

RECOMMENDATIONS

On solutions of certain issues identified during the process of disclosure of beneficial owners of mining companies

As a result of the implementation of obligations undertaken by the Republic of Armenia in the frameworks of the Extractive Industries Transparency Initiative,¹ data pertaining to beneficial owners of mining companies have for now been released in a PDF format.

The present document outlines issues identified in result of the review of declarations of beneficial ownership of companies exploiting and exploring metal mines as well as offers a number of legislative recommendations as solutions to said issues:

- Of the 26 companies with mining permits, all 10 closed joint-stock companies (CJSC) and 11² out of 16 companies with limited liability (LLC) have submitted declarations of beneficial ownership. The declarations of the following 5 companies with mining permits are not available on the web site: Fortune Resources LLC, Vayk Gold LLC, Marjan Mining Company LLC, Baktek Eco LLC, and Mego-Gold LLC.³
- Of the 13 companies (total 14 permits) with mining exploration permits, only 4 have submitted declarations.⁴
- Since 2018, when Armenia joined the EITI, changes of beneficial owners and management have been recorded in a number of companies (Akhtala Mountain Enrichment Combine CJSC, Zangezour Copper and Molybdenum Combine (ZCMC) CJSC, “Ler-Ex” LLC, “Teghut” CJSC, “Chaarat Kapan” CJSC, “At-Metals” LLC, “Lichkvaz” CJS, “Tatstone” LLC).⁵
- Significant changes have occurred to the list of owners of Armenia’s largest mining company – the ZCMC – with the company having bought back 62.5% of its stocks, which is subject to allocation within a year or redemption, as required by law.⁶
- A number of companies (Agarak Copper-Molybdenum Mine Complex CJSC, “Teghut” CJSC, “Chaarat Kapan” CJSC, “Tatstone” LLC, as well as all 5 companies interconnected with owners of GeoProMining CJSC) have a very complicated structure with the involvement of multiple intermediary legal entities.
- The beneficial owners of five different companies (Agarak Copper-Molybdenum Mine Complex CJSC, “Sagamar” CJSC, Paramount Gold Mining CJSC, and “Molibdeni Ashkhar” LLC) are basically the same people.

¹ Extractive Industries Transparency Initiative, www.eiti.am

² “Hrashk Metagh LLC” is noted in the EITI report as the 17th company with a mining permit, however its mining contract has been terminated: <http://www.mtad.am/hy/mtad13.02.3>:

³ Web page of the RA Ministry of Territorial Administration and Infrastructure: www.mtad.am/hy/mtad27.12:

⁴ Ibid www.mtad.am/hy/mtad27.12.2. There is no information available about sanctions warranted against companies failing to submit declarations.

⁵ It should be noted that related official open sources sometimes present varying data. For example, the “Program bulletin” available on the ZCMC web site and the [web site](#) of Ameria Bank, which has allocated the bonds issued by ZCMC, do not include updated data.

⁶ RA Law on “Joint-Stock Companies,” paragraph 7, article 58

- Direct shareholders or intermediary legal entities of a number of companies (“Teghut” CJSC, “Chaarat Kapan” CJSC, “Tatstone” LLC) are registered in offshore zones, including Cyprus, Isle of Man, Bermuda Islands, Virgin Islands, etc.⁷
- Data of beneficial owners of a number of companies (ZCMC, Lydian Armenia CJSC,⁸ “Chaarat Kapan” CJSC) have not been fully disclosed despite being submitted to the extent required by Armenian legislation.
- Data of some companies (“Teghut” CJSC, “Molibdeni Ashkhar” LLC, “Ler-Ex” LLC) is not complete. Particularly, in the case of Teghut, there is no information on where the intermediary legal entity is listed and dates of acquisition of shares. “Molibdeni Ashkhar” LLC is presented as a company with international participation although its shareholder is a registered company. The 100% shareholder of “Ler-Ex” LLC – the Zangezur Copper and Molybdenum Combine CJSC – is listed in the Armenia Securities Exchange (AMX),⁹ however, this information is missing from the declaration of “Ler-Ex” LLC.
- The declarations of some companies (“Aktiv lernagorts” LLC, “Meghradzor Gold” LLC, “Gharagyulyanner” CJSC, Akhtala Mountain Enrichment Combine CJSC, Paramount Gold Mining CJSC) are partially or entirely handwritten.

Overall, it can be concluded that the outcomes and process of disclosure of beneficial owners is inadequate mainly due to the lack of implementation of regulations and insufficient readiness of the electronic system of declarations and also sometimes due to the inadequate enforcement of requirements. A number of mining companies have displayed a careless and irresponsible attitude to filling out declarations, while others have utilized legal loopholes to the maximum extent in order to hide the beneficial owners and/or have made changes to them with such haste that arouses suspicion. Judging from the very first attempt of disclosure of beneficial owners, ensuring the reliability of submitted data is going to be a very serious problem.

According to point 2 of article 10 of the Armenian constitution, “The subsoil and water resources shall fall under the exclusive ownership of the State.” Thus, the ownership of companies exploiting it should be as transparent and complete as possible for both the state and the public.

It is important to note that companies all over the world usually form complicated structures in order to hide or launder money acquired in illicit ways, cover individuals engaged in criminal activities as well as potential foreign interests. The fact that data on beneficial owners of companies or intermediary entities is inaccessible can lead to serious risks related to national security. Thus, it is of utmost significance and urgent to improve law-enforcement practice and legislation related to the disclosure of data on beneficial owners.

⁷ [RA Government Decree N 595-N of June 1, 2017 on “Approving the list of offshore zones \(countries\).”](#)

⁸ Lydian Armenia CJSC has not mentioned anything in its declaration about being listed, probably due to the fact that at the moment of submitting the declaration it had not yet been listed. Although it was listed in the Toronto Securities Exchange during the reporting year (2019).

⁹ <https://amx.am/am/18/listing/23/issuers/24/issuer-documents?issuer=299&year=2020>

Legislative issues identified during the process along with recommendations for their solutions are presented below:

1. Concept definition

On November 13 2019, point 4.1 of paragraph 1 of article 3 of the Mining Code of the Republic of Armenia was amended by a new paragraph, according to which "...physical entities who are members of the given company's single-person and collegial bodies (Board of Shareholders...) are also considered beneficial owners..." This approach contradicts the philosophy of beneficial ownership as well as the definition given by the Republic of Armenia Law on "The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors." The notions of "the head of the executive body" and "board member" noted in the Mining Code are given a status equal to that of a beneficial owner, which is wrong in principle. Chief executive officers and board members of companies required to submit declarations can at the same time be also shareholders or comply with the legally defined concept of a "beneficial owner" in another way, however, the form for the declaration of beneficial owners already resolves this issue. In this case, based on point 9.7 of the declaration, such physical entities shall be declared as members of the governing body of the company or head of the executive body, while under point 9.1, they shall present additional details in relation to the given status.

According to subpoint c) of point 26 ("26) affiliated physical and legal entities") of paragraph 1 of the section on "main concepts" in article 3 of the Republic of Armenia Mining Code, an affiliated physical or legal entity can be "the chairman of the board of the given legal entity, deputy head of the board, board member, executive director, his/her deputy, administration chair, administration member or chairman of the supervising committee, member of supervising committee or member of other governing bodies." At the same time, according to the Law on "Public Service", "occupying a position in a commercial organization" (article 31, paragraph 6) is seen as a requirement of incompatibility for public servants and persons occupying public positions, which sets the following condition for occupying a post in a commercial organization: "any form of involvement by a person occupying a public position in the implementation of representative, administrative or governing functions of the commercial organization." The scope of affiliated persons needs to be clarified so that, in relation to public servants and persons occupying public positions, the Corruption Prevention Commission is able to identify the involvement of politically exposed persons (PEP's) in governing functions of companies and to verify the information regarding violations of the requirement related to the incompatibility with the position.

Recommendation

Point 4.1 of article 3 of the Mining Code should be rephrased in a way that the board or the head of the executive body are not necessarily considered beneficial owners.

The legislation should be harmonized in order to have the same definition of PEP's. Particularly, it is recommended to replace the words “or member of other governing bodies” under subpoint c) of point 26 of article 3 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors” with the following words: “being involved in any form in the implementation of representative, executive/կարգադրիչ or governing functions of the commercial organization.”

2. Exempt to declare

According to point 23 of article 26 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” the requirement for disclosure of beneficial owners foreseen by the given article does not refer to legal entities who are reporting issuers as per the Law on “the Securities Market.”

According to the RA Law on Securities Market, “a reporting issuer is an issuer, securities of any class of which are admitted to trading on the regulated market in the territory of the Republic of Armenia.” In other words, legal requirements for the disclosure of beneficial owners of legal entities do not refer to companies listed in Armenia Securities Exchange (AMX). According to the declarations, only certain amounts of bonds of ZCMC are listed in Armenia, while a number of other companies (Teghut CJSC, “Chaarat Kapan” CJSC) included data in their declarations purporting that companies with indirect participation in their authorized capital are listed in securities exchanges of different countries, hence on these grounds no disclosure of beneficial owners of those companies have been made. The declaration of Lydian Armenia CJSC does not include anything, probably due to the fact that at the time of submitting the declaration it was not listed in the securities exchange. However, it was list by the end of the reporting period – on December 31, 2019. As a result, none of these companies has disclosed their beneficial owners.

Exemption from disclosing beneficial owners for companies listed in the securities exchange is clearly not grounded and is very problematic.

Firstly, according to the RA Law on “Securities Market,” securities are considered stocks, owners of which, in accordance with the share belonging to them, manage the property of the given company, but also bonds, which, according to article 40 of the RA Law on “Joint-Stock Companies,” are temporary securities subject to future redemption and do not imply right of ownership towards the company. Those acquiring bonds may not be considered beneficial owners of the given company, whereas, ostensibly, due to the exemption foreseen by the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” they can only acquire the status of a “reporting issuer” through listing their bonds in the securities exchange and thus be relieved of the obligation to disclose beneficial owners possessing stocks. This is the kind of loophole that was used by ZCMC, which, by listing in the Armenia Securities Exchange a certain amount of bonds subject to redemption on September 30, 2022 – it was considered a “reporting issuer.”

Secondly, the mentioned provision has been imported into the Armenian legislation probably taking into account the legal regulations for companies listed in international securities exchange and partially based on the premise that companies are considered to be somewhat transparent and reliable due to the fact that their shareholders are listed. However, observations show that even information on shareholders represented in serious foreign securities exchange are very insufficient and cannot ensure reliability.

Recommendation

It is necessary to make a change to point 23 of article 26 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” and get rid of the reference to the RA Law on “Securities Market.”

Following the same logic, it is necessary to rephrase point 5.1 of section A of Annex 1 of the declaration of beneficial ownership approved by the February 05, 2020 Order №36-N of the Minister of Justice on “Approving the form of declaration of beneficial ownership, order of submission and filling out” by removing the reference to the Law on “Securities Market.”

It is recommended to establish declaration exemptions only for companies with stocks in credible securities exchanges and only for the amount of listed stocks. The list of credible securities exchanges should be defined either by the RA Government or the Central Bank.

3. Structure and scope of ownership

The review of declarations of beneficial owners of companies exploiting metal mines has revealed that the submitted data does not outline a complete or a nearly complete picture of the companies' ownership. The comparison of incoherent data in the declarations sometimes leads to a very complicated and confusing picture that is tangled by a list of companies with indirect participation. Companies often do not present the interconnections between their subsidiary and dependent companies or the fact of holding shares in each other's authorized capital. The same issue persists in the case of limited liability companies (LLC's) which, despite having no shareholders due to their legal structure, can, however, acquire stocks in joint-stock companies or other companies can hold shares of the LLC's. Investigative journalism related to beneficial owners of certain mines sometimes reveals a picture significantly varying from what was officially declared. It is obvious that certain legal gaps allow for abuses to take place.

The inclusion of “meeting of shareholders” in the definition of beneficial owners by the amendment to point 4.1 of paragraph 1 of article 3 of the RA Mining Code, adopted on November 13, 2019, seems positive in itself, since it implies the disclosure of at least first level of shareholders, however, in practice it has led to a confusion of definitions and an arbitrary enforcement.

According to the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” only physical entities may be considered beneficial owners, whereas according to articles 106 through 116 of the RA Civil Code, as well as the RA Law on “Joint-Stock Companies,” both physical and legal entities may be shareholders. According to articles 37 and 38 of the RA Law on “Joint-Stock Companies,” all shareholders of a company have the right to participate in the meeting of shareholders and possess the right to take part in the decision-making with a vote equivalent to their share. Although there is no apparent controversy in the above-mentioned provisions, this definition has caused a misinterpretation and a legal gap that has been circumvented. The ZCMC has declared names of four intermediary companies that are members of the meeting of shareholders, the beneficial owners of which possess a total of 37.5% of ZCMC stocks. However, they cannot be considered beneficial owners based on the grounds that they are not physical entities. Instead, information on shares held by persons that are considered direct beneficial owners has not been declared.

It is worth noting that declaration based on a minimum of 10% participation as per point 23 of paragraph 1 of article 3 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors” does not make it possible to disclose individuals who hold lower but significant amounts of shares, which is particularly important in the case of public resource. The provision also enables disguising beneficial ownership through fake shareholders. Armenia’s first attempt at disclosure of beneficial owners has already showcased the fact that this threshold is problematic and it should be lowered.

One of the main objections to establishing a low threshold of shares subject to disclosure of beneficial ownership is that companies will be forced to submit data of a large number of persons, which may become a rather large burden for them. In this regard, it should be noted that the number of beneficial owners presented in the declarations of mining companies is 8 (physical entities). Another grounds for objection is that the declaration of shares listed in securities exchange markets is not realistic while considering the dynamics of trading. Obviously, this is an issue to be dealt with on an international level. However, a certain reasonable scope should be defined, in the framework of which their disclosure will be deemed realistic.

Recommendation

The RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” should be amended by a requirement, according to which, both joint-stock companies and LLC’s, along with the declarations of their beneficial owners, submit the complete structure plan of their shareholders and share participation that will reflect the participation of legal entities of all levels, as well as that of physical entities. If a complicated structure is submitted,

the company shall submit a written clarification, as requested by the relevant authority, detailing the justification of the structure.¹⁰

Exemptions from the requirement for the declaration of beneficial owners must be very limited and substantiated. At least in the case of companies exploiting public resources (minerals) there should be maximum transparency as to who are the beneficial owners.

In this regard, it is recommended to allow exemptions from disclosure of beneficial owners only for the following entities: 1. Legal and physical entities utilizing public resources with less than 1% share participation, and 2. Legal entities listed in Armenian regulated markets of securities and in international securities exchange markets defined by a decree of the RA Government or Central Bank but only in relation to the amount of stocks listed.

4. Availability of data

State registration of beneficial owners of legal entities in the Republic of Armenia is done by the agency of state register of legal entities in accordance with the Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” despite the fact that according to article 40 of said law, only information related to participants in LLC’s is subject to registration by the state register. The agency does not have a register of joint-stock companies and does not possess information related to them.

Article 26 and article 40 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors” define regulations on LLC’s, according to which, in the case of registration of LLC’s or alienation of any shares state registration of that activity has to take place. If a foreign organization becomes a shareholder in the LLC, then data on companies affiliated with the latter along with its beneficial owners are no longer recorded in the State Register of the Republic of Armenia if their share participation is less than 10%.

According to article 6 of the aforementioned law, information on LLC’s maintained in the State Register are public, with the exception of passport details, social security number and residence addresses of physical entities. According to a legal amendment to the aforementioned law adopted on March 6, 2020, the noted information is acquired upon payment of 3,000 AMD for each company. It is, however, available for free only to the media, which severally circumscribes the accessibility of data for research and public oversight.

State registration of joint-stock companies is done in accordance with the Law on “Joint-Stock Companies,” articles 51 through 53 of which regulate the basis and order of maintenance of the register of shareholders. A register of shareholders is maintained by account operators (banks, investment companies) for joint-stock companies – the Central Depository of Armenia. These operators open deposit accounts that reflect data of physical and legal entities that are

¹⁰ Such a practice can be introduced taking into account the experience in relation to tax due diligence of companies conducted by international financing organizations (i.e. EBRD) where it is clearly explained why such a complicated structure has been defined or whether or not taxation privileges are received, etc.

shareholders in joint-stock companies, including transactions related to real beneficiaries, alienation of securities (stocks) owned by them.¹¹ Organizations registered in Armenia as well as those registered outside of Armenia have deposit accounts when they acquire stocks in a joint-stock company registered in Armenia. As required by point 14 of paragraph 1 of article 3 of the RA Law on “Combatting Money Laundering and Terrorism Financing,” when opening a deposit account, legal and physical entities must disclose “real beneficiaries,” which include physical and legal entities possessing 20% and more stocks, subjects holding 20% and more of their authorized capital and so on. Data of shareholders with less than 20% stocks/shares are not required by the deposit account operators. Issues related to political exposure or incompatibility of positions are not subject to considered on the domestic level, while mechanisms for the disclosure of PEP’s on the international level are not effective.

Article 199 of the RA Law on “Securities Market” states the following: “The Central Depository, the bodies thereof, the executive officers and employees thereof shall be obliged to maintain and not to make the information, which they have obtained in relation to fulfillment of their official responsibilities or cooperation with the Central Bank, available to third parties, if it is not subject to publication or provision to other persons, pursuant to the law, other legal acts or rules of the Central Depository.”

This means that the information of joint-stock companies is not subject to transfer by the Central Depository to the State Register of Legal Entities, and information on beneficial owners are submitted to the State Register of Legal Entities by the companies themselves. According to paragraph 22 of article 26 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” both joint-stock companies and LLC’s must submit data on their beneficial owners as well as changes thereof to the State Register within 40 days.

Recommendation

Amendments should be made to the RA Law on “Securities Market,” as well as in the decrees of the Board of the Central Bank of Armenia regulating legal relations pertaining to the Central Depository, which would make it possible to provide to the State Register of Legal Entities as well as per inquiries of RA citizens data maintained in the Central Depository about beneficial owners of joint-stock companies that is missing from the State Register. Specifically, information on the ownership of joint-stock companies from all previous years should become accessible based on the right of freedom of information.

Information maintained in the State Register of Legal Entities should be made available for the public in its entirety and free of charge based on the format of open data and open source.

¹¹ [Decision of the Board of the Central Bank of the Republic of Armenia on “Approving Securities Activities” Regulation 33](#)

5. Oversight and liability

As noted above, some declarations are found to be missing required information. In one case the securities exchange where the intermediary legal entity is listed is not mentioned along with the date of acquisition of stocks, while in another case the fact of being listed in a securities exchange is missing, etc. According to article 5 of the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors,” the agency for the State Register Agency generally does not carry out verification of submitted data. Organizations providing depository services also do not adequately check data of persons with less than 20% shares of joint-stock companies since there is no such legal requirement. This means that ensuring the validity of data submitted in the frameworks of the institution of beneficial ownership basically depends on the responsibility and good will of companies submitting the data, the culture for which, unfortunately, is not yet ingrained in Armenian culture. There is not a single guarantee ensuring the validity of submitted data which makes the introduction of the entire institution of beneficial ownership questionable.

Armenian legislation does not foresee any administrative or criminal liability for submitting outdated, false or incomplete data in the declaration for beneficial owners, which does not ensure the enforcement of stipulated requirements.

The Mining Code foresees some liability for mining companies. Specifically, according to article 30 of the Code, the company can receive a written warning if it does not submit information on beneficial owners or changes thereof within a predefined time period or the data submitted is false or incomplete. Failing to eliminate the grounds of the warning in a predefined period leads to the suspending of the mining permit for 120 days. If upon receiving the notice for warning or suspension within not more than 90 days or until the date of expiry of the suspension period defined by the relevant authority the company does not eliminate the noted grounds, the mining permit is then terminated.

Recommendation

If the required fields are not filled out, the electronic system should not accept the declarations.

In addition, it is also essential that the RA Law on “The state registration of legal entities, state registry of separate subdivisions of legal entities, enterprises and sole proprietors” foresees a position or a subdivision responsible for ensuring the wholeness and validity of declarations.

A mechanism for the review/verification of declared data should be established to carry out sample reviews, including through the consideration of risk factors and findings of investigative journalism.

In this regard, there is a need to strengthen the technical and information capacities of the State Register and implement capacity development of staff.

Amendments should be made to the RA Code of Administrative Offences to establish liability for failing to submit a declaration of beneficial owners or submitting false or incomplete information.

Companies that have failed to submit information on their beneficial owners are to revise their declarations within a short time frame and announce their beneficial owners.

It is necessary to apply the sanctions foreseen by the RA Mining Code against mining companies that fail to submit data or submit false information instead.

Civil Society Constituency of EITI MSG

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