

1 **PH-EITI 32nd MSG MEETING**
2 **9:00 AM- 12:00 PM | April 8, 2016**
3 **Waling-Waling Room, Orchid Garden Suites**
4 **Pablo Ocampo Street, Manila**
5
6

7 **Attendees:**
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9	Asst. Sec. Ma. Teresa S. Habitan	Department of Finance (DOF)
10	Charmaine Bagacay	DOF
11	Engr. Romualdo D. Aguilos	Mines and Geosciences Bureau—Department of 12 Environment and Natural Resources (MGB-DENR)
13	Analynsia C. Alarde	Bureau of Internal Revenue (BIR)
14	Dir. Anna Liza F. Bonagua	Department of the Interior of Local Government (DILG)
15	Ronald Allan A. Barnacha	Philippine Rural Reconstruction Movement (PRRM)/ 16 North Luzon
17	Prof. Maria Aurora Teresita W. Tabada	Visayas State University
18	Dr. Merian C. Mani	Romblon Ecumenical Forum Against Mining (REFAM)/ 19 Romblon State University
20	Starjoan D. Villanueva	Alternate Forum for Research in Mindanao (AFRIM)
21	Chadwick G. Llanos	Cebu Alliance for Safe and Sustainable Development 22 (CASSE)
23	Jay L. Batongbacal	UP College of Law
24	Gerard H. Brimo	Nickel Asia Corporation (NAC)/ Chamber of Mines of the 25 Philippines (COMP)
26	Nelia C. Halcon	COMP
27	Ronald S. Recidoro	COMP
28	Sebastian C. Quiniones Jr.	Petroleum Association of the Philippines (PAP)/ Shell 29 Exploration BV
30	Atty. Maria Karla L. Espinosa	Secretariat
31	Abigail D. Ocate	Secretariat
32	Mary Ann D. Rodolfo	Secretariat
33	Angelita P. Galano	Secretariat
34	Roselyn A. Salagan	Secretariat
35	Joylin A. Saquing	Secretariat
36	Marikit J. Soliman	Secretariat
37	Ryan A. Dael	Secretariat
38	Denise M. Domingo	Secretariat
39	Rhea Mae G. Bagacay	Secretariat
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1 AGENDA:

- 2 • Minutes of the 30th and 31st MSG meetings
- 3 • Matters arising from previous MSG meetings
- 4 • 2016 Work Plan
- 5 • Terms of Reference for the Independent Administrator
- 6 • Terms of Reference for the contextual information consultant
- 7 • Roadmap on beneficial ownership (a new requirement of the 2016 EITI Standard)
- 8 • 2015 report analysis workshop
- 9 • Report from the TWG on LGC amendments: Proposed scope of study
- 10 • PH-EITI Validation: Guide, Updates
- 11 • Industry presentation: Computation of industry income and government take in it
- 12 • Other matters

13

14

15 **1. Call to Order**

16

17 1.1. The Philippine Extractive Industries Transparency Initiative (PH-EITI) Multi-Stakeholder Group (MSG)
18 meeting was called to order at 9:05 AM.

19

20 1.2. The proposed agenda was presented and subsequently approved by the body.

21

22 **2. Minutes of the 30th and 31st MSG meetings**

23

24 2.1. The Secretariat circulated the minutes of the 30th and 31st MSG Meeting minutes a day before the
25 32nd MSG Meeting. As such, the Chair said that the minutes may be reviewed and commented on by
26 the MSG for a week.

27

28 **3. Matters arising from previous MSG meetings**

29

30 3.1. *Offer of Timor Leste to conduct a training for the PH-EITI MSG on the Petroleum Fund process:* The
31 Secretariat mentioned removing this topic from "Matters Arising" as discussed during the previous MSG
32 meeting. However, there was a suggestion for the industry representative to draft a concept note for
33 discussion of the MSG.

34

35 3.2. The Secretariat shared that best practices for the Sovereign Wealth Fund that can be considered for
36 literature review are from European countries such as Norway.

37

38 3.3. A Civil Society Organization (CSO) representative also shared that Natural Governance Resource
39 Institute (NRGI) has a complete module and review of the literature on Sovereign Wealth Fund. If the
40 Secretariat would conduct a training regarding this matter, it was suggested to invite NRGI, instead of
41 Timor Leste. It was also suggested that before proceeding with the training, a scoping study should be

1 done on the Philippine context of Sovereign Wealth Fund, as there is a possibility that Local Government
2 Units (LGUs) are also setting up their own funds. After which a training may be conducted and target
3 other stakeholders.

4
5 3.4. The Chair moved that the legal framework be reviewed for setting up a trust fund for both the
6 national government and LGUs. After the review, identifying the target participants and coordinating
7 with NRGI to conduct the training will follow.

8
9 3.5. *Secretariat Institutionalization:* The Chair shared that the Department of Finance (DOF) is preparing
10 a rationalization plan, which includes making PH-EITI an organic office under DOF. A CSO representative
11 inquired if EITI needs to be institutionalized through a law once PH-EITI becomes an organic office under
12 DOF. The Chair responded that PH-EITI institutionalization in the DOF is one thing; the scope of its
13 mandate and powers, which may be provided in the bill, is another.

14
15 3.6. *Draft EITI bill:* The Secretariat reminded the body that the Technical Working Group (TWG) needs to
16 reconvene and prepare another draft EITI Bill to be circulated to the MSG. It was reiterated that the
17 MSG needs to decide if a consultant would still be hired to draft the EITI Bill. In preparation for the TWG
18 meeting, the Secretariat will send out invitations to the members of the TWG.

19
20 3.7. *Selection process for MSG members:* The Secretariat shared that the approval of the selection
21 process for government is still pending. The Mines and Geosciences Bureau (MGB) and the Department
22 of Energy (DOE) still had not commented on or approved the government selection process. The MGB
23 representative said that it is still for review and approval of the MGB Director.

24
25 3.8. A government representative asked why there is a need for a selection process for the government
26 when they were already appointed by the Mining Industry Coordinating Council (MICC) through
27 Executive Order (EO) No. 147. The Secretariat recalled the content of the guidelines on the selection
28 process for government, noting that there are matters specified there that are not covered by EO 147,
29 such as the required seniority level of the representatives and provisions regarding holdover or interim
30 representation, especially in view of the coming elections. Nonetheless, it was pointed out that EO 147
31 gives the MICC the discretion to modify the government sector composition of the MSG.

32
33 3.9. A CSO representative commented that the international standard states that government
34 representatives should have a high-level position (e.g., Secretary, Undersecretary, or Assistant
35 Secretary), which limits the choices on who will attend. The next step to be taken is to identify which
36 government agencies should participate in the MSG. The process on how government agencies are
37 selected should also be considered.

38
39 3.10. *Board of Investments (BOI) and Bureau of Internal Revenue (BIR) Incentives:* The Secretariat
40 reminded the body that some BOI data was obtained from Congress through the work of the DOF on the
41 Tax Incentive Management and Transparency Act (TIMTA). This data refers to the document entitled
42 “Globalization and the Need for Reinforced Tax and Fiscal Incentives Policy” included in the kit, which is

1 the same document BOI submitted to Congress. It was recalled that BOI had earlier indicated that they
2 cannot share their data because of confidentiality provisions in the Omnibus Investments Code. It was
3 also mentioned that there was a request for legal opinion sent to BOI regarding the confidentiality
4 provision of the Omnibus Investments Code. However, there has been no feedback to date. The
5 Secretariat will follow up this matter. It was nevertheless pointed out that as far as the TIMTA is
6 concerned, BOI data will be available on a per sector and per tax type basis and not on a per company
7 basis.

8
9 3.11. *Proposed Amendment of the Local Government Code (LGC):* The Secretariat shared that the TWG
10 on LGC amendment convened last March 17, 2016. The TWG meeting agenda was to craft the Terms of
11 Reference (TOR) for the study proposed to be commissioned for the LGC amendment. Report on the
12 results of the TWG meeting is included in the kit for discussion as part of the main business.

13
14 3.12. *MGB regional directors should be convened:* The Secretariat informed the body on the possible
15 schedule of the next special meeting of MGB Regional Directors as mentioned during the previous MSG
16 meeting. The MGB representative clarified that the schedule of the next special meeting, referring to
17 the Expanded MGB Staff Meeting, will be moved to May 2016 after the election. An industry
18 representative proposed conducting the MSG meeting at the MGB Central Office so that MGB Director
19 Leo Jasareno would be able to participate.

20
21 3.13. A CSO representative suggested that the Regional Directors should be informed on the need to
22 bring to the meeting data and information from the MGB Regional Offices that are yet unavailable in the
23 MGB Central Office. The MSG should be furnished a copy of these data and information should be
24 turned over to the PH-EITI MSG. The same CSO representative also emphasized the need to conduct a
25 workshop and develop a reporting system for data collection and information sharing between MGB
26 Regional Offices and the MGB Central Office. The same CSO representative added that MGB Regional
27 Directors should be given an orientation on the subnational aspects of the PH-EITI report, which would
28 mostly pertain to the MGB Regional Offices. An industry representative suggested to start preparing the
29 program and venue and identifying the speakers for the workshop, assuming the MGB Directors will
30 meet with the PH-EITI MSG in May.

31
32 3.14. The MGB representative mentioned that the request for a one-hour presentation of PH-EITI to be
33 included in the agenda of the next Expanded MGB Staff Meeting has been raised during the last MGB
34 Management Conference in South Cotabato. The same representative clarified that the Expanded MGB
35 Staff Meeting is the activity PH-EITI MSG is targeting to participate in, since this activity is regularly held
36 in Metro Manila.

37
38 3.15. A CSO representative suggested for the Secretariat to review the budget to check the possibility of
39 hosting the Expanded MGB Staff Meeting after the election. The same CSO representative formally
40 asked the MGB representative to request MGB Director Leo Jasareno to issue a memorandum to all
41 MGB Directors to participate in the said meeting. The Secretariat will follow up the MGB representative

1 regarding the proposed hosting of Expanded MGB Staff Meeting in Metro Manila after the election,
2 particularly focusing on PH-EITI implementation.

3
4 3.16. *Engagement of Non-metallic Mining Associations:* The Secretariat reported that the pending item
5 is the list of non-metallic mining companies to be invited to participate in EITI and the proposed meeting
6 with said companies.

7
8 3.17. A CSO representative requested the industry sector to conduct an outreach with the Cement
9 Manufacturers Association of the Philippines (CEMAP) and conduct a briefing on EITI. An industry
10 representative responded that this outreach with CEMAP is possible and can be organized, but would
11 still need the support of PH-EITI Secretariat and representatives.

12
13 3.18. *LGU Roadshow:* The Secretariat mentioned that the PH-EITI 2016 Calendar of Activities will be
14 presented to the body, including the proposed schedule for the LGU roadshow. The Secretariat noted
15 that there was a proposal to compare the results of 2015 to 2016 roadshows to see if there have been
16 changes on LGU perceptions and issues.

17
18 The Secretariat added that this proposal is for further evaluation of the MSG since the LGU roadshow
19 documentation is already included in the 2nd Country Report. As reflected in the minutes of the previous
20 MSG Meeting, the Secretariat reminded the body to evaluate the LGU roadshow documentation in the
21 said Report and propose measures or actions based on this documentation.

22
23 3.19. A CSO representative proposed to have a special MSG meeting the agenda of which would include
24 discussion on the design of the LGU roadshow, so that all MSG members would be required to read the
25 2nd Country Report. Another CSO representative suggested coming up with a standard form for
26 evaluating the LGU roadshows, so that all MSG members would be on the same page.

27
28 3.20. *Updates on the process of downloading of LGU shares:* The Secretariat reported that this is still for
29 follow up with the Department of Budget and Management (DBM) and still pending.

30
31 3.21. The Chair asked who the DBM representative to PH-EITI is, since DBM Dir. Carmencita Delantar
32 had already retired. The Secretariat responded that DBM Dir. Ma. Soledad Doloiras replaced Dir.
33 Delantar and was invited to the TWG Meeting for LGC Amendment last March 17, but Dir. Doloiras did
34 not attend. The Secretariat added that DBM was also requested for comments but has not submitted
35 anything yet. The DBM did reply by e-mail and suggested inviting instead DBM Undersecretary Janet
36 Abuel who is in charge of policy.

37
38 3.22. The Secretariat will set a meeting of the Chair with DBM Undersecretary J. Abuel to discuss
39 updates on the downloading of shares in the national wealth.

40
41 3.23. The Secretariat mentioned that the next six items in the Matters Arising are all included in the
42 2016 Work Plan (approved in principle during the last MSG Meeting) and are for implementation. These

1 items are: Revenue Management at the Local Level, Online Reporting Tool, Report Analysis for the 2nd
2 Country Report, Communications Trainings, EITI Trainings for Media, and Measuring Public Awareness of
3 EITI.

4
5 3.24. *Engagement of Autonomous Region in Muslim Mindanao (ARMM)*: The Secretariat mentioned that
6 this has not been followed up but will be coordinated with ULAP soon.

7
8 3.25. A CSO representative suggested to meet with ULAP representatives after the election and schedule
9 a briefing and dialogue with the new ARMM officials. Another CSO representative suggested that the
10 communication be addressed to the Regional Governor of ARMM.

11
12 3.26. An industry representative raised a question on why ARMM's DENR is an independent entity if
13 there is one mining law implemented in the country, the Philippine Mining Act of 1995, which is
14 enforced by one national office, the DENR Central Office. A CSO representative responded that this
15 concern should be addressed to the national government, since this issue may involve different
16 interpretations on regional autonomy. The same representative added that if there are things that need
17 to be accomplished in ARMM, these should go through the Regional Governor of ARMM.

18
19 3.27. Another CSO representative shared an opinion from the Department of Justice (DOJ) saying that
20 ARMM is under DENR Central Office and concluding that all mining operations in ARMM are illegal. The
21 same CSO representative added that after the issuance of the DOJ opinion, the next step is for the DENR
22 Central Office to file a case against ARMM for a court to rule that mining operations in ARMM are illegal.
23 The problem is ARMM is insisting on their autonomy; hence, it is a struggle between ARMM and the
24 national government. The same CSO representative stressed that the DENR Central Office should stand
25 its ground.

26
27 3.28. The industry representative commented that the national government should resolve this before
28 PH-EITI engages ARMM. The CSO representative shared that another concern is that ARMM is issuing
29 licenses to mining companies in Tawi-tawi.

30
31 The industry representative responded that the national government should intervene and take control
32 of this issue. The same industry representative pointed out that the objective of PH-EITI is to push the
33 national government to do something about this issue, not to engage ARMM immediately, since this is a
34 national government problem.

35
36 3.29. The Chair emphasized that the engagement of ARMM cannot be immediately achieved. The Chair
37 reminded the body that the goal of PH-EITI is to make ARMM aware of what EITI is all about and for the
38 MSG to be aware of what is happening in ARMM. The Chair stressed that what PH-EITI can do is to ask
39 ARMM for information on licenses and mining companies operating in their area and ask these
40 companies if they wish to participate in EITI.

1 3.30. A CSO representative shared that ARMM has already started implementing transparency initiatives
2 and is complying with the seal of good housekeeping. The same representative added that ARMM is
3 disclosing certain information, including investments that have been approved and those that are
4 pending, which are available in the ARMM website. The body was invited to check the link on the
5 Regional Board of Investments where said information have been made available.

6
7 3.31. The same CSO representative also shared that they are coming up with a proposal to do a scoping
8 study on ARMM. The CSO representative suggested that if the issues and concerns of ARMM cannot be
9 dealt with through the formal process, then the informal approach by conducting dialogues with the
10 Regional Governor can be considered.

11
12 3.32. Another CSO representative suggested considering the LGU roadshow as one entry point to
13 conduct dialogues with ARMM. The same CSO representative shared that while the national
14 government and Mindanao government continue to try to come up with solutions, ARMM is receiving
15 external support and development assistance. PH-EITI can consider and take advantage of this trend as
16 an avenue to push ARMM towards transparency.

17 18 **4. 2016 Work Plan**

19
20 4.1. The Secretariat mentioned that there are two documents that need the MSG's final approval: the
21 TOR of the Independent Administrator (IA) and the 2016 Work Plan, both of which were approved in
22 principle during the last MSG meeting.

23
24 4.2. The Secretariat mentioned that changes in the 2016 Work Plan have been incorporated based on
25 initial inputs from the industry and results of the Secretariat planning workshop conducted on March 31
26 to April 1, which was limited to identifying and consolidating activities that were found redundant (the
27 presentation material is attached as Annex A).

28
29 4.3. The Secretariat shared that the main changes were made in the fifth objective of the 2016 Work
30 Plan based on the inputs of COMP and based on the work plan that has been approved in principle by
31 the body. The inputs from COMP proposed the inclusion of two activities for approval of the body.

32
33 4.4. The Secretariat shared modifications made to the paragraph on activities vis-a-vis challenges, in
34 which the statement "*there will be an assessment of the impact of EITI in strengthening the business*
35 *environment*" has been changed to "*PH-EITI will conduct more outreach activities to industry partners*
36 *and consider engaging their business related processes, such as investment promotion in line with its*
37 *plan to expand the scope of the EITI report*". The Secretariat mentioned that the wording would be
38 consistent with the two additional activities proposed.

39
40 4.5. A CSO representative suggested reframing "impact of EITI in strengthening the business
41 environment" to "recognizing the potential contribution of industry to development", where EITI will
42 facilitate the disclosure of information on social and economic contributions so that assessment can be

1 done to institutionalize and ensure industry contribution to sustainable development. The
2 representative added that measuring the impact of the industry to social and economic development
3 can be linked to Corporate Social Responsibility (CSR) programs. It is also more measurable, since social,
4 environmental, economic contributions are reported at the local level.

5
6 4.6. The CSO representative pointed out that there are three important aspects in the proposed revision
7 of statement: (1) recognizing the potential contribution of industry; (2) encouraging participation of
8 companies to disclose the current social and economic contribution both at the national and local level;
9 and (3) reviewing the disclosure to ensure that the contributions of the industry have sustainable
10 impact. The same representative mentioned that an assessment can be made if the current
11 contributions of the industry are within the sustainable development framework; at the same time,
12 policies can be identified to make sure there is an existing sustainable development framework.

13
14 4.7. The Chair affirmed that the above aspects are also the same data and information EITI requires local
15 government to disclose. The Chair added that in doing this, there would be shared accountability;
16 accountability will come not only from the industry, but also from other stakeholders on the ground.

17
18 4.8. A CSO representative stated that at the same time, LGUs will be given a chance to maximize the
19 potential of the Social Development Management Program (SDMP).

20
21 4.9. The Chair stated that the Secretariat will revise the work plan accordingly and will submit the final
22 version within the week. The Chair asked if the body can have a provisional agreement on the fifth
23 objective.

24
25 4.10. A CSO representative suggested that the part on "recognizing the potential contribution of
26 industry" should be put under the rationale. Another CSO representative mentioned that governance-
27 related challenges should include lack of access to information, lack of coordination with stakeholders
28 on the ground, identifying activities that match the rationale and challenges.

29
30 4.11. The Secretariat asked the body to review the proposed activities focusing on investment
31 promotion. A CSO representative suggested adding development framework in the activities and linking
32 the SDMP to local development plans.

33
34 4.12. An industry representative suggested that there should still be activities towards encouraging buy-
35 in of companies. The same industry representative added that buy-in activities would be material when
36 subnational EITI implementation is done.

37
38 4.13. A CSO representative suggested adding in the rationale the potential of the mining industry to help
39 develop other industries at the local level. The proceeds from mining industry should be invested in
40 other sectors so that when the mining ceases to operate, other industries at the local level would be
41 developed, which can contribute to poverty reduction.

1 4.14. An industry representative agreed with the comments and mentioned that the activities can be
2 revised. The Chair reiterated that the industry representatives can suggest new activities also.

3
4 4.15. A CSO representative recalled that there has been an agreement to include in the PH-EITI report a
5 section on subnational implementation. The same CSO representative suggested to add in the
6 contextual information the rationale discussed above -- that the vision of EITI with regard to subnational
7 framework is to create a diverse economy at the local level through proceeds from the extractive
8 industry. Another CSO representative added that emphasis should be given to poverty reduction. The
9 Chair affirmed and agreed with the suggestions raised.

10 11 **5. TOR for the IA**

12
13 5.1. The Secretariat recalled that the TOR of the IA was approved in principle during the last MSG
14 meeting. A copy of the TOR with comments incorporated is included in the kits. The suggestion of
15 adding an item in the expected output of the IA has been included, meaning, instead of doing
16 reconciliation of the report, the IA should also produce data correlation for purposes of validation or
17 checking compliance (the presentation material is attached as Annex B).

18
19 The Secretariat also recalled that the body had already decided to hire a separate consultant for the
20 contextual information.

21
22 5.2. The Secretariat pointed to where the discussion on the TOR of the IA can be found in the last MSG
23 meeting minutes. The Secretariat then asked if the MSG members consider the statement included in
24 the TOR as sufficient to cover these tasks for the IA.

25
26 5.3. A CSO representative suggested adding “accuracy of the data”, for purposes of validation and
27 checking compliance.

28
29 5.4. An industry representative commented that auditing is not the role of the MSG. The BIR is the
30 government agency that should ensure that the industry pays taxes; the NCIP is the government agency
31 that should ensure that the royalties are being paid pursuant to Memoranda of Agreement. The same
32 industry representative stressed that the role of the MSG is to ensure that these government agencies
33 perform the tasks that they are mandated to perform.

34
35 5.5. A CSO representative mentioned that the purpose of the EITI is to check the accuracy of the data
36 submitted by companies and collected by government. If it is not acceptable for the IA to check the
37 accuracy, the minimum is to go back to the template and ensure all data are disclosed.

38
39 5.6. An industry representative asked how far should checking the accuracy of excise taxes and royalties
40 be done. The same industry representative reiterated that checking the accuracy is not the role of PH-
41 EITI. Figures reported are accepted as they are, which are reconciled by the IA.

1 5.7. The Chair stated that auditing the collection of taxes and fees is conducted by the Commission on
2 Audit (COA). The Chair pointed out that what EITI can require to disclose is if there is a program such as
3 SDMP, report progress and accomplishments vis-à-vis declared commitments as indicated in the five-
4 year SDMP plan, and indicate where policies need to be improved or introduced. An Industry
5 representative agreed with the statement of the Chair.

6
7 5.8. A CSO representative mentioned that EITI should allow independent researchers to be able to
8 validate and utilize the data for policy formulation. If accuracy cannot be checked, there should be
9 enough data to do independent analysis at the minimum. The same CSO representative cited the
10 proposed amendment in sharing between national and local government as an example. If an analysis
11 would be conducted regarding this matter, then there should be basis why amendment in the sharing is
12 being proposed. Conclusion cannot be made without validating whether or not the LGUs are actually
13 receiving their 40 percent share. The amount of money that LGUs are receiving does not necessarily
14 represent the total 40 percent. The same CSO representative emphasized that empirical facts are
15 needed in order to propose policies.

16
17 An industry representative agreed and commented that checking whether taxes and royalties paid are
18 correct or not is another thing.

19
20 5.9. The Chair said that what the body requires from the IA is not accuracy but completeness of data.
21 The IA needs to make sure that the templates are completely accomplished.

22
23 5.10. The Chair stated that if the information on the LGU share in excise tax collected two years ago was
24 gathered by the IA, an analysis can be made if the LGU did receive the 40% share. This is the third year
25 of data collection and if data on volume and value of production were obtained from the first year,
26 payments to LGUs can be traced.

27
28 A CSO representative agreed and stated that analysis will give a basis for whether the LGU share in
29 national wealth should be increased or not.

30
31 5.11. The Chair mentioned that whatever the analysis report users would generate is beyond the MSG's
32 concern. The Report needs to provide stakeholders with accurate information which allows them to
33 conduct their own analysis and validation.

34
35 5.12. An industry representative raised the issue of delayed transfer of LGU shares in the national
36 wealth. The same industry representative asked if action has been taken to address this issue. The Chair
37 responded that LGUs are supposed to get it on time this year.

38
39 5.13. The Secretariat mentioned that the TOR that has been approved in principle was already
40 submitted and reviewed by the DOF to jumpstart the procurement process. The bidding process is
41 already being initiated, but changes can be incorporated through the bid bulletin.

1 The body then approved the TOR.

2

3 **6. Terms of Reference for the Contextual Information Consultant**

4

5 6.1. The Secretariat presented the draft TOR for the contextual information writer (the presentation
6 material is attached as Annex C). In drafting the TOR, it was mentioned that the Secretariat referred to
7 previous contracts of technical writers that were hired by the MSG.

8

9 6.2. The body was informed that the main parts of the TOR adhere to the template TOR for the IA.

10

11 6.3. The Secretariat then noted that the important provision is the scope of services, tasks and
12 deliverables of the consultant which is under Section 3 on page 4.

13

14 6.4. With regard to the scope of services, a CSO representative suggested to indicate that the consultant
15 should utilize data from the reporting template in updating the contextual information. The same
16 representative also recommended that the consultant hire an editor.

17

18 6.5. The Secretariat shared that there is also a provision in the TOR that the contextual information
19 writer must have an editor who will make sure that the narrative or write up is internally consistent, well
20 written, coherent, and comprehensive.

21

22 It was also highlighted that part of the consultant’s task is to provide assistance in the translation of the
23 contextual information into local dialects.

24

25 6.6. The Chair suggested to replace the word “dialects” with “languages”.

26

27 6.7. A CSO representative commented that the writer should also assist in the production of popular
28 materials. It was explained that since the consultant would be familiar with the content of the Report,
29 he/she should review the popular materials that will be produced.

30

31 6.8. The Secretariat noted the suggestion and shared that part of the task of the consultant in the draft
32 TOR is to produce a non-technical executive summary of the full narrative.

33

34 6.9. One representative of the CSOs recommended that the writer be asked to prepare a timeline for
35 phased submission of outputs so that the MSG can review the contextual information on a per chapter
36 basis.

37

38 6.10. According to the Secretariat, the suggested timeline for phased submission will be included in item
39 3.1.a of the TOR.

40

41 6.11. A CSO representative stated that the MSG should develop a mechanism to ensure that the
42 consultant will produce what was asked from them.

1 The Chair noted that the payment will be related to the timeline of submission.
2
3 6.12. A CSO representative asked if the IA has already submitted the dataset of the 2nd Report.
4
5 6.13. The Secretariat responded that the IA is expected to submit the dataset including the narrative for
6 the addendum, within the day.
7
8 6.14. The body approved the TOR for the contextual information writer as amended.
9
10 6.15. On a different note, the Chair mentioned that the 3rd Country Report should not be as thick as the
11 2nd Report. An industry representative suggested to have separate volumes for different sectors.
12
13 6.16. A CSO representative commented that another option is to separate the national and sub-national
14 contextual information.
15
16 **7. Industry presentation: Computation of industry income and government take in it**
17
18 7.1. An industry representative presented a tax analysis on the 2013 EITI Report (the presentation
19 material is attached as Annex D).
20
21 7.2. The representative mentioned that the figures used in the tax analysis came from the EITI Report
22 and PricewaterhouseCoopers (PwC).
23
24 7.3. According to the same representative, the analysis aims to determine the government share of both
25 profits and mining revenues. In doing the analysis, the industry representative mentioned that they had
26 to decide on the level of disaggregation required to achieve a meaningful analysis of the tax regime.
27
28 7.4. The industry representative first presented the macro analysis using the data of 19 material
29 companies. It was reported that income before all taxes and fees amounted to PHP 19.2 billion.
30
31 7.5. The same representative noted that Oceana Gold has a significant foreign exchange gain of PHP 2.5
32 billion. According to the industry representative, it was necessary to deduct this amount to the total
33 income before all taxes and fees so as not to skew the figures.
34
35 For the information of the body, it was explained that foreign exchange loans of companies can either
36 gain or acquire loss depending on exchange rate fluctuations.
37
38 7.6. In case there is a foreign exchange loss, the Chair asked if the figures would be added to the
39 computation. The industry representative responded in the affirmative but noted that this would only
40 apply if the amount is material.
41

1 In addition, it was stated that the foreign exchange gain of Oceana Gold is not a realized gain, meaning
2 the company does not pay tax on it.

3
4 7.7. After deducting the foreign exchange gain of Oceana Gold, the adjusted income before all taxes and
5 fees amounted to PHP 16.7 billion. It was then shared that the total taxes and fees of the 19 material
6 companies is at PHP 5.4 billion and the total mining revenue is PHP 70.6 billion. Given these figures, the
7 resulting government share is at 32% while the ratio of total taxes and fees to revenues is equivalent to
8 8%.

9
10 7.8. The industry representative then explained that the macro analysis does not give a good
11 representation of the entire mining tax regime. According to the same representative, material
12 companies under Income Tax Holiday (ITH) need to be separated from the computation because ITH is a
13 function of the incentive regime which is different from the tax regime.

14
15 7.9. In addition, it was mentioned that companies that have incurred losses should also be removed
16 from the computation so that the figures would not get skewed.

17
18 7.10. The body was informed that there are seven material companies that were under ITH in 2013.
19 These companies were: Adnama, Carmen Copper, Carrascal Nickel, Marcventures, Oceana Gold,
20 Platinum Group and TVI Resources. The adjusted income before all taxes and fees for these companies
21 amounted to PHP 12 billion while total taxes and fees is equivalent PHP 2 billion. It was shared that the
22 corresponding government share is only 17%.

23
24 7.11. The industry representative also reported that the total mining revenue of the seven companies
25 under ITH is PHP 37 billion, therefore the ratio of total taxes and fees to revenues is only 6%.

26
27 7.12. It was then shared that the following material companies have losses: Apex Mining, Benguet Nickel
28 Mines, Greenstone Resources, Lepanto Consolidated and Rapu-Rapu Minerals. The total revenue of
29 these five material companies is PHP 7.7 billion, while total losses amounted to PHP 1.9 billion. The
30 industry representative reported that the total taxes and fees of the said companies is equivalent to PHP
31 307 million.

32
33 7.13. The same representative explained that these figures need to be excluded in the computation to
34 be able to determine the correct ratio that would accurately represent the mining tax regime.

35
36 7.14. For the information of the body, it was shared that Philex Mining was also excluded from the
37 computation because the company only operated for ten months, and paid a fine of PHP 1 billion which
38 was not counted as taxes and fees. It was explained that the fine depresses the income as well as the
39 income tax payment of Philex Mining.

40

1 7.15. According to the industry representative, Eramen Minerals, Filminera, Hinatuan Mining, Rio Tuba
2 Nickel, SR Metals and Taganito Mining were the six material companies that operated profitably in 2013
3 without any incentives.
4

5 7.16. The industry representative noted that the figures of the six material companies accurately reflects
6 the mining tax regime. Adjusted income before all taxes and fees for these six companies was reported
7 to be PHP 5.5 billion while the total taxes and fees paid is PHP 2.4 billion.
8

9 7.17. According to the same representative, the computed government share is equivalent to 44% which
10 is very different from the 32% share that was reported in the macro analysis. Given that the total mining
11 revenue of the six companies is PHP 15.5 billion, the resulting ratio of total taxes and fees to revenues is
12 16%.
13

14 7.18. The industry representative stressed that the 16% ratio of total taxes and fees to revenues is the
15 figure that is reflective of the current tax regime.
16

17 7.19. In addition, the industry representative shared that an additional tax is paid to the government
18 when a mining company declares dividends. If the dividend is for an individual Philippine shareholder,
19 the amount will be subjected to a 10% withholding tax. The company has to withhold 10% from the
20 shareholder's dividend check and pay this to BIR.
21

22 7.20. As for corporate shareholders or companies that own shares in another company, it was noted
23 that there is no withholding tax on dividends. However, the industry representative explained that since
24 the company will eventually declare dividends to their individual shareholders, the 10% withholding tax
25 would still apply.
26

27 7.21. According to the industry representative, the 10% withholding tax rate applied to dividends is
28 equivalent to an additional government share of 6%. Therefore, the government share of 44% would
29 increase to 50% on the portion of income before all taxes and fees that are paid out as dividends to
30 shareholders.
31

32 The industry representative noted that 50% is a very high government share.
33

34 7.22. A comparison of different studies on government share from mining and percentage of taxes and
35 fees to mining revenues was also presented to the body.
36

37 7.23. It was shared that the Chamber of Mines of the Philippines (COMP) conducted a detailed tax
38 analysis of countries with large mining industry. Based on the collected data from Chile, Peru, PNG,
39 South Africa, Canada and Australia- Queensland, the average government share is 34% while the
40 average share to revenues is equivalent to 20%.

1 7.24. However, the industry representative clarified that the COMP study cannot be directly compared
2 with the tax analysis being presented. It was explained that the COMP study is a life of mine analysis
3 while the tax analysis being presented only looks data for one year.
4

5 7.25. In addition, it was noted that three of the countries covered by the COMP study have incentives to
6 mining companies while two countries have accelerated depreciation. The industry representatives
7 stated that this is the reason why the computed government share (34%) is low.
8

9 7.26. The second study that was discussed was done by the Asian Institute of Management (AIM) in
10 January 2013. According to the industry representative, the study covered several multinational
11 companies that are publicly listed and accessed the detailed financial information of these companies in
12 their websites. It was stated that AIM arrived at a government share of 40% and 16% share to revenues.
13

14 7.27. As part of the AIM study, the industry representative shared that the same analysis was done for
15 two Philippine mining companies that are also publicly listed (Philex and Nickel Asia). Using 2010 and
16 2011 income and tax figures of the two companies, the computed government share is at 40% while the
17 percentage of share to revenues is at 19%.
18

19 7.28. The industry representative then concluded that the government share of 44% and the 16% ratio
20 of total taxes and fees to revenues in 2013 are good numbers, which indicate that there is nothing
21 wrong with the current mining tax structure in the Philippines.
22

23 7.29. A CSO representative stated that the reason why they were asking the IA to produce clean
24 datasets was precisely to make analysis like the one that was presented by the industry sector. The
25 same representative shared that when they looked at the data of individual companies, they noticed
26 that some of the information that was reported to the IA does not match with what was in the Financial
27 Statement (FS) that companies submitted to the Securities and Exchange Commission (SEC).
28

29 According to the CSO representative, it is important that the IA produce clean datasets so that
30 researchers can make accurate individual company analysis.
31

32 7.30. The industry representative responded that income data is the only missing information in the EITI
33 Report in order to make company level analysis, and this can be requested from PWC.
34

35 In case there are unusual ratios, the same representative stated that the CSOs can validate the figures
36 by looking at the FS of the companies.
37

38 7.31. The CSO representative agreed and mentioned that this was the reason why they wanted the FS
39 data to be encoded as part of the dataset. The aim is to have a clean dataset that everyone can work
40 with. The same representative stated that it is also possible to merge the datasets over the years to be
41 able to make a long term analysis.

1 7.32. The industry representative suggested to include income before all taxes and fees in the reporting
2 template for the next Report.

3
4 7.33. The Chair noted the suggestion.
5

6 **8. Roadmap on beneficial ownership (a new requirement of the 2016 EITI Standard)**

7
8 8.1. The body was informed that one of the requirements of the 2016 EITI Standard is a roadmap on
9 beneficial ownership. The Secretariat shared that the deadline for submitting the said roadmap is in
10 January 2017.
11

12 8.2. It was clarified that the roadmap on beneficial ownership will not be part of the next Country Report
13 but it is a separate submission to the International Secretariat.
14

15 The Secretariat then asked if the body would want to create a TWG for this.
16

17 8.3. A CSO representative explained that the International Secretariat wants to know how the MSG will
18 achieve disclosure of beneficial ownership since this will be mandatory starting 2017.
19

20 8.4. The Chair inquired whether the International Secretariat has a guide on creating the roadmap.
21

22 8.5. A CSO representative stated that this matter is still for discussion of the EITI International Board.
23

24 8.6. The members of the MSG agreed to wait for an advisory from the International Secretariat before
25 discussing the roadmap.
26

27 **9. 2015 report analysis workshop**

28
29 9.1. It was recalled that a report analysis workshop was conducted last year after the 1st Country Report
30 has been published.
31

32 9.2. The Secretariat then shared that a report analysis workshop on the 2nd Report was included in the
33 2016 Work Plan.
34

35 9.3. The Chair commented that the MSG would have to decide on what should be discussed in the
36 report analysis workshop.
37

38 9.4. Based on the calendar of activities, the Secretariat noted that the workshop should be conducted
39 after the elections in May 2016.
40

41 9.5. The Chair suggested to schedule the workshop in June and asked the Secretariat to draft the
42 workshop outline.

1 9.6. The Secretariat mentioned that one objective of the workshop is to inform the stakeholders on how
2 to interpret and use the 2nd Report.

3
4 9.7. One representative of the CSOs suggested to ask people outside the MSG to look into the 2nd Report
5 and give their perspective on how they will analyze the data.

6
7 9.8. The Secretariat shared that they were looking at the idea of changing the workshop design and
8 giving it a different spin. According to the Secretariat, since the trend is to translate the reports into
9 results, they were thinking of inviting other sectors that will be able to use the EITI data. It was noted
10 that the design of the report analysis workshop is flexible.

11
12 9.9. A CSO representative suggested to conduct a workshop with local stakeholders during the
13 roadshow, where participants will look at the EITI Report and analyze the data.

14
15 The same representative suggested that the MSG start identifying key questions for the workshop.

16
17 9.10. The Secretariat stated that they will draft the workshop design including the list of targeted
18 participants.

19 20 **10. Report from the TWG on LGC amendments: Proposed scope of study**

21
22 10.1. The Secretariat shared that the TWG on LGC amendments met last March 17 to draft a TOR for the
23 consultant. However, the TWG drafted a scope of study instead because several matters for MSG
24 decision were identified from the discussion.

25
26 It was mentioned that the said scope of study is included in the kits (the presentation material is
27 attached as Annex E).

28
29 10.2. The Secretariat then shared the following decision points:

- 30 1. Does the MSG want to pursue the study given the context of PH-EITI priorities?
- 31 2. Does the MSG want to pursue amending the relevant law/s and engaging the legislative
32 process?
- 33 3. What does the MSG foresee as the effects or impact of pursuing the subject policy measure/s?

34
35 10.3. The Secretariat noted that the results of the discussion during the meeting was drafted in a form of
36 a concept note, which was submitted to the United States Agency for International Development
37 (USAID)/ Development Alternatives Incorporated (DAI). The body was informed that one of the
38 representatives of DAI mentioned that they might be able to fund the study on LGC amendments.

39
40 10.4. According to the Secretariat, the background of the proposed study is that PH-EITI Reports
41 surfaced several issues with respect to the revenues that LGUs receive from the extractive industries.

- 1 The Secretariat then enumerated the following issues regarding this matter:
2 1. The release and transfer to LGUs of their share in the national wealth
3 2. The revenue sharing between the national government and the LGUs hosting extractive projects
4 (60-40)
5 3. The revenue sharing between the LGU which hosts the project site and that which hosts the
6 principal/head office (70-30)
7

8 10.5. It was noted that the problems identified with respect to these issues generally pertain to the
9 perceived delay in the release or non-receipt of the LGU shares in national wealth and the apparent
10 inequity in the sharing of government revenues. The Secretariat recalled that it has been pointed out
11 that LGUs hosting the principle office appear to be getting a disproportionately larger share of the
12 revenues from the mining companies.
13

14 10.6. The Secretariat mentioned that these issues were also raised in some of the PH-EITI forums such as
15 the roadshows, and these have been in fact the subject of MSG recommendations.
16

17 10.7. According to the Secretariat, the questions that the study should be able to answer were
18 summarized in the scope of study. The TW identified ten main questions and the corresponding method
19 or task for the consultant.
20

21 10.8. On the question regarding studies that have been or are being done on the subject, the Secretariat
22 shared that they were informed by the Philippines Poverty Environment Initiative (PPEI) representative
23 that a similar study is being conducted by their TWG on Environment and Natural Resources (ENR) and
24 social investment. The said study directly touches on the issues related to revenue sharing and release
25 of LGU shares.
26

27 10.9. A representative from the Department of the Interior and Local Government (DILG) proposed that
28 they report the findings of the study in the next MSG meeting. The same representative shared that one
29 of the recommendations of the study is facilitating the release of LGU shares via administrative
30 issuances. A joint memorandum circular by DILG, DOF, DBM, and DENR was recommended.
31

32 10.10. The DILG representative added that there was also a recommendation with regard to changing
33 some of the provisions of the LGC particularly in relation to the release of LGU shares.
34

35 10.11. The same representative explained that DBM, BIR and the Bureau of the Treasury (BTr) are having
36 difficulties in computing the LGU shares that should be allocated for the next budgeting period since the
37 base year for the computation of shares is the preceding year. When the government agencies prepare
38 the budget for the next year, the collection has not been realized yet and this is the source of the
39 apparent non-receipt of the LGUs shares.
40

41 10.12. The Secretariat stated that they will include the DILG presentation in the agenda of the next MSG
42 meeting.

1 10.13. A CSO representative expressed that it is beyond the scope of the MSG to discuss LGC
2 amendments. According to the same representative, what the MSG should do is to only provide data to
3 support the analysis in terms of the release of LGU shares.
4

5 With regard to linking of the SDMP to local economic development plan, the CSO representative pointed
6 out that this can be done through an administrative order from MGB and DILG.
7

8 10.14. According to the same representative, the concern is that the MSG needs to produce an annual
9 Country Report and engaging in legislation on the amendments of the LGC might take a lot of time.
10

11 10.15. The CSO representative suggested to identify what data are needed to support the initiatives of
12 the DILG so that these can be included in the EITI reporting template.
13

14 10.16. The DILG representative conveyed that the reason why they did the study is because of the
15 clamor of LGUs that they are not receiving their shares and the shares are not enough to compensate
16 for the impact of the extractive operations in their localities.
17

18 It was noted that there has not been any major amendments to the LGC for 24 years.
19

20 10.17. With regard to the release and transfers of LGU shares, the DILG representative mentioned
21 shared that bill has already been filed in both the Congress and Senate. The body was informed that the
22 said bill has been deliberated by Senator Marcos and representatives of COMP, DILG, DBM and BIR were
23 believed to be present during the deliberation.
24

25 10.18. The representative expressed that the revenue sharing is an issue that really needs to be studied
26 and addressed.
27

28 10.19. Based on the provisions of the LGC, the DILG representative also noted that the shares of LGUs
29 from the national wealth can be used for any local development and livelihood projects.
30

31 10.20. As for the recommendation to relate SDMP to local development plans of LGUs, the DILG
32 representative stated that they have been working with MGB on this but there are limitations with
33 regard to the law that defines the area that the SDMP should cover.
34

35 10.21. With regards to the share of LGUs from energy sources, the same representative noted that the
36 share should only be used to lower the cost of energy. However, some LGUs were asking where can they
37 use their share if the cost of electricity in their area is already very low.
38

39 10.22. A CSO representative pointed out that the use of the share does not have to be in a form of a
40 subsidy. The same representative noted that the share can also be in a form of investment to generate
41 alternative sources of electricity. The DILG representative noted that this can be a point of clarification.

1 10.23. Going back to the issue on relating SDMP to local development plans, a CSO representative
2 mentioned that SDMP should be aligned with existing plans of LGUs. It was mentioned that LGUs are
3 mandate to include landscape planning in their comprehensive land use plan.
4

5 10.24. The DILG representative clarified that the problem is that SDMP funds can only be used by the
6 host and impacted barangays. The MGB representative stated that this is stipulated in the IRR of RA
7 7942.
8

9 10.25. Another CSO representative agreed to the point raised earlier that the body might be going
10 beyond its mandate. According to the same representative, what the MSG can do is to use the Report
11 and provide additional information or data that would support the initiatives of agencies such as DILG.
12

13 10.26. It was then suggested that instead of hiring a consultant to produce another report, the
14 consultant should be asked to go through the two EITI Country Reports and generate materials that can
15 support the advocacy of DILG.
16

17 10.27. The Chair asked the Secretariat to revise the scope of the study incorporating the comments of
18 the MSG members.
19

20 10.28. The body was informed that the revised scope of study will be circulated after the presentation of
21 the DILG.
22

23 **11. PH-EITI Validation: Guide, Updates**

24

25 11.1. The Secretariat reminded the body that the Validation is scheduled in July 2016. However, it was
26 noted that several aspects of the Validation are still being discussed, including identifying who will do
27 the Validation and who will spend for this activity.
28

29 11.2. A CSO representative shared that the EITI Board will discuss the new Validation process in the first
30 week of June 2016.
31

32 11.3. The Secretariat presented the checklist that they prepared based on the Validation Guideline that
33 was available online (the presentation material is attached as Annex F).
34

35 11.4. An industry representative suggested that the Secretariat be asked to provide recommended
36 answers to the Validation questions.
37

38 11.5. The Secretariat responded that during their planning workshop, they already identified the
39 documents that they need to compile in preparation for the Validation.
40

41 11.6. The Secretariat went through the checklist and the MSG members gave their comments on some
42 of the questions.

- 1 • *Question number 4:* Has a fully costed Work Plan been published and made widely available,
2 containing measurable targets, a timetable for implementation and an assessment of capacity
3 constraints (government, private sector and civil society)?
4

5 11.7. The Secretariat pointed out that this item refers to the Work Plan that is still pending approval of
6 the body.
7

8 11.8. A CSO representative suggested that the EITI International Secretariat be asked to clarify the
9 statement that the Work Plan should also elaborate on how the government will pay for Validation.
10

- 11 • *Question number 10:* Is the multi-stakeholder committee content with the organization
12 appointed to reconcile figures?
13

14 11.9. A CSO representative commented that MSG does not select the IA because there is a government
15 procurement process being followed. The same representative then stated that the International
16 Secretariat should clarify whether the question is pertaining to the contentment of the MSG in terms of
17 the IA's quality of work or in terms of the selection process.
18

19 11.10. The Chair then noted that in the column for Indicator Assessment Tool, there is a statement that
20 there should be transparent liaison with the EITI Secretariat and Board to identify potential Validators. It
21 was noted that this is inconsistent with the question which refers to the IA.
22

23 The Chair commented that the International Secretariat should clarify if question number 10 refers to
24 the IA or the Validator.
25

- 26 • *Question number 11:* Has the government ensured all companies will report?
27

28 11.11. A CSO representative stated that MGB has proof that they exerted effort to ensure that all
29 companies participate in the EITI because Dir. Jasareno of MGB issued a memo related to this. However,
30 the same representative noted that this has not been done yet by DOE.
31

32 11.12. Another CSO representative mentioned that the Chair might need to again meet with the
33 Secretary of DOE.
34

35 11.13. According to one CSO representative, it is important that the efforts of the government in
36 ensuring company participation are well documented.
37

- 38 • *Question number 12:* Has the government ensured that company reports are based on audited
39 accounts to international standards?

1 11.14. The Chair questioned an item under the Indicator Assessment Tool column which implies that
2 there is a need for the government to have a Memorandum of Understanding (MOU) with the
3 companies whereby companies agree to ensure that submitted figures comply international standards.
4

5 11.15. It was mentioned that there is no need for an MOU because the SEC already requires the
6 companies to submit figures that are audited based on international standards.
7

8 11.16. According to a CSO representative, what should be clear in the Validation guidelines are the
9 principles that need to be achieved. It was explained that there are different ways to achieve these
10 Validation principles without requiring something that is not applicable in a country.
11

12 11.17. The Chair agreed stating that the Philippines already has a standard procedure and that there is
13 no need for an MOU.
14

- 15 • *On the Question number 13:* Has the government ensured that government reports are based
16 on audited accounts to international standards?
17

18 11.18. The Chair inquired why the Indicator Assessment Tool column includes the statement
19 “government passes legislation requiring figures to be submitted to international standards”. According
20 to the Chair, there is no need for a legislation on this matter.
21

22 11.19. A CSO representative agreed and explained that there is already an Administrative Order from
23 COA requiring that all accounting procedures be consistent with the international accounting standards.
24

25 11.20. The same representative stated that copies of Administrative Orders related to this matter might
26 be presented as evidence that government accounting is consistent with international accounting
27 standards.
28

29 11.21. The Chair commented that some of the Validation requirements do not apply to countries that
30 already have international systems in place.
31

32 11.22. The CSO representative expressed that instead of “government passes legislation requiring
33 figures to be submitted to international standards”, the statement should be “produce proof that
34 government procedures are compliant with international standards”.
35

- 36 • Questions regarding disclosure
37

38 11.23. A CSO representative suggested that the Secretariat document the comments of the MSG and
39 submit these to the International Secretariat.
40

41 11.24. The same representative commented that the MSG should also recommend that there should be
42 a screening question for every Validation question. Therefore, questions that are not applicable in a

1 country need not be answered by the MSG. For example, if the answer to the question is “yes”, the
2 Validator will move to another set of questions. The CSO representative explained that the questions
3 would be different in case the answer is “no”.

4
5 The body agreed.

6
7 11.25. On a different note, a CSO representative suggested to make the 2nd Report in the PH-EITI
8 website downloadable per Chapter.

- 9
10 • Question under “company forms”: How have oil, gas and mining companies supported EITI
11 implementation?

12
13 11.26. The Secretariat mentioned that each company is required to complete a self-assessed Company
14 Form.

15
16 11.27. A CSO representative commented that it would not be easy to get the companies to answer the
17 forms.

18
19 11.28. The Chair mentioned that the said requirement will not help the MSG encourage more companies
20 to participate in EITI.

21
22 11.29. It was suggested that the Secretariat circulate the soft copy of the Validation checklist so that the
23 MSG members can review each question and give comments.

24 25 **12. Other matters**

- 26
27 • *International EITI Funding Review*

28
29 12.1. The Secretariat provided the MSG members with a brief on EITI funding review (the presentation
30 material is attached as Annex G).

31
32 12.2. The body was informed that a webinar consultation on EITI funding is scheduled on April 11, 2016.
33 The said webinar is open to national coordinators and champions in EITI participating countries.
34 According to the Secretariat, the webinar aims to gather the opinions of the participants on the EITI
35 funding model.

36
37 12.3. It was shared that the EITI Board is interested in exploring the current practice of governance
38 representation without taxation.

39
40 12.4. The Secretariat mentioned that the EITI international management is being funded by
41 supporting governments and companies where each pays a 50% contribution on a voluntary basis.

1 According to the Secretariat, it appeared that this practice is not only unsustainable but it is also riddled
2 with uncertainties and therefore, the Board was prompted to review its funding mechanism.

3
4 12.5. The Secretariat continued that the International Board is exploring two ideas. One is the
5 imposition of a membership fee from implementing countries – the Philippines included. And second is
6 the imposition of a minimum contribution from supporting countries.

7
8 12.6. It was shared that the annual membership fee is pegged at USD 100,000.

9
10 12.7. The Chair stated that the EITI international management should provide a better argument to
11 support their proposal and that they should be more transparent on how they spend their funds.

12
13 12.8. The Chair also voiced that at the minimum, the International Board should publish their FS or
14 quarterly financial reports.

15
16 12.9. The Secretariat informed the MSG members that they can provide their comments through the
17 webpage of the EITI International Secretariat.

18
19 12.10. A CSO representative suggested that the MSG submits a formal letter to the EITI International
20 Secretariat stating their comments on the proposed funding model.

21
22 12.11. The Secretariat mentioned that they will also convey the sentiments of the MSG during the
23 webinar on April 11.

24
25 12.12. According to the Chair, the International Board should first come up with a policy framework on
26 the matter which will also define the governance structure of EITI.

27
28 12.13. The Chair also mentioned that since EITI demands transparency and good governance in a
29 country, it is therefore imperative to demand the same standards of transparency to the International
30 Secretariat and have them disclose their finances.

31
32 • *Results of Secretariat's Planning Workshop*

33
34 12.14. The Secretariat shared that they had a planning workshop last March 31 to April 1 where the
35 2016 Work Plan was discussed. The Secretariat then presented the Gantt Chart showing the activities for
36 the year (the presentation material is attached as Annex H).

37
38 It was noted that preparations for some of the activities are overlapping.

39
40 12.15. It was shared that during the planning workshop, the Secretariat also reviewed their
41 organizational structure, refined the individual roles of the members and rationalized their processes.

1 • *Setting the Next MSG Meeting*

2

3 12.16. The members of the MSG agreed to schedule the next meeting on May 13, 2016.

4

5 12.17. According to the Secretariat, the agenda of the next meeting would include the presentation of
6 Director Anna Bonagua of DILG as well as the presentation on large-scale non-metallic mining scoping
7 study.

8

9 **ADJOURNMENT**

10

11 There being no other matters to discuss, the meeting was adjourned at 12:32 PM.

2016 PHILIPPINE-EITI WORKPLAN

1ST OBJECTIVE: Show direct and indirect contribution of extractives to the economy (through EITI process)

RATIONALE: Current data in the Philippines does not show a complete and accurate picture of EI's contribution to the economy due to its level of disaggregation, inadequate monitoring mechanisms, and lack of consolidated data to facilitate analysis. Also, there is no existing mechanism to record social expenditures beyond what the law requires. The EITI is thus seen as a tool to narrow the gaps in existing data by reporting actual reconciled figures.

GOVERNANCE RELATED CHALLENGES: 1. Regular monitoring of payments between the central and the local offices. 2. Determination of the appropriate fiscal regime for the industry. 3. Transparency in tax information which is hindered by confidentiality provisions in the Tax Code. 4. Ensuring proper amounts are paid down to the local level. 5. Regulation of certain fees imposed by local government units which business perceives as improper. 6. Measuring adequacy of social and environmental expenditures.

ACTIVITIES VIS- A- VIS CHALLENGES: All activities pertaining to publication of the report and improvement of data quality are meant to address the 2nd, 3rd and 6th challenges mentioned above. It is expected that a more comprehensive and credible report with reliable data can influence policies on what is the appropriate fiscal regime, considering that the report contains information on actual contribution of mining to the economy through reconciled data and disclosures on social expenditures and benefits to host communities.

On the other hand, capacity building activities are expected to address the 1st, 4th and 5th challenges. Such challenges require a deeper comprehension of the industry and of fiscal policies at the local level which can be achieved through capacity building activities with government personnel and representatives in local bodies.

The first two years of EITI implementation have shown significant impact in addressing the above challenges. The 2016 work plan includes the same activities in previous years that proved to be effective in addressing the challenges. It also includes new activities that will build on the gains of the previous years such as expanding the scope of the report to include small scale mining in key sites and large scale non metallic mining. Data quality will also be improved through the creation of online reporting tool for companies and agencies. PH-EITI will also include more details in the reporting of social development projects for host communities. The objective of all these is to give a more accurate picture of the extractive industry by providing information on the sector's contribution to the economy that were not covered in previous reports.

ACTIVITIES	OUTCOME	RESPONSIBLE PARTY	TIMELINE	COST	FUNDING
PUBLICATION OF EITI REPORT					
Production of summary report, popular version and translated version (second and third report)	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	Consultant, MSG, secretariat	February 2016 (2 nd report) December 2016 (3 rd report)	2,000,000	EGPS/ World Bank
Hiring of independent administrator to analyze the government and industry data for the third EITI report	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, secretariat	March to April 2016	5,000,000	EGPS/ World Bank
Hiring of consultants to draft contextual information of the report	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making	Consultant	March to April 2016	2,500,000	EGPS/ World Bank
MSG to agree on scope, level of disaggregation and materiality of reporting, sectors covered (e.g. small-scale, non-metallic) for the third report	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	MSG, IA	May 2016	MSG meeting budget	GOP
Report road shows and trainings on reporting template (LGUs and	Increased transparency in EI as an outcome of a relevant EITI process	MSG, secretariat	2 nd to 3 rd quarter 2016	6,651,000	EGPS/ World Bank

communities)	in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.				
Drafting and finalization of reporting template based on the level of disaggregation and materiality as agreed upon by the MSG	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, MSG	May 2016	Budget for IA	EGPS/ World Bank
Conduct reporting template workshop for all sectors per company, per industry, per LGU	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, MSG	2 nd to 3 rd quarter 2016	Budget for IA	EGPS/ World Bank
Completion and submission of reporting template	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, secretariat, reporting entities	2 nd to 3 rd quarter 2016	Budget for IA	EGPS/ World Bank
Creation of online reporting tool for companies and government agencies	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy	Secretariat, Consultant	2 nd Quarter 2016	1,500,000	EGPS/ World Bank

	formulation and decision making.				
Reconciliation process	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, secretariat, reporting entities	July to September 2016	Budget for IA	EGPS/ World Bank
Drafting of the 3 rd PH-EITI report	Increased transparency in EI as an outcome of a relevant EITI process in the country and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA	August to September 2016	Budget for IA	EGPS/ World Bank
Workshop / approval of the 3 rd EITI report	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	IA, MSG, secretariat	October to November 2016	MSG meeting budget	GOP
Printing of the 3 rd PH-EITI report	Increased transparency in EI as an outcome of a relevant EITI process in the country, and a credible and comprehensive EITI report that is used by all stakeholders in policy formulation and decision making.	Consultant, secretariat	November to December 2016	3,000,000	EGPS/ World Bank
CAPACITY BUILDING ACTIVITIES FOR MSG, TWG, SECRETARIAT AND OTHER STAKEHOLDERS					

Report analysis workshop	Improved governance of EI through well capacitated stakeholders who can cascade their learnings on EI issues and EI data to the broader public	Consultant/resource persons, MSG, secretariat	1 st quarter 2016	785,250	EGPS/ World Bank
International outreach and trainings	Improved governance of EI through well capacitated stakeholders who can cascade their learnings on EI issues and EI data to the broader public	MSG, TWG, secretariat	As needed	4,912,870	GOP and EGPS/ World Bank
Outreach activities and capacity building of local stakeholders (government, regional offices, communities and industry) on EITI implementation <u>(academe/ LSNM)</u>	Improved governance of EI through well-capacitated stakeholders who can cascade their learnings on EI issues and EI data to the broader public	MSG, secretariat, regional offices communities, industry sector	1 st to 3 rd quarter 2016	1,500,000	GOP
Improvement of monitoring procedures of government agencies (Delete; already embodied in 2nd objective items)	Increased transparency in EI as an outcome of reliable government data	MSG, government agencies	March 2016 onwards		USAID
Dialogues with companies to ensure full participation in EITI <u>(move under outreach activities)</u>	Increased transparency in EI as a result of full commitment and participation of companies to ensure a comprehensive and reliable report	MSG, reporting entities, secretariat	January 2016 onwards	Budget for outreach activities and meetings	GOP
VALIDATION					
Orientation on validation	Proper implementation of EITI in the country	Resource persons, MSG, secretariat	1 st quarter 2016	Budget for meetings	GOP

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Validation meetings and other related expenses	Proper implementation of EITI in the country	Validator, MSG, secretariat	July 2016 onwards	Budget for meetings	GOP
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2nd OBJECTIVE: Improve public understanding of the management of natural resources and availability of data

RATIONALE: Local communities should be able to make informed decisions on issues pertaining to extractive operations in their areas. In giving their consent, they should be armed with the necessary data and be equipped to use them. Public debate on EI governance should be stimulated because this a way by which we evaluate the government's capacity to implement laws governing natural resource management. Information on extractive data and revenue management should be made accessible and explained to the public to make sure that they are spent for legally mandated purposes and that they are received by the intended beneficiaries. The EITI process provides venue for discussions of these issues and frames the questions that should be asked to stimulate public debate.

GOVERNANCE RELATED CHALLENGES: 1. Irregular monitoring and limited access to EI data especially with respect to the management of mandatory funds, IP royalties, and local payments. 2. Ensuring integrity and credibility in implementing legally mandated mechanisms for obtaining the consent of host communities and Indigenous Peoples. 3. Generating and sustaining public involvement which would require a lot of capacity building, information dissemination, and sustained political commitment especially at the local level.

ACTIVITIES VIS –A- VIS CHALLENGES: Activities under this objective are geared towards increasing awareness on EI issues by ensuring a regular flow of information through all forms of communication (e.g., mass media, social media, forums, lecture series, publications). It is expected that these activities will produce a more informed public that is better equipped to monitor compliance with laws and exact accountability from government and the industry.

It is recognized that effective communication of EITI reports will require more trainings of MSG members and secretariat on how to simplify EITI's message and effectively communicate data. It is also important that PH-EITI assess whether previous communication efforts are effective and are getting the MSG's message across. The 2016 work plan ensures that these considerations are taken into account.

Finally, PH-EITI also recognizes the global trend of applying Open Data practices. Thus, activities relating to Open Data such as online reporting and enhancement of open data portals are included.

ACTIVITIES	OUTCOME	RESPONSIBLE PARTY	TIMELINE	COST	FUNDING
National Conference/ Launching of the 2 nd report	Increased awareness and improved public debate on EI	MSG, secretariat	February 2016	3,430,120	GOP and EGPS/ World

	issues leading to introduction of reforms				Bank
Regular press releases and articles on PH-EITI activities	Increased awareness on the need for transparency, and improved public debate on EI issues leading to introduction of reforms	MSG, secretariat, communications officer	January 2016 onwards	Budget for communications plan	EGPS/ World Bank
Communications trainings for MSG and media (move under objective 1-capacity building)	Improved governance of EI through well capacitated stakeholders who can cascade their learnings on EI issues and EI data to the broader public	Communications officer/consultant, secretariat	2 nd quarter 2016 onwards	650,000	GOP
Engage public information office of relevant government agencies	Increased awareness on the need for transparency, and improved public debate on EI issues leading to introduction of reforms	MSG, secretariat, communications officer	1 st Quarter 2016 onwards	Budget for communications plan	EGPS/ World Bank
Media briefing on EITI implementation	Increased awareness on the need for transparency, and improved public debate on EI issues leading to introduction of reforms	MSG, secretariat, communications officer	2 nd to 3 rd quarter 2016	Budget for communications plan	EGPS/ World Bank
Development of a communications plan and MSG/Secretariat workshop	Increased awareness on the need for transparency, and improved public debate on EI issues leading to introduction of reforms	MSG, Secretariat, Communications Officer	2 nd Quarter 2016	1,000,000	EGPS/ World Bank
Hiring of consultants for studies	Increased awareness on the need for transparency, and improved public debate on EI issues leading	Secretariat, consultant	2 nd quarter 2016 onwards	3,316,480	GOP and EGPS/ World Bank

	to introduction of reforms				
<u>Establish a mechanism for assessing</u> -public awareness on EITI	Proper implementation of EITI	MSG, Secretariat, Communications Officer/consultant	2 nd Quarter 2016 onwards	Budget for studies	GOP and EGPS/ World Bank
Publication of reference materials, primer and online resources	Increased awareness and improved public debate on EI issues leading to introduction of reforms	Secretariat, Communications Officer	1 st quarter 2016 onwards	2,116,480	GOP and EGPS/ World Bank
Maintain and update PH-EITI website	Increased awareness and improved public debate on EI issues leading to introduction of reforms	Secretariat, Communications Officer	January 2016 onwards	600,000	EGPS/ World Bank
Enhancement of PH-EITI contracts portal	Increased awareness and improved public debate on EI issues leading to introduction of reforms; Increased transparency regarding the operations of extractive companies through contract disclosure and creation of interactive maps.	Secretariat, Communications Officer, NRG, consultant	1 st quarter 2016 onwards	Budget for management of the PH-EITI secretariat	GOP
<u>Partners Forum Meeting</u> -with Development Partners	Increased awareness and improved public debate on EI issues leading to introduction of reforms	MSG, Secretariat	March 2016	Budget for outreach activities and meetings	GOP
Roll-out of NCIP monitoring tools	Increased transparency and accountability through citizens'	MSG, NCIP, Secretariat	2 nd quarter 2016 onwards		USAID

	participation in the regular monitoring of payments				
Development of monitoring tool for MGB mandated funds and SDMP	Increased transparency and accountability -through citizens' <u>multi-stakeholder</u> participation in the regular monitoring of payments	MSG, MGB, Secretariat	2 nd Quarter 2016		USAID

3RD OBJECTIVE: Strengthen national resource management / strengthen government systems

RATIONALE: Local communities should be able to see how their natural resources are managed and should be able to hold officials liable in case of unsound management. To make this happen, government systems must be in place to ensure accountability. For instance, there should be a standard way of monitoring compliance with laws and contractual obligations. Capacity building measures should also be conducted to make sure that government personnel understand the industry very well so as to make informed decisions. Local mining monitoring teams should be further equipped so that they can perform their function well with respect to mining companies' compliance with laws and contractual obligations. Moreover, information should always be available. With the current data, however, and with the way information systems are structured, the public is unable to monitor the management of natural resources as much as they want to.

GOVERNANCE RELATED CHALLENGES: 1. In some instances, institutionalizing mechanisms to Improve government systems to remove barriers to transparency would require enactment or amendment of laws that will take time to materialize. 2. Arriving at a consensus on which reforms to introduce could be a challenge given the diverse views of stakeholders 3. Implementing reforms in a sustainable manner is a challenge because it is highly dependent on political will which is susceptible to change when the administration changes. This is particularly true at the local level.

ACTIVITIES VIS-À-VIS CHALLENGES: Key to addressing the above challenges is the implementation and institutionalization of policies to ensure sustainability. The activities under this objective thus aim not just to address gaps in existing government systems but also to make sure that reforms are firmly in place despite changes in administration at the local and national level. To ensure this, amendment of laws shall be prioritized, as well as securing the full commitment and building the capacity of government employees especially local monitoring teams in charge of implementing these reforms. Existing processes in data generation and record keeping will also be improved.

PH-EITI has gained ground in introducing reforms in the sector. Gaps in existing systems have been identified in the last 2 reports, and recommendations have been formulated to address them. For 2016, the MSG intends to deepen its involvement in strengthening the governance of the sector by recommending more policies, monitoring the progress of the reforms that it introduced, and proposing amendments to legislation. This work plan covers

activities to achieve these objectives.					
ACTIVITIES	OUTCOME	RESPONSIBLE PARTY	TIMELINE	COST	FUNDING
MSG to formulate new policies and propose legislations/amendments of existing laws based on the recommendations from the 2 nd report	Improved government systems that ensure transparency in all EI transactions ; Institutionalization of policies which results in sustainable reforms and programs	MSG, consultant	4 th quarter 2016	Budget for meetings and studies	GOP and EGPS/ World Bank
<u>MSG to provide inputs in the drafting of the TIMTA Implementing Rules and Regulations (IRR)MSG to establish a coordinating mechanism with implementation of the TIMTA</u>	Improved government systems that ensure transparency in all EI transactions; Institutionalization of policies which results in sustainable reforms and programs	MSG, Secretariat	1 st Quarter 2016 onwards	Budget for meetings	GOP
MSG to formulate recommendations and policies to address LGU concerns using EITI process	Improved government systems at the local level	MSG, Secretariat	3 rd Quarter 2016	Budget for meetings	GOP
Workshop with LGUs on revenue management* <u>Coordinate with ULAP</u>	Improved revenue management at the local level	MSG, consultant	3 rd Quarter 2016	Budget for roadshow and studies	GOP and EGPS/ World Bank
<u>Coordinate with MGB on the sStandardization</u> process for planning of SDMP and community development plans	Improved government systems that ensure transparency in all EI transactions Institutionalization of policies through law which results in sustainable reforms and programs;	DILG, MGB, Companies	2 nd Quarter 2016 onwards	Budget for meetings	GOP
Engage the Legislative branch of government	Improved government systems that ensure transparency in all EI	MSG, secretariat	3rd Quarter ^{2nd} quarter 2016 onwards	Budget for regular forums and	GOP

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	transactions		2016	dialogues with stakeholders	
Conduct policy forums to address issues in the extractive industries	Improved government systems that ensure transparency in all EI transactions ; Institutionalization of policies which results in sustainable reforms and programs	MSG, Secretariat	2 nd quarter 2016 onwards	Budget for regular forums and dialogues with stakeholders	GOP and EGPS/World Bank
Draft EITI law	Improved government systems that ensure transparency in all EI transactions; Institutionalization of policies through law which results in sustainable reforms and programs	MSG, consultant	2 nd quarter 2016	Budget for studies	GOP and EGPS/ World Bank
Strengthening of local monitoring teams	Increased transparency and improve EI governance at the local level as led by well capacitated LGUs and local monitoring teams equipped in implementing reforms	MSG, secretariat	2 nd quarter 2016 onwards		USAID
Continuous monitoring of agency actions on MSG recommendations from previous reports	Improved government systems that ensure transparency in all EI transactions	MSG, Secretariat	2 nd quarter 2016 onwards	Budget for meetings	GOP

4TH OBJECTIVE: Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders

RATIONALE: Stakeholders have divergent views on how much the extractive sector is contributing to the economy and on the extent that local communities benefit from extractive operations. The EITI is seen a way by which parties can arrive at a consensus on matters pertaining to natural resource management.

GOVERNANCE RELATED CHALLENGES: 1. Distrust among stakeholders. 2. Sustainability of stakeholder engagement 3. Ensuring that the effects of stakeholder engagement through EITI extends to the broader public

ACTIVITIES VIS-À-VIS CHALLENGES: As seen from the first cycle of EITI implementation in the country, sustained and meaningful engagement can go a long way in building trust among stakeholders. The forums, dialogues and regular MSG meetings in the past years proved effective in ventilating issues and coming to a common understanding of how such issues may be addressed through the EITI process. Drawing from the positive results of stakeholder engagement in the past year, more forums and dialogues are scheduled this year to deepen understanding of the sector and to formulate policies. Note that activities under the first and second objectives are also meant to contribute to this fourth objective.

One of the strengths of PH-EITI is the effective engagement of stakeholders through regular MSG meetings, forums and outreach activities. For 2016, PH-EITI intends to engage more stakeholders as it considers expanding the scope of the report to include small scale mining and large scale non metallic mining.

PH-EITI will also provide regular updates to stakeholders on the progress of EITI implementation, and significant achievements the past years. Forums with stakeholders will also seek to get deeper commitment from them by asking for concrete measures that they can implement in promoting transparency in their localities.

ACTIVITIES	OUTCOME	RESPONSIBLE PARTY	TIMELINE	COST	FUNDING
Regular MSG meetings	An enabling environment for sound policies as a result of sustained dialogue among stakeholders	MSG, secretariat	January 2016 onwards	3,000,000	GOP
Regular forums and dialogues with stakeholders	An enabling environment for sound policies as a result of sustained dialogue among stakeholders	MSG, secretariat	January 2016 onwards	2,200,000	GOP

5TH OBJECTIVE: Strengthen business environment and increase investments [in the extractives sector](#)

RATIONALE: There are debates on whether the extractive sector in the Philippines can contribute more to the economy given the country's mineral

deposits. However, shifting policies in the sector affect the level of investments. EITI data is a tool that can be used to ensure that policies are more evidence-based and thus, less volatile. Moreover, perception of corruption still exists, thus discouraging companies from investing. EITI sends the message that the government is serious in its commitment to eradicate corruption to strengthen business environment.

GOVERNANCE RELATED CHALLENGES: 1. Frequent changes in administration and in policies especially at the local level make investing risky. 2. Some local governments lack the political will in ensuring that consultations with communities are transparent and participatory. This increases the level of distrust between companies and communities. 3. The voluntary nature of the EITI process at this point hinders full participation of all companies and may undermine the credibility of the EITI process in the long run.

ACTIVITIES VIS-À-VIS CHALLENGES: For the EITI process to have more impact in strengthening business environment, the complete buy-in of companies is essential. Thus, increased participation of companies is among the priorities of PH-EITI at this stage. Towards this end, the importance of EITI and how it benefits the industry should be communicated more to industry members through forums and dialogues. It is also important that participation in EITI be mandated or least incentivized through legislation in order to ensure full cooperation of companies. Note that activities listed under the 1st and 4th objectives also apply to this objective.

After two years of implementation, the MSG wants to know whether EITI already has an impact in strengthening business environment. The assessment of this will be one of the major activities under the 5th objective. In addition, PH-EITI will conduct more outreach activities to industry partners and consider engaging their business-related processes such as investment promotion, in line with its plan to expand the scope of the EITI report.

ACTIVITIES	OUTCOME	RESPONSIBLE PARTY	TIMELINE	COST	FUNDING
Come up with a study on the mining industry's contributions to and business prospects in the Philippine economy, taking into account Arangkada Philippines advocacy in the process	Affirmation of contribution of extractives to the economy, including through participation in EITI, fostering confidence in the industry	COMP/MGB MSG	June 2016	Budget for studies	GOP and EGPS/ World Bank
Revisit the streamlined process in doing mining business in the country – from SEC registration to the grant of mining tenements and other permits until the final rehabilitation	Streamlined process in the grant of mining tenements, greater transparency in and ease of doing business in the EI sector	MSG	June 2016	Budget for studies	GOP and EGPS/ World Bank

– to surface issues and corresponding recommendations					
Forums with industry members on BIR waiver, beneficial ownership and continuous engagement in the EITI process	Entry of more investments, higher ease of doing business rating in the EI sector	MSG, secretariat	2 nd to 3 rd quarter 2016	Budget for regular forums and dialogues with stakeholders	GOP
Engagement of other mining-affiliated organizations	Entry of more investments, higher ease of doing business rating in the EI sector	MSG, secretariat	2 nd and 3 rd quarter 2016	Budget for regular forums and dialogues with stakeholders	GOP
ADMINISTRATIVE EXPENSES					
Management of the PH-EITI secretariat and operational expenses	Effective implementation of EITI	Secretariat, DOF	January 2016 onwards	7,713,616	GOP and EGPS/ World Bank
Trainings for Secretariat and DOF on project management	Proper implementation of the PH-EITI work plan and grant	Secretariat, DOF	1 st to 2 nd Quarter 2016	350,000	GOP

TOTAL	
EGPS/ World Bank	PHP 35,225,816
GOP	PHP 17,000,000
USAID	
GRAND TOTAL	PHP 52,225,816

Terms of Reference for Independent Administrator

Terms of Reference

Independent Administrator for the 2016 EITI Report, Republic of the Philippines

Approved by the PH-EITI MSG on _____

1. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an Independent Administrator, and published annually alongside contextual and other information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business.

The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

It is a requirement that the MSG approves the terms of reference for the Independent Administrator (requirement 5.2), drawing on the objectives and agreed scope of the EITI as set out in the workplan. The MSG's deliberations on these matters should be in accordance with the MSG's internal governance rules and procedures (see requirement 1.3g). The EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner.

It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent (Requirement 5.1). The multi-stakeholder group and Independent Administrator should address any concerns regarding conflicts of interest. The Independent Administrator's report will be submitted to the MSG for approval and made publicly available in accordance with Requirement 6.

These terms of reference include "agreed upon procedures" for EITI reporting (see section 4) in accordance

¹<http://eiti.org/document/standard>

with EITI Requirement 5.2. The international EITI Board has developed these procedures to promote greater consistency and reliability in EITI reporting. The EITI process should be used to complement, assess, and improve existing reporting and auditing systems. The Board recommends that the process relies as much as possible on existing procedures and institutions, so that the EITI process draws on, complements and critically evaluates existing data collection and auditing systems. In this way, the EITI process has the potential to generate important recommendations to strengthen other oversight systems.

EITI Implementation in the Philippines

The Philippines was admitted as a candidate country by the EITI International Board on May 22, 2013. This coincided with the adoption of the 2013 EITI standard, thus necessitating a revision of the country's work plan. Pursuant to the requirement of the new standard, and after a series of consultations with stakeholders, the Philippine MSG formulated the following objectives for EITI implementation that are linked to EITI principles and reflective of national priorities for the extractive industries:

1. Show direct and indirect contribution of extractives to the economy
2. Improve public understanding of the management of natural resources and public availability of data
3. Strengthen national resource management / strengthen government systems
4. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders
5. Strengthen business environment and increase investments in the extractives sector

The legal basis for EITI implementation in the country is found in Executive Order No. 79 (2012) which states the Philippines' commitment to participate in the EITI process. Subsequent to this, Executive Order No. 147 (2013) was issued by President Aquino formally creating Philippine EITI.

The EITI process in the Philippines is governed by a multi stakeholder group composed of representatives from the government, namely the Department of Finance (in which the PH-EITI secretariat is lodged), Department of Environment and Natural Resources, Department of Energy, Department of the Interior and Local Government, and Union of Local Authorities of the Philippines. The civil society is mainly represented by Bantay Kita Philippines, a broad coalition of civil society organizations advocating transparency and accountability. The extractive industries are represented by the Petroleum Association of the Philippines, The Chamber of Mines Philippines, and an elected representative from non-chamber members.

The key activities that will be undertaken by the MSG to implement the initiative in the country are as follows: 1. Institutionalization of PH-EITI; 2. Capacity-building activities; 3. Outreach and forums with stakeholders; 4. Policy recommendations; 5. Publication and dissemination of EITI report; 6. Communications plan, reference materials and knowledge products; and 7. Information systems.

In December 2014, PH-EITI submitted its first report to the EITI International Secretariat. In February 2016, the second report was launched. This TOR is for the third report which is expected to draw from the recommendations arising from the second report.

The PH-EITI work plan may be accessed at www.ph-eiti.org

2. Objectives of the assignment

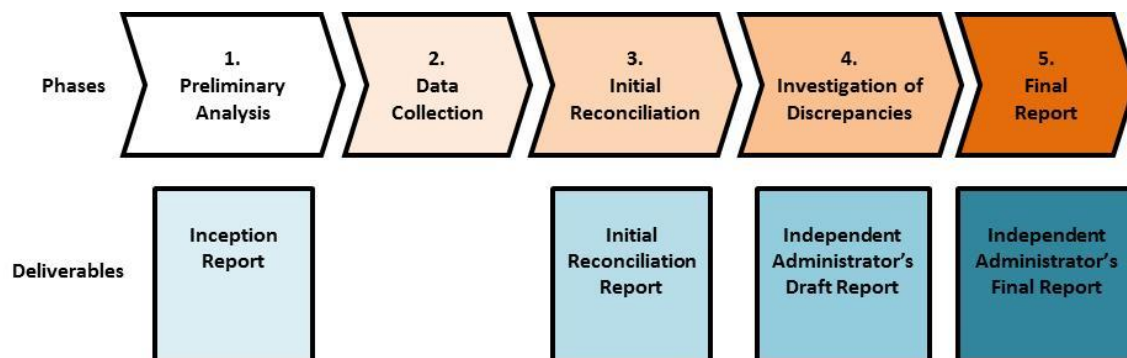
On behalf of the Philippine government and PH-EITI MSG, the Department of Finance seeks a competent and credible firm, free from conflicts of interest, to provide Independent Administrator services in accordance with the EITI Standard. The objective of the assignment is to:

1. Produce an EITI Report for 2015 (covering data for 2014) in accordance with the EITI Standard and section 3 below.
2. Perform other related tasks outlined in this Terms of Reference necessary for the production of the EITI report for 2016.
3. Perform data collection for payments made in 2015.

3. Scope of services, tasks and expected deliverables

3.1. The work of the Independent Administrator has five phases (see figure 1). The Independent Administrator's responsibilities in each phase are elaborated below.

Figure 1 – Overview of the EITI Reporting process and deliverables



Phase 1 – Preliminary analysis and inception report

Objective: The purpose of the inception phase is to confirm that the scope of the EITI reporting process has been clearly defined, including the reporting templates, data collection procedures, and the schedule for publishing the EITI Report. It is imperative that the scope of EITI reporting is clearly defined, in line with the EITI Standard and with the MSG's agreed objectives and expectations for the EITI process. The findings from the first phase should be documented in an inception report (see below). The Independent Administrator is expected to undertake the following tasks:

- 1.1 The Independent Administrator should prepare a detailed outline of the report which shall be

approved by the MSG. It should also submit for the MSG's approval a work plan indicating its approach and methodology in producing the following outputs:

- a. Reconciliation report
- b. Data correlation for purposes of validation or checking compliance

1.2 The Independent Administrator should review whether the revenue streams covered in the 2015 report should be amended for the **2016 EITI Report**. In case of amendments, the IA shall provide an explanation for the same. The inception report should clearly indicate the MSG's decisions on:

- The definition of materiality and thresholds, and the resulting revenue streams to be included in accordance with Requirement 4.1(b).
- The sale of the state's share of production or other revenues collected in-kind in accordance with Requirement 4.1(c).
- The coverage of infrastructure provisions and barter arrangements in accordance with Requirement 4.1(d).
- The coverage of social expenditure in accordance with Requirement 4.1(e).
- The coverage of transportation revenues in accordance with Requirement 4.1(f)
- The level and type of disaggregation of the EITI Report in accordance with Requirement 5.2(e).
- In instances when any of the revenue streams required by the EITI Standard are not applicable in the Philippines context, the IA must explicitly state so in the report.

1.3 The Independent Administrator should review **the companies and government entities that are required to report as defined by the MSG in its 2015 report (Annex A) in accordance with EITI Requirement 4.2**. In case of changes from the previous report as to reporting entities covered, the IA shall provide an explanation for the same. The inception report should:

- Identify and list the companies that make material payments to the state and will be required to report in accordance with Requirement 4.2(a).
- Identify and list the government entities that receive material payments and will be required to report in accordance with Requirement 4.2(a).
- Identify any barriers to full government disclosure of total revenues received from each of the benefit streams agreed in the scope of the EITI report, including revenues that fall below agreed materiality thresholds (Requirement 4.2(b)).
- Confirm the MSG's position on disclosure and reconciliation of payments to and from state-owned enterprises in accordance with Requirement 4.2(c)
- Confirm the MSG's position of the materiality and inclusion of sub-national payments in accordance with Requirement 4.2(d).

- Confirm the MSG's position on the materiality and inclusion of sub-national transfers in accordance with Requirement 4.2(e).

1.4 REPORTING TEMPLATE:

The Independent Administrator shall:

- Review the template for the 2015 report and make recommendations for improvement
- Together with the MSG, draft and finalize a reporting template identifying all revenue streams and information that should be provided by the reporting entities for the EITI report.
- Develop guidelines for completing reporting templates

1.5 The Independent Administrator should provide advice to the MSG in examining **the audit and assurance procedures in companies and government entities participating in the EITI reporting process** in accordance with Requirement 5.2(b). This includes examining the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.

1.6. The Independent Administrator should provide advice to the MSG **on what information the MSG should require to be provided to the Independent Administrator by the participating companies and government entities to assure the credibility of the data** in accordance with Requirement 5.2(c). The Independent Administrator should then employ his /her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator should document the options considered and the rationale for the assurances to be provided. Where deemed necessary by the Independent Administrator and the MSG, assurances may include:

- Requesting sign-off from a senior company or government official from each reporting entity attesting that the completed reporting form is a complete and accurate record.
- Requesting a confirmation letter from the companies' external auditor that confirms that the information they have submitted is comprehensive and consistent with their audited financial statements. The MSG may wish to phase in any such procedure so that the confirmation letter may be integrated into the usual work programme of the company's auditor. Where some companies are not required by law to have an external auditor and therefore cannot provide such assurance, this should be clearly identified, and any reforms that are planned or underway should be noted".
- Where relevant and practicable, requesting that government reporting entities obtain a certification of the accuracy of the government's disclosures from their external auditor or equivalent.

The Independent Administrator should exercise judgement and apply appropriate international professional standards² in developing a procedure that provide a sufficient basis for a

² For example, ISA 505 relative to external confirmations; ISA 530 relative to audit sampling; ISA 500 relative to audit evidence; ISRS 44000 relative to the engagement to perform agreed-upon procedures regarding financial information and 4410 relative to compilation engagements.

comprehensive and reliable EITI Report.

- 1.7 The Independent Administrator should provide advice to the MSG on **agreeing appropriate provisions relating to safeguarding confidential information**.
- 1.8 The Independent Administrator shall present to the MSG which data from the 2015 report on contextual information should be updated.
- 1.9 The Independent Administrator should prepare a work plan and work with the MSG to agree on the procedures for incorporating contextual and other non-revenue information in the EITI Report. The procedures should ensure that information is clearly sourced and attributed. The contextual information to be incorporated in the Report in accordance with Requirement 3 is detailed in Annex 1 hereof.

The Independent Administrator should document the results from the inception phase in an **inception report** for consideration by the MSG addressing points 1.1 – 1.9 above. Where necessary the inception report should highlight any unresolved issues or potential barriers to effective implementation, and possible remedies for consideration by the MSG. The inception report should be submitted to the MSG one week before its presentation to the body.

Phase 2 – Data collection

- 2.1 The Independent Administrator shall distribute the reporting templates and collect the completed forms and associated supporting documentation, as well as any other information requested to be collected by the MSG, directly from the participating reporting entities. The MSG, assisted by the National Secretariat, shall provide contact details for the reporting entities and assist the Independent Administrator in ensuring that all reporting entities participate fully.
- 2.2 The Independent Administrator shall ensure that the request for data includes appropriate guidance to the reporting entities, and on where to seek additional information and support.
- 2.3 The Independent Administrator shall contact the reporting entities directly to clarify any information gaps or discrepancies.
- 2.4 The Independent Administrator shall obtain any additional information from the extractive companies and government agencies necessary to carry out the reconciliation, including requesting any other data not included in the reporting template and documents in support of the information provided in the template.
- 2.5 The Independent Administrator shall demonstrate to the reporting entities how to properly fill in reporting templates.
- 2.6 The Independent Administrator should make sure that templates are completely filled up by reporting entities and must employ all measures to ensure that each entity submits complete information.

Phase 3 – Initial reconciliation and initial reconciliation report

- 3.1 The Independent Administrator should compile a database with the data provided by the reporting entities and ensure access by the MSG to such database.
- 3.2 The Independent Administrator should comprehensively reconcile the information disclosed by the

reporting entities, identifying any discrepancies (including offsetting discrepancies) in accordance with the agreed scope. The Independent Administrator shall discuss with the MSG further actions it should take in explaining the discrepancies.

- 3.3 The Independent Administrator should prepare an initial reconciliation report based on the reported (unadjusted) data for consideration by the MSG in accordance with the agreed scope. The said report, together with the narrative of the updated contextual information shall be submitted to the MSG one week before the presentation of findings to the MSG.
- 3.4 Should the MSG wish, the Independent Administrator shall recommend an acceptable margin of error in determining which discrepancies should be further investigated. Where this has been agreed, the Independent Administrator should identify any discrepancies above the agreed margin of error established at X% of total revenues.

Phase 4 – Investigation of discrepancies and draft Independent Administrator’s Report (contextual information and reconciliation)

- 4.1 The Independent Administrator shall directly contact the reporting entities in seeking to clarify any discrepancies in the reported data.
- 4.2 The Independent Administrator shall prepare a draft Independent Administrator’s Report that comprehensively reconciles the information disclosed by the reporting entities, identifying any discrepancies and the explanation for the same, and reports on contextual and other information requested by the MSG.
- 4.3 The draft Independent Administrator’s report should:
 - a) describe the methodology adopted for the reconciliation of company payments and government revenues, and demonstrate the application of international professional standards.
 - b) include a description of each revenue stream, related materiality definitions and thresholds (Requirement 4.1).
 - c) include an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided. The Independent Administrator should assess the process of data collection of the companies and the agencies and report on the reliability of data collection and validity and accuracy of the data.
 - d) based on the government’s disclosure of total revenues as per Requirement 4.2(b), indicate the coverage of the reconciliation exercise.
 - e) include an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report (Requirement 5.3(d)). In cases where companies do not sign the BIR waivers or refuse to participate in the reporting process, the reconciliation report should contain unilateral reporting by government agencies.
 - f) document whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the EITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the EITI Report advise readers on how to access this information (Requirement 5.3(e)).
 - g) Include a discussion on the flow of revenue streams and how transfers are facilitated between the different levels of government offices.
 - h) provide an in-depth analysis of the data generated by the report, not just on the contribution to the economy but also the accuracy and consistency of the numbers based on existing laws and regulations. It should determine whether the figures are in compliance with the law.

- 4.4 The Independent Administrator should make recommendations for strengthening the reporting process in the future, citing problems encountered in the process and methods to address them. It shall also include recommendations regarding audit practices and reforms needed to bring them in line with international standards.
- 4.5 The Independent Administrator is encouraged to make recommendations on strengthening the template Terms of Reference for Independent Administrator services in accordance with the EITI Standard for the attention of the EITI Board.
- 4.6 The Independent Administrator shall include a Discussion on the reporting cycles of the reporting entities and availability dates of data.
- 4.7 The Independent Administrator should work in coordination with the consultant tasked to write the contextual information to make sure that their findings and conclusions are consistent.
- 4.8 A draft narrative of all findings for this phase shall be submitted to the MSG one week before the presentation of the findings to the MSG.

Phase 5 – Final Independent Administrator’s report

- 5.1 The final report should contain all the comments of the MSG from the draft report, making sure that all concerns raised by the reporting entities have been sufficiently addressed before the final report is submitted.
- 5.2 The Independent Administrator should produce electronic data files that can be published together with the final Report. For this purpose, the Independent Administrator should encode the data from the templates and the companies’ financial statements from the SEC into the dataset that can be analyzed using statistical software. A codebook should accompany such data set.
- 5.3 The Independent Administrator should provide machine readable files and/or code or tag EITI Reports and data files
- 5.4 Following approval by the MSG, the Independent Administrator is mandated to submit summary data from the EITI Report electronically to the International Secretariat according to the standardised reporting format available from the International Secretariat (Requirement 5.3(b)).
- 5.5 Independent Administrator will publish/make public their final report only upon the instruction of the MSG. The MSG will endorse the report prior to its publication. Where stakeholders other than the Independent Administrator wish to include additional comments in, or opinions on, the EITI Report, the authorship should be clearly indicated.
- 5.6 The Independent Administrator shall propose a scope for the next EITI report.
- 5.7 The Independent Administrator shall assist the MSG in giving trainings to reporting government agencies, extractive companies and CSOs in connection with the reconciliation process.
- 5.8 The Independent Administrator shall include an assessment of how the findings of the Independent Administrator in the previous report have been addressed by the MSG and how the recommendations have been carried out.
- 5.9 The Independent Administrator shall submit its final report to the MSG two weeks before the findings are presented to the MSG.

Phase 6-- Post-publication

- 6.1 The Independent Administrator shall provide assistance in the translation into local dialects of the EITI reports (both for the popular and official version) and give final approval for the same.
- 6.2 The Independent Administrator shall conduct a report analysis workshop with the MSG members and key stakeholders immediately after the publication of the report.
- 6.3. The Independent Administrator shall turn over to the PH-EITI Secretariat all documents and data gathered in connection with the production of the report.

4. Qualification requirements for Independent Administrators

The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards (requirement 5.1). It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent. Bidders must follow (and show how they will apply) the appropriate professional standards for the reconciliation / agreed-upon-procedures work in preparing their report.

The Independent Administrator will need to demonstrate:

- Expertise and experience in the oil, gas and mining sectors in the Philippines as shown by previous engagements.
- Expertise in accounting, auditing and financial analysis.
- A track record in similar work. Previous experience in EITI reporting is not required, but would be advantageous.
- Working knowledge of legal, regulatory and fiscal legislation applicable to the extractive industries.
- Affiliation with an internationally recognised audit firm that has experience in preparing EITI or similar reports in extractive and financial sectors.

At the minimum, the firm must be able to provide a support staff of certified public accountants in good standing with the following qualifications:

- One partner with experience of 15 years in auditing and accounting and must be familiar with public accounting and finance;
- One senior associate with 8 years of experience in auditing and accounting;
- 2 junior associates with 2 years of experience in auditing and accounting.

The firm must have a senior writer and editor who will make sure that the report is well written, comprehensible, coherent, and that there are no conflicting data in the entire document.

Submission must include proof of relevant qualifications for key staffs.

- The Independent Administrator must have no conflict of interest as determined by the MSG. In order to ensure the quality and independence of the exercise, Independent Administrators are required in their proposal to disclose any actual or potential conflicts of interest. The bidder must submit a sworn statement of lack of conflict of interest, indicating the nature of work performed for a previous client in the extractive industry and the measures they intend to adopt to ensure impartiality.
- The IA must have already provided services in large-scale projects of similar nature or magnitude.

5. Reporting requirements and time schedule for deliverables

The period for the assignment is from April 15, 2015 to December 2016. The proposed schedule is set out below:

ACTIVITY/DELIVERABLES	DEADLINE	MSG APPROVAL
Signing of contract	April 8, 2016	
Phase 1: Workplan, Report Outline, Inception Report, Reporting Template	May 2, 2016	May 6, 2016
Phase 2: Data Collection	May-June 2016	
Phase 3: Initial Reconciliation Report (unadjusted data) and Incorporated Contextual Information	July 31, 2016	September 2, 2016
Phase 4: Investigation of Discrepancies and Draft Reconciliation Report	August 30, 2016	September 2, 2016
Phase 5: Final report	October 3, 2016	November 4, 2016
Phase 6: Post-publication	January 2017	

The schedule of payments shall be as follows:

15% upon contract signing

20% following delivery of the inception report

20% following delivery of the draft of first EITI report

20% following MSG approval and publication of the EITI report

25% following the launching of the final EITI report at a national conference

6. Client's input and counterpart personnel

The IA shall coordinate with and report to the National Secretariat on a day-to-day basis on all relevant matters pertaining to the implementation of the Project. The Head of the Secretariat will be the Consultant's contact person in the course of implementation of the Project.

Support to be provided by PH-EITI

The PH-EITI Secretariat will provide the IA with the following support:

- i) Coordinate with the members of the PH-EITI MSG;
- ii) Coordinate with reporting entities to facilitate the IA's work; and
- iii) Provide relevant reference materials and information on EITI

Annex 1 – Data Sheet on scope of services

Based on scoping reports the MSG proposes the following scope for the EITI:

1. Contextual Information

The Independent Administrator is tasked with incorporating the following contextual information in accordance with EITI Requirement 3.

Contextual information to be provided in the EITI Report	Commentary on work to be undertaken by the Independent Administrator
A description of the legal framework and fiscal regime governing the extractive industries (Requirement 3.2), in particular laws relevant to the information disclosed in the EITI report.	To be drawn from output of consultant for contextual information
An overview of the extractive industries, including any significant exploration activities (Requirement 3.3)	To be drawn from output of consultant for contextual information
Where available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report (Requirement 3.4)	To be drawn from output of consultant for contextual information
Production data for the fiscal year covered by the EITI Report (Requirement 3.5)	To be drawn from output of consultant for contextual information
Information regarding state participation in the extractive industries (Requirement 3.6) ³	To be drawn from output of consultant for contextual information
Distribution of revenues from the extractive industries (Requirement 3.7);	To be drawn from output of consultant for contextual information
Any further information requested by the MSG on revenue management and expenditures (Requirement 3.8)	To be drawn from output of consultant for contextual information
Information on the licencing process and register (Requirement 3.9) ⁴ and the allocation of licenses (Requirement 3.10) ⁵	To be drawn from output of consultant for contextual information
Any information requested by the MSG on beneficial ownership (Requirement 3.11) ⁶	To be drawn from output of consultant for contextual information
Any information requested by the MSG on	To be drawn from output of consultant for contextual information

Contextual information to be provided in the EITI Report	Commentary on work to be undertaken by the Independent Administrator
contracts (Requirement 3.12) ⁷	information
Contextual information on the two sites selected by the MSG to report on small scale mining	To be drawn from scoping study on small-scale mining
Contextual information on the extractive industries in ARMM	To be drawn from output of consultant for contextual information

2. The taxes and revenues to be covered in the EITI Report (Requirement 4.1)

Benefit stream	Commentary on work to be undertaken by the Independent Administrator
Payments to DENR and MGB	Subject to the scope and materiality agreed upon by the MSG
Payments to BIR	Subject to the scope and materiality agreed upon by the MSG
Payments to local government units (direct and indirect/subnational transfers)	Subject to the scope and materiality agreed upon by the MSG. Reconciliation of payments to local government should cover the following: <ol style="list-style-type: none"> 1. Revenue Collection: Direct payments by companies reconciled with collection of subnational governments 2. Revenue distribution process: Revenue transfers from central to subnational government compared against applicable laws on what they should be getting 3. Revenue distribution cash flow: Revenue transfers from central to subnational reconciled with subnational governments' receipts
Royalties	Subject to the scope and materiality agreed upon by the MSG
Payments to Department of Energy	Subject to the scope and materiality agreed upon by the MSG
Payments to BOC	Subject to the scope and materiality agreed upon by the MSG
IP Royalties	Subject to the scope and materiality agreed upon by the MSG
Social expenditures	Subject to the scope and materiality agreed upon by the MSG This information should include large scale metallic mining companies and oil and gas companies with

Benefit stream	Commentary on work to be undertaken by the Independent Administrator
	social expenditures whether or not they are included in Annex 1
Sale of state's share of production or other revenues collected in kind	Subject to the scope and materiality agreed upon by the MSG
Infrastructure provisions and barter arrangements	Subject to the scope and materiality agreed upon by the MSG
Transportation expenses	Subject to the scope and materiality agreed upon by the MSG
Total revenues (in aggregate) received by the government from each benefit stream including revenues that fall below agreed materiality thresholds (See Requirement 4.2.b)	
Incentives availed of by the extractive companies	
Special funds created and earmarked for specific purposes under existing laws and regulations governing the extractive industries	The current status of special funds and assessment of compliance with existing laws on the administration and management of funds should be provided by the IA.
The materiality and inclusion of sub-national payments (Requirement 4.2(d)) ⁸	
The disclosure and reconciliation of payments to and from state-owned enterprises (Requirement 4.2(c)) ⁹	
The materiality and inclusion of sub-national transfers in accordance with Requirement 4.2(e) ¹⁰	
Payments collected from the two sites selected by the MSG to report on small scale mining	
Payments collected from extractive operations in ARMM	

⁸ Add reference to Guidance Note

⁹ Add reference to Guidance Note

¹⁰ Add reference to Guidance Note

3. List of reporting entities (companies and government agencies) (Requirement 4.2)

See attached list of mining, oil and gas companies (Annexes 3 and 4)

Government agencies

1. DENR-Mines and Geosciences Bureau
2. Bureau of Internal Revenue
3. Local government units with mining, oil and gas operations in their localities.
4. Department of Energy
5. Bureau of Customs
6. National Commission on Indigenous Peoples
7. State owned enterprises (PNOC and PMDC)
8. Department of Budget and Management
9. Commission on Audit
10. Bureau of Treasury
11. Philippine Ports Authority

Annex 2 – Supporting documentation

Documentation on governance arrangements and tax policies in the extractive industries, including relevant legislation & regulations

- [...]
- [...]
- [...]

EITI work plans & other documents

- [...]
- [...]
- [...]

Findings from preliminary scoping work

- [...]
-

Terms of Reference

CONTEXTUAL INFORMATION WRITER

Terms of Reference

Contextual Information Writer for the 2016 EITI Report, Republic of the Philippines

Approved by the PH-EITI MSG on _____

1. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an Independent Administrator, and published annually alongside contextual and other information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business.

The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

It is a requirement that the MSG approve the terms of reference for the Contextual Information Writer, drawing on the objectives and agreed scope of the EITI as set out in the work plan, and in accordance with the MSG's internal governance rules and procedures.

It is a requirement that the Contextual Information Writer is perceived by the MSG to be credible, trustworthy and technically competent. The MSG and Contextual Information Writer should address any concern regarding conflict of interest. The Contextual Information Writer's output will be submitted to the MSG for approval and made publicly available.

¹<http://eiti.org/document/standard>

EITI Implementation in the Philippines

The legal basis for EITI implementation in the country is found in Executive Order No. 79 (2012) which states the Philippines' commitment to participate in the EITI process. Subsequently, President Benigno S. Aquino III issued Executive Order No. 147 (2013) formally creating Philippine EITI.

The EITI process in the Philippines is governed by a multi-stakeholder group composed of representatives from the government, namely the Department of Finance (in which the PH-EITI secretariat is lodged), Department of Environment and Natural Resources, Department of Energy, Department of the Interior and Local Government, and Union of Local Authorities of the Philippines. The civil society is mainly represented by Bantay Kita Philippines, a broad coalition of civil society organizations advocating transparency and accountability. The extractive industries are represented by the Petroleum Association of the Philippines, The Chamber of Mines Philippines, and an elected representative from non-chamber members.

The Philippines was admitted as a candidate country by the EITI International Board on May 22, 2013. Pursuant to the requirement of the EITI Standard, and after consultation with stakeholders, the Philippine MSG formulated the following objectives for EITI implementation that are linked to EITI principles and reflective of national priorities for the extractive industries:

1. Show direct and indirect contribution of extractives to the economy
2. Improve public understanding of the management of natural resources and public availability of data
3. Strengthen national resource management / strengthen government systems
4. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders
5. Strengthen business environment and increase investments in the extractives sector

In December 2014, PH-EITI submitted its first report to the EITI International Secretariat. In February 2016, the second report was launched. This TOR is for the third report which is expected to draw from the recommendations arising from the second report.

2. Objectives of the assignment

On behalf of the Philippine government and PH-EITI MSG, the Department of Finance seeks a competent and credible service provider, free from conflict of interest, to render technical research and writing services to achieve the following objectives:

1. Contribute to the production of an EITI Report for 2016 (covering 2014 data) in accordance with the EITI Standard by doing the narrative or write-up of the contextual information of the Report.
2. Perform other related tasks necessary for the production of the EITI report for 2016, as stipulated in this Terms of Reference.

3. Scope of services, tasks, and deliverables

3.1. The Contextual Information Writer shall undertake the following tasks:

- a) Prepare and submit a detailed outline of the narrative or write-up and a note on the approach and methodology to be employed, which shall be approved by the MSG.
- b) Review the contextual information in the 2015 Report and determine if the same should be amended for the 2016 Report, providing an explanation for such determination.
- c) Identify which data from contextual information in the 2015 Report on should be updated.
- d) Advise the MSG on what information it should require EITI participating companies and agencies to provide the Contextual Information Writer to ensure the credibility of the contextual information.
- e) Advise the MSG on safeguarding confidential information that may be involved in the contextual information.
- f) Coordinate with the Independent Administrator on the terms and procedures for incorporating the contextual information in the EITI Report. The procedures should ensure that data are consistent and clearly sourced or attributed.
- g) Draft the narrative or write-up of the contextual information, observing professional standards of technical writing.
- h) Address and incorporate in the final draft all the comments of the MSG on the first draft.
- i) Present the final contextual information narrative to the MSG upon request.
- j) Make recommendations for strengthening the contextual information writing process in the future, citing problems encountered in the process and methods to address them.
- k) Provide assistance in the translation into local dialects of the EITI reports (both for the popular and official version) and give final approval for the same.
- l) Participate in the conduct of a report analysis workshop with the MSG members and key stakeholders after the publication of the Report.
- m) Turn over or submit to the PH-EITI Secretariat all documents and data gathered in connection with the writing of the contextual information, like reference materials and supporting documentation, including contact details of resource persons, if any.
- n) Produce electronic data files that can be published together with the Report.
- o) Produce a comprehensible, non-technical executive summary of not more than 10% of the length of the full narrative or write-up.

3.2. The narrative or write-up of the contextual information should contain:

- a) A description of the legal framework and fiscal regime governing the extractive industries in the Philippines, in particular laws relevant to the information disclosed in the EITI Report

- b) An overview of the extractive industries*, including any significant exploration activities
- c) Information on the licencing process and register and the allocation of licenses applicable to the extractive industries
- d) Information on the extraction process flow and a description of regulatory mechanisms and payments made at each stage of the process (e.g. monitoring of pricing and production volume)
- e) Information on the procedures as to and treatment of extractive operations in ancestral domains
- f) Information on beneficial ownership of extractive companies
- g) Information regarding state participation in the extractive industries
- h) Information on contracts
- i) Information about the contribution of the extractive industries to the economy*, especially for the fiscal year covered by the EITI Report
- j) Production figures and data*, especially for the fiscal year covered by the EITI Report
- k) Government revenues from extractive industries at the national and local levels (taxes, royalties, bonuses, fees, other payments) in absolute terms and as percentage of total government revenues
- l) Overview of management of natural resource revenues
- m) Information on the distribution of revenues from the extractive industries, including special funds
- n) Information on the subnational framework for EITI implementation
- o) Information on the two sites selected by the MSG to report on small scale mining
- p) Information on the extractive industries in ARMM
- q) Other related information requested by the MSG on the foregoing

4. Qualification requirements for the Contextual Information Writer

The Contextual Information Writer will need to demonstrate:

- A proven track record in technical writing
- At least five (5) years of relevant experience
- Samples of previous work of a similar nature
- Working knowledge of the extractive industries in the Philippines
- Working knowledge of the legal and regulatory framework of the extractive industries in the Philippines

- Familiarity with the Extractive Industries Transparency Initiative (EITI)
- Absence of conflict of interest

The Contextual Information Writer must have an editor who will make sure that the narrative or write-up is internally consistent, well written, coherent, and comprehensible.

5. Budget, duration, and timeline for deliverables

The budget for the consultancy service is _____ for a period of _____ (__) months.

The period for the assignment is from _____ 2016 to _____ 2016.

The schedule of payment shall be as follows:

15% upon contract signing

20% following delivery of the output referred to under 3.1 (a)-(c) hereof [due: _____]

20% following delivery of the first draft of the contextual information write-up [due: _____]

20% following delivery of the final draft incorporating all comments of the MSG [due: _____]

25% following MSG approval and publication of the EITI Report

6. Support to be provided by PH-EITI

The PH-EITI Secretariat will provide the Contextual Information Writer the following support:

- i) Coordinate with the members of the PH-EITI MSG as may be necessary; and
- ii) Provide relevant reference materials and information on EITI .

***Overview of the Extractives Industries**

1. Mineral potential per province (including figures and maps from DOE for oil, gas and coal, and MGB for metallic minerals)

2. **Contribution to the economy**
 - a) Size of extractive industries in absolute terms and as a percentage of GDP including estimate of informal sector activity, number, and location of operating companies
 - b) Government revenues from extractive industries (taxes, royalties, bonuses, fees, other payments) in absolute terms and as percentage of total government revenues
 - c) Exports from the extractive industries in absolute terms and as a percentage of total exports
 - d) Employment in the extractive industries in absolute terms and as a percentage of total employment
 - e) Incentives availed of by extractive companies
 - f) Social expenditures paid by extractive companies

3. **Production figures**
 - a) Key provinces where production is concentrated
 - b) Total production volume and value of production by commodity and by project
 - c) Total export volumes, value of exports by commodity and by project

TAX ANALYSIS 2013 EITI REPORT



**Chamber of Mines
of the Philippines**

OBJECTIVE OF THE ANALYSIS

DETERMINE:

- GOVERNMENT SHARE OF PROFITS: total taxes and fees collected by government as a percentage of income before all taxes and fees of material metallic mining companies¹
- GOVERNMENT SHARE OF MINING REVENUES: total taxes and fees collected by government as a percentage of revenues (gross sales) of such companies
- The level of DISSAGREGATION required to achieve a meaningful analysis of the tax regime

¹ 19 material metallic mining companies with sales revenues of P1 Billion and above
Note: figures provided, and analysis reviewed, by PWC.

MACRO ANALYSIS: USING DATA OF 19 MATERIAL COMPANIES

Income Before All Taxes & Fees	19,203
Deduct Oceana Gold Forex Gain	<u>2,486</u>
Adjusted Income Before All Taxes & Fees	16,717 (A)
Total Taxes & Fees	5,364 (B)
Government Share (B/A)	32%
Total Mining Revenues	70,649 (C)
Total Taxes & Fees to Revenues (B/C)	8%

The analysis is not a good indication of the mining tax regime. Need to separate material companies under ITH and who incurred losses.

MATERIAL COMPANIES UNDER ITH

Seven material companies under ITH:

Adnama	Carmen Copper	Carrascal Nickel	Marcventures
Oceana Gold	Platinum Group	TVI Resources	

Adjusted Income Before All Taxes & Fees	12,092 (A)
Total Taxes & Fees	2,066 (B)
Government Share (B/A)	17%
Total Mining Revenues	37,216 (C)
Total Taxes & Fees to Revenues (B/C)	6%

MATERIAL COMPANIES WITH LOSSES

Five material companies who lost money:

Apex Mining	Benguet Nickel Mines	Greenstone Resources
Lepanto Consolidated	Rapu-Rapu Minerals	

Total Revenues: **P7.7 B**

Total Losses: **P1.9 B**

Total Taxes & Fees: **P307 M**

MATERIAL PROFITABLE COMPANIES

Six material companies operated profitably throughout the year¹

Eramen Minerals
Rio Tuba Nickel

Filminera
SR Metals

Hinatuan Mining
Taganito Mining

Adjusted Income Before All Taxes & Fees	5,499 (A)
Total Taxes & Fees	2,418 (B)
Government Share (B/A)	44%
Total Mining Revenues	15,505 (C)
Total Taxes & Fees to Revenues (B/C)	16%

Meaningful numbers reflective of the mining tax regime

¹ Philex Mining was excluded as it operated for 10 months only and paid a fine of P1.03 B (not counted as taxes & fees), which depressed income and therefore income tax payment.

NOT THE END OF THE STORY....

Mining Company

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graph TD; MC[Mining Company] --> I1[Dividends to Individual RP Shareholders*: Subject to 10% Withholding Tax]; MC --> C[Dividends to RP Corporate Shareholders*: No Withholding Tax]; C --> I2[Dividends to Individual RP Shareholders*: Subject to 10% Withholding Tax];
```

Dividends to Individual RP Shareholders*: **Subject to 10% Withholding Tax**

Dividends to RP Corporate Shareholders*: **No Withholding Tax**

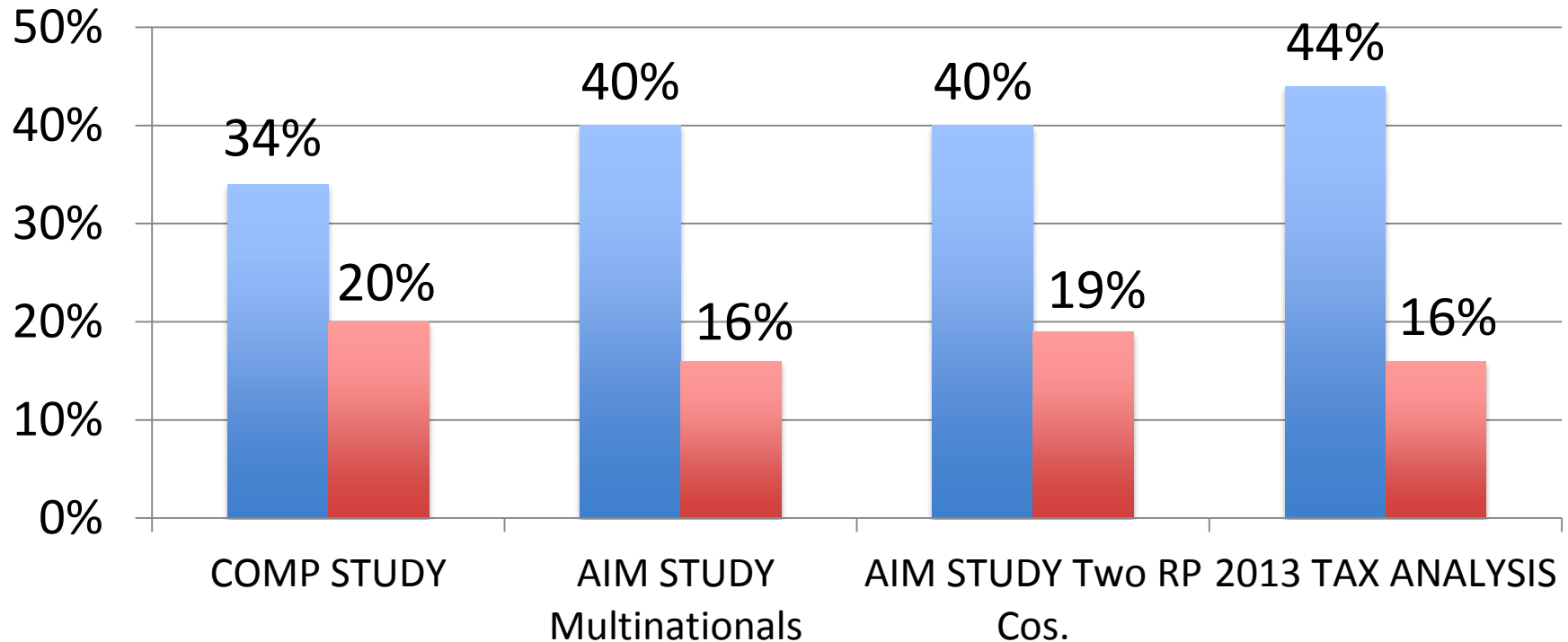
NOTE: 10% WH tax rate is equivalent to an additional government share of 6%. Therefore government share of 44% increases to 50% on the portion of income before all taxes and fees that are paid out as dividends to shareholders.

Dividends to Individual RP Shareholders*: **Subject to 10% Withholding Tax**

*If foreign individual, WH tax rate is 25%. If foreign corporation, WH tax rate is 30% if not in tax treaty country, and if so, at a range of between 10% to 30% depending on treaty.

HOW DOES THIS COMPARE?

■ GOV'T SHARE ■ % TO REVENUES



COMP STUDY: Average of the tax regimes of select mining countries (Chile, Peru, PNG, South Africa, Canada & Australia – Queensland) applied to a copper model. Gov't share low of 25% in Chile and high of 42% in Peru)

AIM STUDY: "Revenue Sharing in Mining: Insights from the Philippine Case", Jan 2013
Two RP Companies: Philex & Nickel Asia (Rio Tuba, Taganito, Hinatuan & Cagdianao)

Meeting of the TWG on Local Government Code (LGC)

Amendment

17 March 2016, 10:00am

FPPO Conference Room, DOF

Present:

Atty. Ron Recidoro (COMP)

Gina Tumlos (BK)

Dir. Elsa Agustin (DOF)

Febe Lim (DOF)

Jean Centeno (PPEI)

Atty. Karla Espinosa (Secretariat)

Abigail Ocate (Secretariat)

Joy Saquing (Secretariat)

Agenda:

Draft TOR for Consultant or Scope of Study on LGC amendment (for implementation of MSG recommendation/s)

***Notes on the discussion/proceedings are embodied in the following Concept Note/ Scope of Study.**

While other issues related to LGUs and the Local Government Code have been pointed out in PH-EITI (e.g., taxing powers of LGUs over extractive activities), it is suggested that the proposed study be limited in scope due to resource constraints. The present scope of study was defined and narrowed down based on cost considerations, level of importance, and expected impact.

For MSG Discussion/Decision:

1. Does the MSG want to pursue the study given the context of PH-EITI priorities?
2. Does the MSG want to pursue amending the relevant law/s and engaging the legislative process?
3. What does the MSG foresee as the effects or impact of pursuing the subject policy measure/s?

CONCEPT NOTE/ SCOPE OF STUDY

The PH-EITI country reports have surfaced several issues with respect to the revenues local government units (LGUs) receive or derive from the extractive industries. In particular, these issues relate to the following matters:

1. The release and transfer to LGUs of their share in the national wealth
2. The revenue sharing between the national government and the LGUs hosting extractive projects (60-40)
3. The revenue sharing between the LGU which hosts the project site and that which hosts the principal/head office (70-30)

For the most part, the problems identified include the perceived delay in release or non-receipt altogether of the LGU shares in national wealth and the apparent inequity in the sharing of government revenues.

Having been raised in PH-EITI forums such as LGU roadshows, the issues have been subject of MSG recommendations to review the applicable laws for possible amendment or revision. The legal provisions governing the matter of LGU shares in revenues from the extractive industries are found mainly in the Local Government Code of 1991 (Republic Act No. 7160) and the National Internal Revenue Code, as amended.

The foregoing considered, it is proposed that a study be conducted to help address the issues identified. The study should answer or cover the following questions:

Question	Method/Task
1. What studies have been or are being done on the subject?	<ul style="list-style-type: none">▪ Review of related literature (including study by DILG-PPEI TWG on ENR and social investment)
2. What is the legal regime governing the nature, determination, distribution and disposition of LGU shares in the national wealth from extractive industries?	<ul style="list-style-type: none">▪ Mapping of applicable/relevant laws and policies, including administrative issuances▪ Survey of comparable policies and practices in other countries▪ Description of pending relevant proposed legislation (including mining fiscal regime bills, direct remittance bill, alternative bills)
3. How does the legal regime (above) relate to EITI? What are the points of	<ul style="list-style-type: none">▪ Discussion of EITI and subnational/local government

convergence and of conflict, nexus and gaps?	concerns
4. Is there clamor or significant demand for policy reform from the concerned sector/s?	<ul style="list-style-type: none"> ▪ Survey/key informant interviews/ focus group discussions with LGU representatives
5. What exactly are the concerns, considerations, aims and suggestions of the concerned sector/s?	
6. What legislative amendments would be required to address the problems identified?	<ul style="list-style-type: none"> ▪ Outline and discussion of necessary amendatory legislation ▪ Draft bill/s
7. Can the draft bill/s admit supplementary provisions addressing other PH-EITI-related concerns, such as including the Social Development and Management Program (SDMP) in the formulation of local development plans?	
8. What are the projected repercussions or impact of the contemplated legislative amendment?	<ul style="list-style-type: none"> ▪ Outline and discussion of implications/impact
9. Are there alternative ways to address the problems (other than through legislative action)?	<ul style="list-style-type: none"> ▪ Identification and discussion of alternative measures
10. What actions does the consultant expert recommend?	<ul style="list-style-type: none"> ▪ Recommendations

2016 EITI Validation Checklist

Checklist	Indicator Assessment Tool (Evidence)
<i>Sign Up</i>	
1. Has the government issued an unequivocal public statement of its intention to implement EITI?	
2. Has the government committed to work with civil society and companies on EITI implementation?	
3. Has the government appointed a senior individual to lead on EITI implementation?	
4. Has a fully costed work plan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (government, private sector and civil society)?	<ul style="list-style-type: none"> • Measurable targets. • A timetable for implementation. • An assessment of potential capacity constraints. • How the government will ensure the multi-stakeholder nature of EITI, particularly in terms of the involvement of civil society. • A timetable for validation during the stage at which a country is a 'Candidate'. This should reflect country needs, but should take place at least once every two years. • The Work Plan should also elaborate on how the government will pay for validation.
<i>Preparation</i>	
5. Has the government established a multi stakeholder group to oversee EITI implementation?	<ul style="list-style-type: none"> • Stakeholder assessments where these have been carried out. • Information on the membership of the multi-stakeholder group: <ul style="list-style-type: none"> ○ Was the invitation to participate in the group open and transparent? ○ Are stakeholders adequately represented (this does not mean stakeholders have to be equally represented)? ○ Do stakeholders feel that they are adequately represented? ○ Do stakeholders feel they can operate as part of the committee – including by liaising with their constituency groups and other stakeholders – free of undue influence or coercion? ○ Are civil society members of the group operationally, and in policy terms, independent of government and/or the private sector? ○ Where group members have changed, has there been any suggestion of coercion or an attempt to include members that will not challenge the status quo? ○ Do group members have sufficient capacity to carry out duties?

	<ul style="list-style-type: none"> • Do the TORs give the committee a say over the implementation of EITI? These TORs should at least include: endorsement of the Country Work Plan – following revisions where necessary; choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards; choosing an organisation to undertake the reconciliation; and, other areas as noted in the Validation Grid. • Are senior government officials represented on the committee?
6. Is civil society engaged in the process?	<ul style="list-style-type: none"> • Outreach by the multi-stakeholder group to wider civil society groups, including communications (media, website, letters) with civil society groups and/or coalitions (e.g. a local Publish What You Pay coalition), informing them of the government's commitment to implement EITI, and the central role of companies and civil society. • Actions to address capacity constraints affecting civil society participation, whether undertaken by government, civil society or companies. • Civil society groups involved in EITI should be operationally, and in policy terms, independent of government and/or the private sector. • Civil society groups involved in EITI are free to express opinions on EITI without undue restraint or coercion.
7. Are companies engaged in the process?	<ul style="list-style-type: none"> • Outreach by the multi-stakeholder group to oil, gas and mining companies, including communications (media, website, letters) informing them of the government's commitment to implement EITI, and the central role of companies. • Actions to address capacity constraints affecting companies, whether undertaken by government, civil society or companies.
8. Did the government remove any obstacles to EITI implementation?	<ul style="list-style-type: none"> • A review of the legal framework. • A review of the regulatory framework. • An assessment of obstacles in the legal and regulatory framework that may affect implementation of EITI. • Proposed or enacted legal or regulatory changes designed to enable transparency. • Waiver of confidentiality clauses in contracts between the government and companies to permit the disclosure of revenues. • Direct communications with e.g. companies, allowing greater transparency. • Memoranda of Understanding setting out agreed transparency standards and expectations between government and companies.
9. Have reporting templates been agreed?	<ul style="list-style-type: none"> • Draft templates provided to the multi stakeholder group. • Multi-stakeholder group minutes of template discussions. • Communications to wider stakeholders (e.g. companies) regarding the design of the templates. • Arrangement to enable stakeholders to understand the issues involved. • Agreement by the multi-stakeholder group that they agreed the templates, including all revenue streams to be included.

<p>10. Is the multi-stakeholder committee content with the organisation appointed to reconcile figures?</p>	<ul style="list-style-type: none"> • TORs agreed by the multi-stakeholder group. • Transparent liaison with the EITI Secretariat and Board to identify potential Validators. • Agreement by the multi-stakeholder group of the final choice of organisation.
<p>11. Has the government ensured all companies will report?</p>	<ul style="list-style-type: none"> • Introduced/amended legislation making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates. • Introduced/amended relevant regulations making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates. • Negotiated agreements (such as memoranda of understanding and waiver of confidentiality clauses under production sharing agreements) with all companies to ensure reporting as per the EITI Criteria and the agreed reporting templates. • Where companies are not participating, the government is taking generally recognised (by other stakeholders) steps to ensure these companies report by an agreed (with stakeholders) date.
<p>12. Has the government ensured that company reports are based on audited accounts to international standards?</p>	<ul style="list-style-type: none"> • Government passes legislation requiring figures to be submitted to international standards. • Government amends existing audit standards to ensure they are to international standards, and requires companies to operate to these. • Government agrees an MOU with all companies whereby companies agree to ensure submitted figures are to international standards. • Companies voluntarily commit to submit figures audited to international standards. • Where companies are not submitting figures audited to international standards, the government has agreed a plan with the company (including SOE) to achieve international standards against a fixed timeline. • Where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.
<p>13. Has the government ensured that government reports are based on audited accounts to international standards?</p>	<ul style="list-style-type: none"> • Government passes legislation requiring figures to be submitted to international standards. • Government amends existing audit standards to ensure they are to international standards, and ensures compliance with these. • Where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.
<p><i>Disclosure</i></p>	
<p>14. Were all material oil, gas and mining payments by companies to government ("payments") disclosed to the organisation contracted to reconcile figures and produce the EITI report?</p>	

<p>15. Were all material oil, gas and mining revenues received by the government ("revenues") disclosed to the organisation contracted to reconcile figures and produce the EITI report?</p>	
<p>16. Was the multi-stakeholder group content that the organisation contracted to reconcile the company and government figures did so satisfactorily?</p>	
<p>17. Did the EITI report identify discrepancies and make recommendations for actions to be taken?</p>	
<p><i>Dissemination</i></p>	
<p>18. Was the EITI report made publicly available in a way that was: – publicly accessible, – comprehensive, and – comprehensible?</p>	<ul style="list-style-type: none"> • Producing paper copies of the Report, which are distributed to a wide range of key stakeholders, including civil society, companies, the media and others. Making the Report available on-line, and publicising its web location to key stakeholders. • Ensuring the Report is comprehensive, including all information gathered as part of the validation process and all recommendations for improvement. • Ensuring the Report is comprehensible, including by ensuring it is written in a clear, accessible style and in appropriate languages. • Ensuring that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of the Report.
<p><i>Company Forms</i></p>	
<p>How have oil, gas and mining companies supported EITI implementation?</p>	<p>This indicator does not require the Validator to provide an overall assessment. The Validator should provide a written assessment in the EITI Validation Report based on the self assessed Company Forms (below) which each company is required to complete. Where companies do not fill in forms, the Validator should note this in the final report. In addition, the Validator should include in the final report any relevant information on the company concerned that is already in the public domain. The company should be given the opportunity to check this information. As well as using the forms to summarise company performance in the EITI Report, the forms should be publicly available and a table collating company responses should be included in the EITI Report.</p>

	<p>The Validator should contact all the companies required to fill in forms at the start of the validation, inform them of the requirement to complete the form and request that the forms be returned to the Validator. In addition, the Validator should ask companies to comment on lessons learnt and best practice. Companies will have two ways of providing such comments:</p> <ul style="list-style-type: none"> • Companies can use the space provided on the self assessment forms, or • Companies can provide verbal evidence to the Validator where issues the company wishes to note are of a sensitive nature. The Validator will summarise anonymised lessons and experiences in the Validation Report.
<p>What steps have been taken to act on lessons learnt, address discrepancies and ensure EITI implementation is sustainable?</p>	<p>The Validator should see evidence that a review mechanism has been established that takes account of the purpose outlined above. The Validator should comment on this in the Validation Report.</p>

EITI FUNDING REVIEW –a webinar consultation on Monday 11 April at 9:00 AM Oslo time

The International Secretariat invites you to join a webinar discussion for national coordinators and champion in implementing countries in Europe and the Americas on the EITI funding model. Please find call in details below.

In preparation for the call, we would be grateful if you could send a short list of technical and financial contributions that your government makes to the EITI beyond financial support to the EITI international management.

Background

The International EITI Secretariat has estimated that the cost of EITI implementation exceeds USD 50 million per year. Of this, the international management costs less than USD 6 million. In recent years, the international management has faced three challenges with its existing funding model in which broadly, supporting governments and companies pay 50% each on a voluntary contribution basis:

1. **Overall:** given the limit to expected revenue from companies in 2016, the current funding formula effectively places a ceiling on the overall budget. In other words, the funding formula has become financially unsustainable with the Secretariat's mandate.
2. **Equity:** in these constrained times, an increasing number of supporters – governments and companies are not paying the advised contribution and some are not paying at all.
3. **Managing uncertainty:** given the voluntary nature of the contributions to the Secretariat, there is uncertainty of both short-term and multi-year funding, making budget planning more challenging.

In summary, the current arrangements are no longer sustainable. The Board has therefore decided to review its funding mechanisms with the aim to ensure that the EITI has funding arrangements that ensure reliable income. In order to do so, it is undertaking a consultation.

The Board is particularly keen to explore the current practice of governance representation without taxation. The key emphasis on **whether implementing countries and whether supporting companies should pay a membership fee, and whether supporting countries should be required to provide support at a minimum level.**

The [consultation paper](#) explores these issues in more detail. You and other stakeholders are, of course welcome to provide comments through the webpage at: <https://eiti.org/consultation-funding-review>.

Implementing countries

Of the 51 countries implementing the EITI, a significant majority obtain support for their implementation from outside sources, although most countries fund at least part of their implementation through the ordinary state budget. Some 35 have a bilateral grant agreement with the World Bank. The regional development banks - African, Asian, European Bank of Reconstruction and Development, Inter-American, etc. - support a number of implementing countries. Even though many countries obtain external financial support for their implementation, it has always been the intention that implementing countries increasingly should fund implementation themselves. Under the EITI Rules, Validation had to be paid for by the implementing countries themselves.

Except for Germany, Norway and the UK, none of the implementing countries provides funding to the EITI International Management.

Brief comments

It seems reasonable that implementing countries themselves increasingly fund their own implementation. Development assistance is almost always intended to be temporary, until countries have reached further levels of development. There have been extensive discussions throughout the years about whether implementing countries should pay for Validation themselves which they did until 2013. This system was dismantled as it created a conflict of interest for the consultants to assess their client's work. The World Bank had initially indicated that it would be able to cover the cost of validations procured in line with Bank procurement requirements by the International Secretariat. It seems that this will not be possible in the long term. One subsequent suggestion has been that validators should be contracted by the Secretariat, which in turn should charge implementing countries.

A fee for implementing countries to the international management could be considered. This fee could either be compulsory – with some consequences for implementation if it was not paid - or voluntary and for example strongly recommended. When the funding arrangements were agreed in 2006, which are largely still in place, the EITI was not to the extent it is today a Standard implemented by a wide range of countries. With growing emphasis on implementing country ownership, it appears reasonable that these countries also increasingly pay for the EITI including its international management.

If implementing countries paid on average USD 100,000 a year, this would cover a large part of the EITI's funding requirements, perhaps over time including validations. There are however many issues that would need to be considered. The paying of an annual fee is likely to strengthen implementation in some countries and assist with embedding the EITI in government systems, as a larger number of government officials would become acquainted with the EITI. On the other hand, a fee is likely to generate significant questions and administration. It may be difficult for a developing country to justify payments to an organisations headquartered in Oslo. It might create some challenges over the Board's role in suspending and de-listing countries. Some implementing countries may welcome a fee, whereas others are likely to have strong reservations. It might lead to a reduction in the number of implementing countries. An introduction of a fee for implementing countries is likely to call into question whether it continues to be justified to have the category of "supporting countries".

In pre-consultation, some membership fee for implementing countries was broadly supported by supporting countries and by civil society. The latter commented that "the current approach to have as many countries in the EITI family as possible does have an impact on quality and that this is part of the problem - reduced resources but too much emphasis on bringing more countries in, instead of getting those that are in up to the right standard".

In conclusion, the Board agreed to consider the possibility that implementing countries, at least to some degree, contribute towards the international management of the EITI. If there are political and administrative arguments against a mandatory fee, a phased approach could be considered, beginning with a strongly recommended fee. The Open Government Partnership model is instructive on this matter.ⁱ

Questions for consultation

- Under a fee-based model, what should happen to implementing countries that do not pay the required funding within a certain year? How much grace should they be provided before losing their status?
- What should the level of fee be set at?
- Should some countries be expected to pay more than others or should membership fees be flat? If they are at different levels, should this be based on their population, their wealth, the size of their extractives industry, or their status within the EITI? How might **low income and fragile and conflict-affected countries** be considered?
- In the case of supporting countries which are also implementing countries, should some kind of "**waiver system**" be introduced?
- Should greater contributions be related to greater influence within the constituency? If so, how might this be reflected – Board seats, shareholding, etc.?

- Should implementing country support be earmarked, perhaps for technical assistance, validation, or some core support?
 - How can the long term funding of Validation be assured? Whilst the Board has agreed more cost-effective methods for Validation, it will still be a significant additional cost to the Secretariat which is not assured in the long term.
- Do you have views on whether other constituencies/stakeholders should be required to pay fees/minimum contributions?

ⁱ Since 2015, the Open Government Partnership has expected all its participating governments to contribute towards OGP's budget. These contributions are based on each participating country's income level (according to the World Bank data). The Steering Committee set both minimum and recommended contribution levels. For low income countries, the minimum is \$10,000 and the recommended is \$25,000. For lower middle income countries, the minimum is \$25,000 and the recommended is \$50,000. For upper middle income countries the minimum is \$50,000 and the recommended is \$100,000. For high income countries the minimum is \$100,000 and the recommended is \$200,000. All contribution levels are in US dollars. See more at: <http://www.opengovpartnership.org/finances-and-budget#sthash.T8AWNNEL.dpuf>.

