer**  
Natural Resource Governance Institute

*Serious corruption risks arise when there are inadequate mechanisms for investigating and disclosing the ownership and character of license applicants. This comprehensive manual is a valuable and practical resource that will help all of us working in resource-rich countries to address risks related to conflicts of interest, hidden beneficial ownership, weak integrity checks, and lack of due diligence. What's at stake is significant: the transparency and accountability of a country's mining sector licensing regime.*

**Delia Ferreira Rubio**  
Chair, Transparency International Board

*A very crucial building block to embedding the culture of transparency and good governance in licensing in the extractives sector. Countries should propagate within extractives licensing laws an obligation that officials publicly disclose beneficial ownership of licensees in extractive sectors. The lack of such transparency increases risks of corruption.*

**Modibo Traore**  
Officer-In-Charge, African Natural Resources Center,  
African Development Bank

*This manual provides detailed and thorough guidance for mitigating corruption risks in a highly vulnerable yet critical stage of the extractives value chain: licensing. This stage plays a large and important role in determining the nature and scope of benefits that citizens will derive from extraction. Too often, licensing has been shrouded in secrecy, allowing individuals to privately benefit at the expense of achieving positive resource-based development gains. The easily accessible knowledge contained in this manual will help governments and other key stakeholders to ensure the integrity of the licensing process.*

**Kendra Dupuy**  
PhD, Senior Advisor, Natural Resource Management,  
U4 Anti-Corruption Resource Center

*The extractive industry is one of the critical revenue generating sectors of the economy, especially in West Africa. This World Bank manual contains useful measures to beam a piercing searchlight to prevent criminals from reaping what they do not sow, in a sector where transparency and accountability are sorely lacking. It is a valuable tool for improving governance and accountability in extractive sectors in the West Africa region and beyond. Criminals do not deserve our pity, their victims do!*

**Muazu Umaru**  
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ISBN 978-1-4648-1271-2



SKU 211271