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PH-EITI STUDY RE: BENEFICIAL OWNERSHIP / POLITICALLY EXPOSED PERSONS

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1. Introduction

The Philippines committed to join the Extractive Industries Transparency Initiative (EITI) through Section 14 of Executive Order No. 79 (2012). EITI is a global standard that promotes transparency and accountability in the extractive sector. Each implementing country creates its own EITI process adapted to the specific needs of the country. EITI implementation has two core components:

- **Transparency:** Mining, oil and gas and coal companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an independent administrator and published in annual EITI Reports alongside contextual information about the country's extractive sector.
- **Accountability:** A multi-stakeholder group (MSG) with representatives from the relevant government agencies, industry and civil society is established to oversee the process and approve communicate the findings of the EITI Report.

Under requirement 2.5 of the 2016 EITI Standard,² all EITI implementing countries must ensure that

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² a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.

b) It is required that:

- i. The EITI Report documents the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.
- ii. By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The multi-stakeholder group will determine all milestones and deadlines in the roadmap, and the multi-stakeholder group will evaluate implementation of the roadmap as part of the multi-stakeholder group's annual progress report.

c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.

d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

e) The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.

f) Definition of beneficial ownership:

- i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
- ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

extractive companies that bid for, operate, or invest in extractive projects in the country disclose their beneficial owners, including any politically exposed persons (PEPs) by 2020. The Standard also requires implementing countries to agree and publish roadmaps outlining the activities and preparations that are considered necessary to ensure full implementation of the beneficial ownership (BO) requirements by 1 January 2020.

To comply with the Standard, the PH-EITI MSG submitted and published a roadmap for disclosing information on BO and agreed to include BO data in future EITI reports. Pursuant to the roadmap, the PH-EITI commissioned a study to identify potential legal and institutional barriers for disclosing beneficial owners and PEPs and to review existing definitions and policies related to BO and PEP disclosures, including current government procedures for reporting beneficial owners. Expected outputs include a suggested definition of beneficial owners and PEPs for purposes of PH-EITI reporting and a review of existing government data that the MSG can use as basis for implementing BO disclosures.³

2. Literature Review

2.1. Optimal Law Enforcement⁴

The basic economic theory of criminal law enforcement revolves around the deterrence hypothesis - that crime rates respond to risks and benefits. A criminal is a utility maximizer that compares the benefits of the crime against its costs. The benefits of the crime are a function of the probability of detection and the imposable fine. The policy maker has several decision variables - he can opt for higher penalties or improved detection. Since the former is costless and the latter is costly, increasing resources that society devotes to the arrest, conviction, and punishment of criminals is the optimal policy for reducing crime and its social costs.⁵ However, there are several

iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.

g) The EITI Report should also disclose the legal owners and share of ownership of such companies.

³ 1. Review of existing definitions and policies related to BO and PEP disclosures, including:

i. BO definitions, such as but not limited to, definitions used by government agencies and other international bodies (FATF, G20, GK7, GK8, EU);

ii. Government agencies and other entities that collect information on BO and PEP, including their data collection procedures, reportorial requirements, and gaps and weaknesses in the reporting process;

iii. Initial list of beneficial owners based on available documents such as but not limited to the General Information Sheet (GIS) that extractive companies submit to the Securities and Exchange Commission (SEC);

iv. Suggested definition of beneficial owners and PEPs for PH-EITI reporting;

v. Suggested materiality threshold for BO disclosure/reporting including an initial list of companies that should be required to disclose their beneficial owners;

vi. Recommendations on how to implement BO and PEP disclosures in accordance with the EITI Standard (requirement 2.5);

vii. Approaches to assure accuracy of information on disclosure of BO and PEP.

2. Analysis of potential legal and institutional barriers and risks for disclosing BO and PEPs, including:

i. Actors/institutions at the national and local levels that will be affected by BO disclosure and how they will be affected;

ii. Related existing policies, norms, and practices, as well as any policy or program underway;

iii. The barriers and risks posed by the foregoing to BO and PEP disclosures;

iv. Strategic actions and recommendations for addressing and/or reducing the gaps, risks, and barriers for BO and PEP disclosures.

⁴ Posner, R.A., *Economic Analysis of Law*, 163-177 (2nd ed.); Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45-76 (March 2000); Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267-295 (1997).

⁵ Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 267-270 (1997); These social costs include operating the jail system, among others.

difficulties with this proposition. First, moral and constitutional norms constrain the imposition of penalties.⁶ Second, penalties and enforcement are not costless and eradicating crime has a declining marginal benefit. Policy makers must therefore evaluate the costs and benefits from reducing crime. Empirical research confirms that increases in probability of arrest, conviction, and punishment, and increases in the severity of punishment have deterrent effects.⁷

Research has shed light on the determinants of optimal penalties. For example, ignorance of a law's substance and its penalties results in the optimal penalty being less than the maximum. Therefore, the process of how individuals formulate probabilities of sanctions and their magnitudes is important to setting the optimal penalty.⁸ Risk aversion may also reduce the optimal fine due to costs of overdeterrence.⁹ An increase in false positives or negatives results in a reduction in the optimal penalty due to the social cost of miscarriage of justice.¹⁰ Higher fines deter crime but also increase corruption. As such, the net social benefit of an increase in fines depends on its amount, and the maximal fine may not be optimal.¹¹ The incentive structure of law enforcers is likewise material, and whether they are rewarded for finding violations may affect the probability of enforcement, deterrence, and the optimal fine.¹²

Policy makers may utilize money laundering regulation to reduce enforcement costs through standardized disclosures, clear liability rules, data analytics, criminalization of offenses, better confiscation rules, and increased international cooperation and intervention.¹³ Research by Chong and Lopez-de-Silanes finds that criminalization of money laundering activities, increasing liability standards, higher levels of disclosure and transparency for banks, and increasing enforcement and international cooperative efforts, are associated with lower levels of money laundering.¹⁴

2.1.1. Data Analytics

As the cost of gathering, storing, and processing information has dropped, accounting has moved from summarizing transaction data into generally accepted formats to using information to infer, predict, and assure tasks.¹⁵ One can use data analytics, or the process of using structured and unstructured data through the

⁶ Const., Art. III, Sec. 19: "(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

⁷ Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45, 67-68 (March 2000); Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 270 (1997).

⁸ Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 282 (1997); Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45, 53-56 (March 2000).

⁹ Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45, 60 (March 2000); Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 279 (1997).

¹⁰ Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45, 61 (March 2000); Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 284 (1997); Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., *Infer, Predict, and Assure: Accounting Opportunities in Data Analytics*, 29(3) *Accounting Horizons* 719, 732 (2015): "For example, in financial fraud detection, missing a severe fraud (false negative error) is much more costly than investigating some normal transactions (false positive error). However, noisy data could result in a large number of false positive errors, that could lead managers to spend more resources investigating them than the resource loss caused by an undetected anomaly (false negative error)."

¹¹ Garoupa, N., *The Theory of Optimal Law Enforcement*, 11(3) *Journal of Economic Surveys*, 267, 287 (1997).

¹² Polinsky, M. and Shavell, S., *The Economic Theory of Public Enforcement of Law*, 38 *Journal of Economic Literature*, 45, 72-73 (March 2000)

¹³ Chong, A. and Lopez-de-Silanes, F., *Money Laundering and its Regulation*, 27 *Economics & Politics* 78, 80 (March 2015).

¹⁴ Chong, A. and Lopez-de-Silanes, F., *Money Laundering and its Regulation*, 27 *Economics & Politics* 78, 80 (March 2015).

¹⁵ Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., *Infer, Predict, and Assure: Accounting Opportunities in Data Analytics*, 29(3) *Accounting Horizons* 719, 719-720 (2015).

applications of various analytic techniques such as statistical and quantitative analysis and explanatory and predictive models, to provide useful information to decision-makers. Data analytics has been used by regulators to identify fraudulent financial reporting and flag risky transactions. However, information overload, information relevance, pattern recognition, and ambiguity are among the issues that must be addressed.¹⁶

Information overload, or receiving excessive information, is a concern. The ability of decision makers to process large amounts of information is finite, and research on the ability of individuals to combine cues from multiple sources consistently demonstrates less than favorable outcomes. While data analytic tools make it possible to extract large volumes of data, analysis and interpretation of results is problematic because the amount produced is overwhelming. For data mining to be an effective analytic tool, auditors must have a clear understanding of the data (e.g. quality, relevance, context) in order to draw appropriate conclusions.¹⁷ The inability to disregard irrelevant information is also a cause for concern. Higher levels of irrelevant information have been shown to reduce the decision makers' ability to identify relevant information and reduce their overall decision-making performance (i.e. dilution effect). Thus, the challenge of determining and extracting relevant information has to be addressed.¹⁸ Research has also shown that auditors are not very adept at recognizing patterns in financial and nonfinancial data, applying prior knowledge to the current judgment task, and weighting evidence appropriately. Research shows that providing auditors with more contextual experience and training improves their ability to accurately recognize and interpret patterns in data.¹⁹ The unstructured nature of data that comes in many formats can also be problematic. Ambiguity may arise from variations in the amount and type of information available as well as source reliability and lack of causal knowledge of observed events.²⁰ Data analytics likewise gives rise to concerns about data confidentiality and integrity, data biases, and liability.²¹

2.2. Domestic

2.2.1. Constitutional Law

Government power is contained in three great powers: police power, eminent domain, and taxation. Police power is "the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same."²² Policies regarding beneficial ownership and politically exposed persons are manifestations of police power. These powers are constrained by the 1987 Constitution, which delimits and allocates them among the

¹⁶ Brown-Liburud, H., Issa, H., and Lombardi, D., Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making, 29(2) Accounting Horizons, 451, 455 (June 2015).

¹⁷ Brown-Liburud, H., Issa, H., and Lombardi, D., Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making, 29(2) Accounting Horizons, 451, 456 (June 2015); Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., Infer, Predict, and Assure: Accounting Opportunities in Data Analytics, 29(3) Accounting Horizons 719, 727 (2015).

¹⁸ Brown-Liburud, H., Issa, H., and Lombardi, D., Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making, 29(2) Accounting Horizons, 451, 456 (June 2015); Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., Infer, Predict, and Assure: Accounting Opportunities in Data Analytics, 29(3) Accounting Horizons 719, 727 (2015).

¹⁹ Brown-Liburud, H., Issa, H., and Lombardi, D., Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making, 29(2) Accounting Horizons, 451, 457 (June 2015); Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., Infer, Predict, and Assure: Accounting Opportunities in Data Analytics, 29(3) Accounting Horizons 719, 727 (2015).

²⁰ Brown-Liburud, H., Issa, H., and Lombardi, D., Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making, 29(2) Accounting Horizons, 451, 457-458 (June 2015); Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., Infer, Predict, and Assure: Accounting Opportunities in Data Analytics, 29(3) Accounting Horizons 719, 727 (2015).

²¹ Schneider, G.P., Dai, J., Janvrin, D.J., Ajayi, K., and Raschke, R.L., Infer, Predict, and Assure: Accounting Opportunities in Data Analytics, 29(3) Accounting Horizons 719, 720 (2015).

²² Bernas, J., The 1987 Constitution of the Republic of the Philippines: A Commentary 101 (2009); Churchill v. Rafferty, 32 Phil. 580, 601-601 (1915).

government agencies.²³ Its salient principles are discussed below:

2.2.1.1. Non-delegation doctrine and administrative rulemaking

Generally, legislative power cannot be delegated due to the doctrine of separation of powers, the due process clause, and the maxim “delegata potestas non potest delagari.”²⁴ An exception to non-delegability of legislative power is administrative rulemaking.²⁵ This is justified by the premise that the administrative agency does not legislate but merely fills in the details of the statute.²⁶ In order that delegation may validly be made to an administrative agency, the statute making the delegation must be: 1) complete in itself, setting forth the policy to be implemented by the delegate; and 2) fix a standard, sufficiently determinate or determinable to which the delegate must conform in the performance of his functions.²⁷ When these requirements are satisfied, the regulations enacted by the administrative agency in the exercise of quasi-legislative power have the force and effect of law.²⁸ Standards as broad as “public interest” have been upheld by the Court.²⁹

2.2.1.2. Public Disclosure / Right to Information on Matters of Public Concern

The Constitution adopts the state policy of full public disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by law.³⁰ This policy is not self-executory, requires an enabling law,³¹ and applies to the State’s transactions and not to information on private citizens *per se*.

The Constitution likewise recognizes the right to information on matters of public concern. Access to official records, and to documents pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for developing policy is afforded but subject to limitations provided by law.³² Thus, access may not be prohibited but may be regulated by statute or through the inherent powers of public officers.³³

Attempts to enact laws on public disclosure have proved futile.³⁴ As such, President Duterte enacted an Executive Order operationalizing the right to information and the policy of public disclosure in the Executive Branch.³⁵ Information may be obtained through written request to the concerned office and provision of valid

²³ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 101 (2009); Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 678-679 (2009): “In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers...legislative power remains a limited power after the manner of the American constitutional system embodied in the 1935 Constitution. It is subject to substantive limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. The substantive limitations are chiefly found in the Bill of Rights. And legislative power is subject to procedural limitations prescribing the manner of passing bills and the form they should take.”

²⁴ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 685 (2009).

²⁵ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 685 (2009).

²⁶ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 686 (2009).

²⁷ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 686 (2009).

²⁸ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 687 (2009).

²⁹ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 689 (2009); *People v. Rosenthal*, 68 Phil. 328 (1939).

³⁰ Const., Art. II, Section 28: “SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”

³¹ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 99 (2009).

³² Const., Art. III, Section 7: “The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

³³ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 381 (2009).

³⁴ See <http://www.congress.gov.ph/legisdocs/> (accessed on June 6, 2017);

³⁵ Executive Order No. 2, Section 2 (2016): “Coverage. — This order shall cover all government offices under the Executive Branch, including but not limited to the national government and all its offices, departments, bureaus, and instrumentalities, including

proof of identity.³⁶ No request shall be denied unless the reason for the request is contrary to law or falls under any of the exceptions listed by the Department of Justice (DOJ) and Office of the Solicitor General (OSG) and distributed by the Office of the President.³⁷ The list of exceptions³⁸ is extensive, and includes:

- (1) Information covered by Executive privilege;
- (2) Privileged information relating to national security, defense or international relations;
- (3) Information concerning law enforcement and protection of public and personal safety;
- (4) Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
- (5) Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
- (6) Prejudicial premature disclosure;
- (7) Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
- (8) Matters considered confidential under banking and finance laws, and their amendatory laws; and
- (9) Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

Among the exceptions is where privacy may be violated.³⁹ The list of exceptions is consistent with the

government-owned or -controlled corporations, and state universities and colleges. Local Government Units (LGUs) are enjoined to observe and be guided by this Order.”

³⁶ Executive Order No. 2, Section 9 (2016): “Procedure. — The following procedure shall govern the filing and processing of request for access to information:

(a) Any person who requests access to information shall submit a written request to the government office concerned. The request shall state the name and contact information of the requesting party, provide valid proof of his identification or authorization, reasonably describe the information requested, and the reason for, or purpose of, the request for information: Provided, that no request shall be denied or refused acceptance unless the reason for the request is contrary to law, existing rules and regulations, or it is one of the exceptions contained in the inventory of exceptions as hereinabove provided.”

³⁷ Executive Order No. 2, Sections 4 and 9(a) (2016).

³⁸ Memorandum From The Executive Secretary, November 24, 2016,

³⁹ Executive Order No. 2, Section 7 (2016): “Protection of Privacy. — While providing access to information, public records, and official records, responsible officials shall afford full protection to an individual's right to privacy as follows:

(a) Each government office per Section 2 hereof shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject matter of the request and its disclosure is permissible under this Order or existing laws, rules or regulations;

(b) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information which unduly exposes the individual whose personal information is requested to vilification, harassment or any other wrongful acts; and

(c) Any employee or official of a government office per Section 2 hereof who has access, authorized or unauthorized, to personal information in the custody of the office must not disclose that information except when authorized under this Order or pursuant to existing laws, rules or regulations.”

nature of Executive Orders which implement and do not amend or repeal statutes⁴⁰ and, as such, cannot carve out exceptions to privacy laws.⁴¹

Initial assessment of the request is conducted by the Head of Office or his designated officer⁴² and may be appealed to his superiors or subjected to judicial review.⁴³ The office concerned should respond to a request within 15 days.⁴⁴

2.2.1.3. Due Process and Contract Clauses

Article III, Section 1 of the 1987 Constitution states: “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”⁴⁵ The Due Process clause requires observance of substantive and procedural due process. Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. It is typically concerned with the kind of notice and form of hearing the government must provide when it takes a particular action. Substantive due process refers to whether the government has an adequate reason for taking away a person's life, liberty, or property. It examines whether there is a sufficient justification for the government's action.⁴⁶

Procedural due process is not a static concept. In judicial proceedings, it requires: 1) a court or tribunal clothed with judicial power to hear and determine the matter before it; 2) jurisdiction lawfully acquired over the person of the defendant or over the property subject of the proceedings; 3) giving the defendant an opportunity to be heard; and 4) judgment rendered upon lawful hearing.⁴⁷ In administrative proceedings, it mandates: 1) the right to a hearing, which includes the right to present one's case and submit evidence in support thereof; 2) the tribunal must consider the evidence presented; 3) the decision must have something to support itself; 4) the evidence must be substantial; 5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; 6) the tribunal or body or any of its judges must act on its own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; 7) the board or body should render its decision in a manner that the parties to the proceeding can

⁴⁰ See Executive Order No. 292, Book III, Chapter 2, Section 2 (1987): “Executive Orders. - Acts of the President providing for rules of a general or permanent character **in implementation or execution of constitutional or statutory powers** shall be promulgated in executive orders.” (Emphasis supplied) Therefore, Executive Orders are in the nature of administrative rules to fill details

⁴¹ See Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles vs. Home Development Mutual Fund, G.R. No. 131082, June 19, 2000: “It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.”

⁴² Executive Order No. 2, Section 6 (2016).

⁴³ Executive Order No. 2, Section 13 (2016).

⁴⁴ Executive Order No. 2, Section 9(d) (2016).

⁴⁵ Const., Art. III, Section 1.

⁴⁶ Pimentel III v. COMELEC, G.R. No. 178413, March 13, 2008; See also Bernas, J., The 1987 Constitution of the Republic of the Philippines: A Commentary 113-114, 118 (2009); See also Nowak, J. and Rotunda, R., Constitutional Law 429 (7th ed.): “Under the due process clause the Court asks whether the legislation rationally relates to a legitimate end of government. The identical test exists under the equal protection clauses except that legislation reviewed under these guarantees always involves a classification. If a law burdens all persons equally when they exercise a specific right, then the courts will test the law under the due process clause. If, however, the law distinguishes between who may and who may not exercise a right, then judicial review of the law falls under the equal protection guarantee because the issue now becomes whether the distinction between these persons is legitimate. The classification employed is the “means” used to achieve some end. Thus, the Court reviews the issue of whether the classification rationally relates to a legitimate end under the equal protection guarantees.”

⁴⁷ Bernas, J., The 1987 Constitution of the Republic of the Philippines: A Commentary 115 (2009); Banco Espanol Filipino v. Palanca, 37 Phil. 921, 934 (1918).

know the various issues involved, and the reason for the decision rendered.⁴⁸

Substantive due process is likewise context dependent. There are three levels of scrutiny: 1) the rational basis test, which mandates a reasonable relation between the means and purpose of the law; 2) the intermediate or heightened review where "the law must not only further an important governmental interest and be substantially related to that interest, but . . . the classification . . . must not depend on broad generalizations[;]" and 3) strict scrutiny review, where the Government must prove the necessity "to achieve a compelling state interest, and that [the law or ordinance] is the least restrictive means to protect such interest."⁴⁹ The test applied is dependent on the subject of the regulation. The strict scrutiny test applies where fundamental rights are implicated, such as race, national origin, religion, alienage, suffrage, and access to courts. The intermediate test is applied where suspect classifications such as gender or illegitimacy are concerned. Finally, the rational basis test applies when the first two tests do not.⁵⁰ In the Philippines, *Ople v. Torres* has ruled that laws infringing upon the right to privacy are subject to strict scrutiny review.⁵¹

Substantive due process includes publication of the law or regulation.⁵² Penal laws may also be challenged for vagueness when they fail to give notice of what they command and the challenger is himself the victim of the

⁴⁸ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 115 (2009); *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

⁴⁹ *Mosqueda, et al. v. Pilipino Banana Growers & Exporters Association, Inc., et al.*, G.R. No. 189185, August 16, 2016.

⁵⁰ *Poe-Llamanzares v. COMELEC*, G.R. No. 221697, March 8, 2016: "Under the rational basis test, courts will uphold a classification if it bears a rational relationship to an accepted or established governmental end. This is a relatively relaxed standard reflecting the Court's awareness that classification is an unavoidable legislative task. The presumption is in favor of the classification's validity.

If the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class" it will be treated under a heightened review called the intermediate scrutiny test. Intermediate scrutiny requires that the classification serve an important governmental end or objective and is substantially related to the achievement of this objective. The classification is presumed unconstitutional and the burden of justification for the classification rests entirely with the government.

Finally, the strict scrutiny test is used when suspect classifications or fundamental rights are involved. This test requires that the classification serve a compelling state interest and is necessary to achieve such interest. A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate the most basic human rights, i.e., on the basis of race, national origin, alien status, religious affiliation, and to a certain extent, sex and sexual orientation. . . . By this standard, the legislative classification is presumed unconstitutional and the burden rests on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest. . . . A "suspect class" is identified as a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

⁵¹ *Ople v. Torres*, G.R. No. 127685, July 23, 1998: "**Unlike the dissenters, we prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn.**" A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger." (Emphasis supplied)

See also Nowak, J. and Rotunda, R., *Constitutional Law* 460 (7th ed.): "**During the modern era, the Court will engage independent judicial review if the law substantially impairs a fundamental right or employs certain classifying traits that have special constitutional status (such as race, nationality, gender, or illegitimacy). If a law does not employ a classification that would require independent judicial review, the Court will examine the law under the rationality test unless the law significantly impaired a fundamental constitutional right. If a law substantially impairs the exercise of a fundamental right by all persons the law will be reviewed under the due process clause. If the law restricts the exercise of a fundamental constitutional right by only a class of individuals, the law will be reviewed under the equal protection clause, or the implied equal protection guarantee of the Fifth Amendment due process clause. x x x Fundamental constitutional rights comprise a subset, or special part, of the concept of liberty. While all human activity may constitute liberty, only certain types of actions are fundamental constitutional rights.**"

⁵² Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 131-132 (2009)

law's unconstitutional application.⁵³ Here, the court does not declare the law void on its face but only invalidates it "as applied" to the defendant.⁵⁴

As regards the Contract Clause, Article III, Section 10 of the 1987 Constitution provides "No law impairing the obligation of contracts shall be passed."⁵⁵ However, this expansive language has been tempered by jurisprudence that remedial legislation for the general welfare which amends the substance of contracts or remedies do not violate the non-impairment clause.⁵⁶ Notably, Fr. Bernas has declared it a superfluity which adds nothing to the Due Process Clause.⁵⁷

2.2.1.4. Privacy Generally, and of Communication

Article III, Section 3 of the 1987 Constitution provides: "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law." It is otherwise called the right to "be left alone."⁵⁸ Evidence obtained in violation of the right to privacy is inadmissible for any purpose in any proceeding.⁵⁹ This exclusionary rule applies to government agents and not to private individuals.⁶⁰

Any intrusion upon privacy must be predicated on 1) a lawful order of the court; or 2) when the law requires for public safety or order. When a court order is obtained, the probable cause requirement should be satisfied, with the order particularly describing the communication sought to be seized.⁶¹ If without a judicial order, the authorized public official must assess that public safety and order require the intrusion.⁶² Public safety and order are defined as "the security of human lives, liberty and property against the activities of invaders, insurrectionists, and rebels."⁶³ The public official who exercises this power must be able to point to an enabling law empowering him to do so, and his actions are subject to judicial review.⁶⁴ This right to privacy may be exercised by corporations as well.⁶⁵ The right to privacy likewise finds support as part of the right to liberty under the due process clause and other Constitutional provisions.⁶⁶ Thus, *Morfe v. Mutuc* declares that:

"... in the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: "**Various guarantees create zones of privacy.** The **right of association** contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition

⁵³ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 132, 138 (2009); *Disini, Jr. v. Secretary of Justice*, G.R. No. 203335, February 18, 2014.

⁵⁴ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 138 (2009); *Romualdez v. COMELEC*, G.R.No. 167011, December 11, 2008; *Southern Hemisphere Engagement Network, Inc. vs. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010.

⁵⁵ Const., Art. III, Section 10.

⁵⁶ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 457-458 (2009); *Ongsiako v. Gamboa*, 86 Phil. 50, 54 (1950).

⁵⁷ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 458 (2009).

⁵⁸ *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*, G.R. No. 216914, December 6, 2016, concurring opinion of J. Leonen,

⁵⁹ Const., Art. III, Section 3: "... Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

⁶⁰ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 229 (2009).

⁶¹ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 219 (2009).

⁶² Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 220 (2009).

⁶³ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 220 (2009).

⁶⁴ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 220 (2009); Const., Art. III, Section 3: "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise **as prescribed by law**..." (Emphasis supplied).

⁶⁵ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 229 (2009); *Bache & Co. v. Ruiz*, 36 SCRA 823 (1971).

⁶⁶ *Ople v. Torres*, G.R. No. 127685, July 23, 1998; *Morfe v. Mutuc*, G.R. No. L-24693, October 23, 1967.

against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms **the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'** The Fifth Amendment in its **Self-Incrimination clause** enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" After referring to various American Supreme Court decisions, Justice Douglas continued: "These cases bear witness that the right of privacy which presses for recognition is a legitimate one." . . .

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society." (Emphasis supplied)

Per *Disini, Jr. v. Secretary of Justice*,⁶⁷ the right to privacy is classified into two categories: decisional privacy and informational privacy. Decisional privacy involves the right to independence in making certain important decisions, while informational privacy refers to the interest in avoiding disclosure of personal matters. Informational privacy has two aspects: the right not to have private information disclosed, and the right to live freely without surveillance and intrusion. To evaluate claims for the right to privacy, one must determine: 1) whether there a reasonable expectation of privacy; and 2) if the first is in the affirmative, 1) is there a reasonable expectation of privacy; 2) if the right applies, whether the conduct amounts to unreasonable government intrusion.⁶⁸ Whether there is a reasonable expectation of privacy is assessed using a two-fold test: 1) a subjective test, where one claiming the right must have an actual or legitimate expectation of privacy over a certain matter; and 2) an objective test, where his or her expectation of privacy must be one society is prepared to accept as objectively reasonable.⁶⁹

2.2.2. Data Privacy Act of 2012

As the Bill of Rights is a baseline, Congress may enact laws providing greater privacy protection.⁷⁰ The Data Privacy Act of 2012 (DPA) is an example.⁷¹ The DPA applies to the government and the private sector,⁷² and provides bifurcated treatment of personal and sensitive personal information. Personal information refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with

⁶⁷ G.R. No. 203335, February 18, 2014.

⁶⁸ *Miguel v. Gordon*, G.R. No. 174340, October 17, 2006.

⁶⁹ *Disini, Jr. v. Secretary of Justice*, G.R. No. 203335, February 18, 2014; *Ople v. Torres*, G.R. No. 127685, July 23, 1998.

⁷⁰ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 676-677 (2009).

⁷¹ Republic Act No. 10173 (2012).

⁷² Republic Act No. 10173, Section 2 (2012).

other information would directly and certainly identify an individual.⁷³ Sensitive personal information refers to personal information:⁷⁴

- (1) About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
- (4) Specifically established by an executive order or an act of Congress to be kept classified.

Processing of personal information is allowed, unless prohibited by law. For processing to be lawful, any of the following conditions must be complied with:⁷⁵

- (1) The data subject must have given his or her consent prior to the collection, or as soon as practicable and reasonable;
- (2) The processing involves the personal information of a data subject who is a party to a contractual agreement, in order to fulfill obligations under the contract or to take steps at the request of the data subject prior to entering the said agreement;
- (3) The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;
- (4) The processing is necessary to protect vitally important interests of the data subject, including his or her life and health;
- (5) The processing of personal information is necessary to respond to national emergency or to comply with the requirements of public order and safety, as prescribed by law;
- (6) The processing of personal information is necessary for the fulfillment of the constitutional or statutory mandate of a public authority; or
- (7) The processing is necessary to pursue the legitimate interests of the personal information controller, or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject, which require protection under the Philippine Constitution.

The processing of sensitive personal and privileged information is prohibited, except in any of the following cases:⁷⁶

⁷³ Republic Act No. 10173, Section 3(g) (2012).

⁷⁴ Republic Act No. 10173, Section 3(1) (2012).

⁷⁵ Republic Act No. 10173, Sections 12 (2012); IRR, Section 21.

⁷⁶ Republic Act No. 10173, Sections 13 (2012); IRR, Section 22.

- (1) Consent is given by data subject, or by the parties to the exchange of privileged information, prior to the processing of the sensitive personal information or privileged information, which shall be undertaken pursuant to a declared, specified, and legitimate purpose;
- (2) The processing of the sensitive personal information or privileged information is provided for by existing laws and regulations: Provided, that said laws and regulations do not require the consent of the data subject for the processing, and guarantee the protection of personal data;
- (3) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;
- (4) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations provided that:
 - a. Processing is confined and related to the bona fide members of these organizations or their associations;
 - b. The sensitive personal information is not transferred to third parties; and
 - c. Consent of the data subject was obtained prior to processing;
- (5) The processing is necessary for the purpose of medical treatment: Provided, that it is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal data is ensured; or
- (6) The processing concerns sensitive personal information or privileged information necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise, or defense of legal claims, or when provided to government or public authority pursuant to a constitutional or statutory mandate.

Assuming the above conditions are met, the following principles must be complied with:⁷⁷

- (1) Collection must be for a declared, specified, and legitimate purpose.
 - a. Consent is required prior to the collection and processing of personal data, subject to exemptions provided by the Act and other applicable laws and regulations. When consent is required, it must be time-bound in relation to the declared, specified and legitimate purpose. Consent given may be withdrawn.
 - b. The data subject must be provided specific information regarding the purpose and extent of processing, including, where applicable, the automated processing of his or her personal data for profiling, or processing for direct marketing, and data sharing.
 - c. Purpose should be determined and declared before, or as soon as reasonably practicable, after collection.
 - d. Only personal data that is necessary and compatible with declared, specified, and legitimate purpose shall be collected.
- (2) Personal data shall be processed fairly and lawfully.
 - a. Processing shall uphold the rights of the data subject, including the right to refuse, withdraw

⁷⁷ Republic Act No. 10173, Sections 11-13 (2012); IRR, Sections 19 and 20.

- consent, or object. It shall likewise be transparent, and allow the data subject sufficient information to know the nature and extent of processing.
- b. Information provided to a data subject must always be in clear and plain language to ensure that they are easy to understand and access.
 - c. Processing must be in a manner compatible with declared, specified, and legitimate purpose.
 - d. Processed personal data should be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed.
 - e. Processing shall be undertaken in a manner that ensures appropriate privacy and security safeguards.
- (3) Processing should ensure data quality.
- a. Personal data should be accurate and where necessary for declared, specified and legitimate purpose, kept up to date.
 - b. Inaccurate or incomplete data must be rectified, supplemented, destroyed or their further processing restricted.
- (4) Personal Data shall not be retained longer than necessary.
- a. Retention of personal data shall only for as long as necessary:
 - i. for the fulfillment of the declared, specified, and legitimate purpose, or when the processing relevant to the purpose has been terminated;
 - ii. for the establishment, exercise or defense of legal claims; or
 - iii. for legitimate business purposes, which must be consistent with standards followed by the applicable industry or approved by appropriate government agency.
 - b. Retention of personal data shall be allowed in cases provided by law.
 - c. Personal data shall be disposed or discarded in a secure manner that would prevent further processing, unauthorized access, or disclosure to any other party or the public, or prejudice the interests of the data subjects.
- (5) Any authorized further processing shall have adequate safeguards.
- a. Personal data originally collected for a declared, specified, or legitimate purpose may be processed further for historical, statistical, or scientific purposes, and, in cases laid down in law, may be stored for longer periods, subject to implementation of the appropriate organizational, physical, and technical security measures required by the Act in order to safeguard the rights and freedoms of the data subject.
 - b. Personal data which is aggregated or kept in a form which does not permit identification of data subjects may be kept longer than necessary for the declared, specified, and legitimate purpose.
 - c. Personal data shall not be retained in perpetuity in contemplation of a possible future use yet to be determined.

Moreover, personal information controllers have the following obligations under the DPA:⁷⁸

⁷⁸ Republic Act No. 10173, Section 20 (2012); IRR, Sections 25-28.

SECTION 21. Principle of Accountability. — Each personal information controller is responsible for personal information under its control or custody, including information that have been transferred to a third party for processing, whether domestically or internationally, subject to cross-border arrangement and cooperation.

(a) The personal information controller is accountable for complying with the requirements of this Act and shall use contractual or other reasonable means to provide a comparable level of protection while the information are being processed by a third party.

- (1) Implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.
- (2) Implement reasonable and appropriate measures to protect personal information against natural dangers such as accidental loss or destruction, and human dangers such as unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination.
- (3) Ensure that third parties processing personal information on its behalf shall implement the security measures required by this provision.
- (4) Employees, agents or representatives of a personal information controller who are involved in the processing of personal information shall operate and hold personal information under strict confidentiality if the personal information are not intended for public disclosure. This obligation shall continue even after leaving the public service, transfer to another position or upon termination of employment or contractual relations.
- (5) Promptly notify the Commission and affected data subjects when sensitive personal information or other information that may, under the circumstances, be used to enable identity fraud are reasonably believed to have been acquired by an unauthorized person, and the personal information controller or the Commission believes that such unauthorized acquisition is likely to give rise to a real risk of serious harm to any affected data subject.

Notably, the DPA and its associated restrictions do not apply to:

- (1) information about an individual who is or was performing service under contract for a government institution that relates to the services performed, including the terms of the contract, and the name of the individual given in the course of the performance of those services;⁷⁹
- (2) information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;⁸⁰ or
- (3) information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions.⁸¹

In case of data sharing between government agencies, the DPA IRR mandates that an agreement must be executed which must comply with the DPA, its IRR, and the rules of the National Privacy Commission (NPC).⁸²

(b) The personal information controller shall designate an individual or individuals who are accountable for the organization's compliance with this Act. The identity of the individual(s) so designated shall be made known to any data subject upon request.

⁷⁹ Republic Act No. 10173, Section 4(b) (2012).

⁸⁰ Republic Act No. 10173, Section 4(c) (2012).

⁸¹ Republic Act No. 10173, Section 4(e) (2012).

⁸² Implementing Rules and Regulations of Republic Act No. 10173, Section 20(d): “d. Data sharing between government agencies for the purpose of a public function or provision of a public service shall be covered a data sharing agreement.

1. Any or all government agencies party to the agreement shall comply with the Act, these Rules, and all other issuances of the Commission, including putting in place adequate safeguards for data privacy and security.

The personal information controller shall obtain the consent of the data subject prior to collection and processing, except where such consent is not required for the lawful processing of personal data, as provided by law.⁸³ The data subject shall be provided with the following information prior to collection or before his or her personal data is shared:⁸⁴

- (1) Identity of the personal information controllers or personal information processors that will be given access to the personal data;
- (2) Purpose of data sharing;
- (3) Categories of personal data concerned;
- (4) Intended recipients or categories of recipients of the personal data;
- (5) Existence of the rights of data subjects, including the right to access and correction, and the right to object; and
- (6) Other information that would sufficiently notify the data subject of the nature and extent of data sharing and the manner of processing.

The data sharing agreement shall be in writing and comply with the following:⁸⁵

- (1) It shall specify, with due particularity, the purpose or purposes of the data sharing agreement, including the public function or public service the performance or provision of which the agreement is meant to facilitate: Provided, that if the purpose includes the grant of online access to personal data, or if access is open to the public or private entities, these shall also be clearly specified in the agreement.
- (2) It shall identify all personal information controllers that are party to the agreement, and for every party, specify:
 - a. the type of personal data to be shared under the agreement;
 - b. any personal information processor that will have access to or process the personal data, including the types of processing it shall be allowed to perform;
 - c. how the party may use or process the personal data, including, but not limited to, online access;
 - d. the remedies available to a data subject, in case the processing of personal data violates his or her rights, and how these may be exercised;
 - e. the designated data protection officer or compliance officer.
- (3) It shall specify the term or duration of the agreement, which may be renewed on the ground that the purpose or purposes of such agreement continues to exist: Provided, that in no case shall such term or any subsequent extensions thereof exceed five (5) years, without prejudice to entering into a new data sharing agreement.
- (4) It shall contain an overview of the operational details of the sharing or transfer of personal data

2. The data sharing agreement shall be subject to review of the Commission, on its own initiative or upon complaint of data subject.”

⁸³ NPC Circular No. 02-16 (Data Sharing Agreements Involving Government Agencies), Section 4.

⁸⁴ NPC Circular No. 02-16 (Data Sharing Agreements Involving Government Agencies), Section 4.

⁸⁵ NPC Circular No. 02-16 (Data Sharing Agreements Involving Government Agencies), Section 6.

under the agreement. Such overview must adequately explain to a data subject and the Commission the need for the agreement, and the procedure that the parties intend to observe in implementing the same.

- (5) It shall include a general description of the security measures that will ensure the protection of the personal data of data subjects, including the policy for retention or disposal of records.
- (6) It shall state how a copy of the agreement may be accessed by a data subject: Provided, that the government agency may redact or prevent the disclosure of any detail or information that could endanger its computer network or system, or expose to harm the integrity, availability or confidentiality of personal data under its control or custody. Such information may include the program, middleware and encryption method in use, as provided in the next succeeding paragraph.
- (7) If a personal information controller shall grant online access to personal data under its control or custody, it shall specify the following information:
 - a. Justification for allowing online access;
 - b. Parties that shall be granted online access;
 - c. Types of personal data that shall be made accessible online;
 - d. Estimated frequency and volume of the proposed access; and
 - e. Program, middleware and encryption method that will be used.
- (8) It shall specify the personal information controller responsible for addressing any information request, or any complaint filed by a data subject and/or any investigation by the Commission: Provided, that the Commission shall make the final determination as to which personal information controller is liable for any breach or violation of the Act, its IRR, or any applicable issuance of the Commission.
- (9) It shall identify the method that shall be adopted for the secure return, destruction or disposal of the shared data and the timeline therefor.
- (10) It shall specify any other terms or conditions that the parties may agree on.

Data sharing shall only be allowed where there are adequate safeguards for data privacy and security.⁸⁶ Unless otherwise provided by the data sharing agreement, all personal data transferred to other parties by virtue of such agreement shall be returned, destroyed, or disposed of, upon the termination of the agreement.⁸⁷ Notably, in addition to unauthorized processing,⁸⁸ unauthorized disclosure of personal or sensitive personal information to

⁸⁶ NPC Circular No. 02-16 (Data Sharing Agreements Involving Government Agencies), Section 12.

⁸⁷ NPC Circular No. 02-16 (Data Sharing Agreements Involving Government Agencies), Section 17.

⁸⁸ Republic Act No. 10173, Sections 25-26, 28:

SECTION 25. Unauthorized Processing of Personal Information and Sensitive Personal Information. — (a) The unauthorized processing of personal information shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

(b) The unauthorized processing of personal sensitive information shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

SECTION 26. Accessing Personal Information and Sensitive Personal Information Due to Negligence. — (a) Accessing personal information due to negligence shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than

third parties without the consent of the data subject is penalized.⁸⁹

2.2.3. The Law of Public Officers

The source of public authority is the people, whose will is expressed in the Constitution and laws through their representatives.⁹⁰ As such, the powers of a public officer must find their source in law.⁹¹ A public officer's powers consist of: 1) those which are expressly conferred by the law under which he is appointed or elected; 2) expressly annexed to the office by the law which created it or *in pari materia*; or 3) incidentally attached to the office.⁹² In other words, public officers have those powers expressly granted or necessarily implied by the law.⁹³

Express grants of power to a public officer are strictly construed as conferring only those powers expressly imposed or necessarily implied.⁹⁴ In the absence of a valid grant, a public officer is devoid of power and their acts are infirm.⁹⁵

Parenthetically, public officers may be treated by legislation as a distinct class for purposes of the equal protection clause. Article XI, Section 1 of the Constitution states: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." The Constitution likewise declares that the right of action to recover property unlawfully acquired by public officers or employees is imprescriptible.⁹⁶ Likewise, the Court has upheld laws requiring disclosure of information to prevent corruption. In *Morfe v. Mutuc*,⁹⁷ a provision in the Anti-Graft Law which required public officers to regularly submit a sworn statement of assets and liabilities was deemed to satisfy the rational basis test and upheld as a valid exercise of

Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who, due to negligence, provided access to personal information without being authorized under this Act or any existing law.

(b) Accessing sensitive personal information due to negligence shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who, due to negligence, provided access to personal information without being authorized under this Act or any existing law.

SECTION 28. Processing of Personal Information and Sensitive Personal Information for Unauthorized Purposes. — The processing of personal information for unauthorized purposes shall be penalized by imprisonment ranging from one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00) shall be imposed on persons processing personal information for purposes not authorized by the data subject, or otherwise authorized under this Act or under existing laws.

The processing of sensitive personal information for unauthorized purposes shall be penalized by imprisonment ranging from two (2) years to seven (7) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons processing sensitive personal information for purposes not authorized by the data subject, or otherwise authorized under this Act or under existing laws.

⁸⁹ Republic Act No. 10173, Section 32: "Unauthorized Disclosure. — (a) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).

(b) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party sensitive personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from three (3) years to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00).

⁹⁰ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 132 (2000).

⁹¹ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 132 (2000).

⁹² De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 134 (2000).

⁹³ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 134 (2000).

⁹⁴ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 138 (2000).

⁹⁵ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* 133 (2000).

⁹⁶ Const., Article XI, Section 15: "The right of the State to recover properties unlawfully acquired by public officials and employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel."

⁹⁷ G.R. No. L-24693, October 23, 1967.

police power.⁹⁸ This was later elevated to a constitutional provision.⁹⁹ This starkly diverges from the Court's application of strict scrutiny review in *Ople v. Torres* as regards the national ID system and private individuals.¹⁰⁰ Moreover, public officials have a more limited expectation of privacy, having thrust themselves into the public sphere.¹⁰¹

2.3. International

There are two ways by which international law becomes enforceable in the domestic sphere. First is the transformation principle which applies to treaties.¹⁰² Second is the incorporation principle which applies to customary international law.¹⁰³ In transformation, international law becomes part of domestic law through the appropriate constitutional machinery such as an act of Congress. The incorporation principle operates *ipso facto*, integrating customary international law into domestic law. Transformation does not apply to all treaties, with distinctions between those that are 'self-executing' and 'non-self-executing.' The former operates automatically within the domestic sphere, without the need for any municipal legislation, while the latter require enabling acts before they can function inside the country and bind the courts.¹⁰⁴

Non-binding instruments or provisions in treaties are termed 'soft law.' 'Soft law' is not law¹⁰⁵ but provides guidelines which may be converted into legally binding rules through treaty or by acceptance as

⁹⁸ *Morfe v. Mutuc*, G.R. No. L-24693, October 23, 1967: ". . . Even with due recognition of such a view, it cannot be said that the challenged statutory provision calls for disclosure of information which infringes on the right of a person to privacy. It cannot be denied that the rational relationship such a requirement possesses with the objective of a valid statute goes very far in precluding assent to an objection of such character. This is not to say that a public officer, by virtue of a position he holds, is bereft of constitutional protection; it is only to emphasize that in subjecting him to such a further compulsory revelation of his assets and liabilities, including the statement of the amounts and sources of income, the amounts of personal and family expenses, and the amount of income taxes paid for the next preceding calendar year, there is no unconstitutional intrusion into what otherwise would be a private sphere."

⁹⁹ Const., Article XI, Section 17: "A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law."

¹⁰⁰ *Ople v. Torres*, G.R. No. 127685, July 23, 1998: "...the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn."

¹⁰¹ *Valmonte v. Belmonte*, G.R. No. 74930, February 13, 1989: "Apparent from the above-quoted statement of the Court in *Morfe* is that the right to privacy belongs to the individual in his private capacity, and not to public and governmental agencies like the GSIS. Moreover, the right cannot be invoked by juridical entities like the GSIS. As held in the case of *Vassar College v. Loose Wills Biscuit Co.* [197 F. 982 (1912)], a corporation has no right of privacy in its name since the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party and a corporation would have no such ground for relief. Neither can the GSIS through its General Manager, the respondent, invoke the right to privacy of its borrowers. The right is purely personal in nature. . . , and hence may be invoked only by the person whose privacy is claimed to be violated..."

It may be observed, however, that in the instant case, the concerned borrowers themselves may not succeed if they choose to invoke their right to privacy, considering the public offices they were holding at the time the loans were alleged to have been granted. It cannot be denied that because of the interest they generate and their newsworthiness, public figures, most especially those holding responsible positions in government, enjoy a more limited right to privacy as compared to ordinary individuals, their actions being subject to closer public scrutiny [Cf. *Ayer Productions Pty. Ltd. v. Capulong*, G.R. Nos. 82380 and 82398, April 29, 1988; See also *Cohen v. Marx*, 211 P. 2d 321 (1949).]"

¹⁰² Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 61 (2009); Const., Art. VII, Sec. 23; See *Pharmaceutical and Health Care Association of the Philippines v. Duque*, 535 SCRA 265 (2007).

¹⁰³ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 61 (2009); Const., Art. II, Sec. 2; See *Pharmaceutical and Health Care Association of the Philippines v. Duque*, 535 SCRA 265 (2007).

¹⁰⁴ See *Nicolas v. Romulo*, G.R. No 175888, Feb. 11, 2009;

¹⁰⁵ See *Pharmaceutical and Health Care Association of the Philippines v. Duque*, 535 SCRA 265 (2007): "'Soft law" does not fall into any of the categories of international law in Article 38 of the ICJ Statute. For an international rule to be considered as customary law, *opinio juris* must be established. Respondents have not presented any evidence to prove that the WHA Resolutions were in fact enforced or practiced by at least a majority of the member states, or that compliance was obligatory in nature. Thus, respondents failed to establish that the provisions of pertinent WHA Resolutions are customary international law. Consequently, legislation is necessary to transform the provisions of the WHA Resolutions into domestic law and cannot be implemented otherwise."

customary international law. It is the intention of the parties to create binding legal relationships that is determinative and not the title given to the document in question. This may be inferred from the circumstances.

2.3.1. FATF¹⁰⁶

The main international standard setting body responsible for tackling money laundering is the Financial Action Task Force (FATF). It was established in 1989 by the then G7 with a mandate to prevent the utilization of the banking system for the purpose of money laundering. Less than one year later the FATF published 40 Recommendations complemented by Special Recommendations to combat the financing of terrorism in the aftermath of the 9/11 terror attacks. The FATF Recommendations were revised in 2012. Today, the FATF's Recommendations are acknowledged by the Financial Stability Board (FSB) as one of 12 international key standards for sound financial systems.

In line with this mandate, the FATF adopted the following definition of beneficial ownership:¹⁰⁷

- Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer-and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
- Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
- This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.

As regards politically exposed persons, the following definition was adopted:¹⁰⁸

- *Foreign PEPs* are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.
- *Domestic PEPs* are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.
- *Persons who are or have been entrusted with a prominent function by an international organisation* refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.
- The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

¹⁰⁶ Janos Boszormenyi and Erich Schweighofer, A review of tools to comply with the Fourth EU anti-money laundering directive, 29(1) International Review of Law, Computers & Technology, 63–77 (2015).

¹⁰⁷ FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, 113 (February 2012 | Updated October 2016).

¹⁰⁸ FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, 123 (February 2012 | Updated October 2016).

However, the FATF guidelines are “soft law” and are neither treaties¹⁰⁹ nor customary international law. As such, they are not part of domestic law until enactment of implementing legislation.¹¹⁰

2.3.2. EU 4AMLD¹¹¹

The European Union’s legal framework implements the FATF Recommendations and adds further requirements. The Fourth AMLD (4AMLD) requires additional due diligence measures for domestic Politically Exposed Persons (Art. 20), in contrast to the Third AMLD, which mentioned foreign PEPs only. A list of criteria regarding PEPs is outlined in Art. 3(9).

Art. 3(6) of the 4AMLD provides that a beneficial owner is ‘any natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted.’ A percentage of 25% plus one share is considered as evidence of ownership or control. However, different approaches are taken to determine beneficial owners in the Member States, which can create confusion and practical problems when determining beneficial owners in cross-border cases. To enhance knowledge of beneficial ownership, Art. 29 demands that corporate and legal entities ‘hold adequate, accurate and current information on their beneficial owners.’

Art. 30 of the 4AMLD adds that all types of legal entities, trusts and legal arrangements shall be obliged to hold and transmit adequate, accurate, current and up-to-date information to a public central register, commercial register or companies register on themselves and on their BOs. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current and accessible in all cases to: (a) competent authorities and FIUs, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any person or organization that can demonstrate a legitimate interest. The persons or organizations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held. Access to the information on beneficial ownership shall be in accordance with data protection rules.

The 4AMLD likewise defines “politically exposed person” as “a natural person who is or who has been entrusted with prominent public functions and includes the following:¹¹²

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament or of similar legislative bodies;
- (c) members of the governing bodies of political parties;
- (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions

¹⁰⁹ As regards the Vienna Convention on the Law of Treaties.

¹¹⁰ See Sharman, J.C., Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States, 52 *International Studies Quarterly*, 635, 644 (2008): “... the FATF seemed to lack coercive options: it has never been able to extend or withhold conditional loans, and, having no formal legal existence itself, cannot make international law. Formal trade sanctions would have required a legal and practical re-invention of the organization, and put member states to significant expense in applying and monitoring these sanctions. As such, neither members nor the FATF were in favor of these sanctions. The alternative, establishing a process for publicly branding non-members as non-compliant with respect to money laundering standards, marked a break in its confrontational character.”

¹¹¹ Janos Boszormenyi and Erich Schweighofer, A review of tools to comply with the Fourth EU anti-money laundering directive, 29(1) *International Review of Law, Computers & Technology*, 63–77 (2015).

¹¹² EU Directive 2015/849, Article 3(9).

of which are not subject to further appeal, except in exceptional circumstances;

(e) members of courts of auditors or of the boards of central banks;

(f) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces;

(g) members of the administrative, management or supervisory bodies of State-owned enterprises;

(h) directors, deputy directors and members of the board or equivalent function of an international organisation.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;

Notably, the enhanced due diligence measures under EU 4AMLD Articles 20 and 21 apply to family members or close associates.¹¹³

The EU 4AMLD is likewise “soft law” and are neither treaties¹¹⁴ nor customary international law as regards the Philippines. As such, they are not part of domestic law until enactment of implementing legislation.¹¹⁵

2.3.3. United States

- Beneficial Owner

In the United States, any person who acquires directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Securities Exchange Act of 1934 shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing the information required under the Act, and as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.¹¹⁶

Beneficial owner includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:¹¹⁷

¹¹³ EU Directive 2015/849, Article 23. EU Directive 2015/849, Article 3(10): “family members’ includes the following: (a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person; (b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person; (c) the parents of a politically exposed person;”

EU Directive 2015/849, Article 3(11): “persons known to be close associates’ means: (a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person; (b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.”

¹¹⁴ As regards the Vienna Convention on the Law of Treaties.

¹¹⁵ See Sharman, J.C., Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States, 52 International Studies Quarterly, 635, 644 (2008): “... the FATF seemed to lack coercive options: it has never been able to extend or withhold conditional loans, and, having no formal legal existence itself, cannot make international law. Formal trade sanctions would have required a legal and practical re-invention of the organization, and put member states to significant expense in applying and monitoring these sanctions. As such, neither members nor the FATF were in favor of these sanctions. The alternative, establishing a process for publicly branding non-members as non-compliant with respect to money laundering standards, marked a break in its confrontational character.”

¹¹⁶ Securities Exchange Act of 1934, 48 Stat. 881.

¹¹⁷ Section 240 (13d-1). Filing of Schedules 13D and 13G: “(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d-101).”

- (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or,
- (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.

In addition, any person who, directly or indirectly, creates or uses any device with the purpose of effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

Persons shall also be deemed to be beneficial owners if they have the right to acquire beneficial ownership of such security within sixty days, including but not limited to any right to acquire:

- (1) Through the exercise of any option, warrant or right;
- (2) Through the conversion of a security;
- (3) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or
- (4) Pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

- Politically Exposed Person

Under the Currency and Foreign Transactions Reporting Act of 1970 (also known as the Bank Secrecy Act)¹¹⁸ and its implementing regulations,¹¹⁹ the term "politically exposed person" generally includes a current or former senior foreign political figure, their immediate family, and their close associates. More specifically:

- A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation.²⁷⁰ In addition, a senior foreign political figure includes any corporation, business, or other entity that has been formed by, or for the benefit of, a senior foreign political figure.
- The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children, and in-laws.

Choi, S. and Pritchard, A.C., *Securities Regulation: Cases and Analysis*, 735 (2005): "For the CEO confronted by a surprise offer for his company, however, "eventually" may be too late. If a hostile acquirer already has 20% of the stock locked up, getting the last 31% is not a very daunting challenge. Worse yet, the CEO confronted by the surprise offer has little time in which to maneuver to repurchase stock, find a "white knight," or adopt defensive measures. In a hostile takeover situation, delay is the ally of the defense.

Congress felt the pain of the CEO confronted by the surprise tender offer and adopted §13(d) of the Exchange Act, the "early warning provision of the Williams Act. The §13(d) notification requirement is triggered when any person (or group of persons) acquires beneficial ownership of 5% or more of an equity security registered under §12 of the Exchange Act."

¹¹⁸ See 12 USC 1829b, 12 USC 1951–1959, and 31 USC 5311, et seq.

¹¹⁹ Bank Secrecy Act Anti-Money Laundering Examination Manual. Retrieved from https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf. Accessed on 13 July 2017.

See also <https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/ffiec-bsa-aml-examination-manual.pdf>. Accessed on 13 July 2017.

- A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

Other factors to be considered when determining if an individual is a PEP are:

- Official responsibilities of the individual's office.
- Nature of the title (e.g., honorary or salaried).
- Level and nature of authority or influence over government activities or other officials.
- Access to significant government assets or funds.

Notably, the US definition is flexible and is subject to the concerns expressed in the optimal law enforcement literature regarding ambiguous rules. Other definitions of beneficial ownership and politically exposed person are provided in Annexes A and B.

2.4. Beneficial Ownership / Politically Exposed Persons in the Philippine Context

2.4.1. Generally

There are significant constraints that hinder identification and disclosure of beneficial ownership and politically exposed persons. Under the Data Privacy Act of 2012 (DPA), matters required to be disclosed by EITI Standards¹²⁰ (e.g. national identity number, date of birth, residential address) are data that, when put together with other information would directly and certainly identify an individual, and are deemed by the DPA to be personal information.¹²¹ As earlier discussed in Section 2.2.1.5, this characterization is associated with obligations imposed by the DPA, including:¹²²

- (1) Implementing reasonable and appropriate organizational, physical and technical measures

¹²⁰ EITI Standard 2016, Section 2.5(d): "Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed."

¹²¹ Republic Act No. 10173, Sec. 3(g): "Personal information refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual."

Republic Act No. 10173, Sec. 3(l): "Sensitive personal information refers to personal information:

- (1) About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns;
- (4) Specifically established by an executive order or an act of Congress to be kept classified. x x x

¹²² Republic Act No. 10173, Section 20 (2012); IRR, Sections 25-28.

SECTION 21. Principle of Accountability. — Each personal information controller is responsible for personal information under its control or custody, including information that have been transferred to a third party for processing, whether domestically or internationally, subject to cross-border arrangement and cooperation.

- (a) The personal information controller is accountable for complying with the requirements of this Act and shall use contractual or other reasonable means to provide a comparable level of protection while the information are being processed by a third party.
- (b) The personal information controller shall designate an individual or individuals who are accountable for the organization's compliance with this Act. The identity of the individual(s) so designated shall be made known to any data subject upon request.

intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.¹²³

- (2) Implementing reasonable and appropriate measures to protect personal information against natural dangers such as accidental loss or destruction, and human dangers such as unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination.
- (3) Ensuring that third parties processing personal information on its behalf shall implement the security measures required by this provision.
- (4) Employees, agents or representatives of a personal information controller who are involved in the processing of personal information shall operate and hold personal information under strict confidentiality if the personal information is not intended for public disclosure.¹²⁴
- (5) Promptly notify the Commission and affected data subjects when sensitive personal information or other information that may, under the circumstances, be used to enable identity fraud are reasonably believed to have been acquired by an unauthorized person, and the personal information controller or the Commission believes that such unauthorized acquisition is likely to give rise to a real risk of serious harm to any affected data subject.¹²⁵

Names are not unique, which necessitates cross-referencing this information with unique identifiers. Likewise, names by themselves are not conclusive indicia of relationship. While birth and marriage certificates may shed light on relationships, whether by consanguinity and affinity, they are classified as sensitive personal information.¹²⁶ Surveys conducted by the Philippine Statistics Authority might be useful in this regard but are classified as confidential, with penalties for unauthorized disclosure.¹²⁷ The ambiguity issues may be mitigated

¹²³ The determination of the appropriate level of security under this section must take into account the nature of the personal information to be protected, the risks represented by the processing, the size of the organization and complexity of its operations, current data privacy best practices and the cost of security implementation. Subject to guidelines as the Commission may issue from time to time, the measures implemented must include:

- Safeguards to protect its computer network against accidental, unlawful or unauthorized usage or interference with or hindering of their functioning or availability;
- A security policy with respect to the processing of personal information;
- A process for identifying and accessing reasonably foreseeable vulnerabilities in its computer networks, and for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach; and
- Regular monitoring for security breaches and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.

¹²⁴ Note that the obligation shall continue even after leaving the public service, transfer to another position or upon termination of employment or contractual relations.

¹²⁵ The notification shall at least describe the nature of the breach, the sensitive personal information possibly involved, and the measures taken by the entity to address the breach. Notification may be delayed only to the extent necessary to determine the scope of the breach, to prevent further disclosures, or to restore reasonable integrity to the information and communications system.

¹²⁶ Republic Act No. 10173, Sec. 3(1): "Sensitive personal information refers to personal information:

- (1) About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings; x x x

¹²⁷ Republic Act No. 10625, Sec. 26: "Individual data furnished by a respondent to statistical inquiries, surveys and censuses of the PSA shall be considered privileged communication and as such shall be inadmissible as evidence in any proceeding.

The PSA may release aggregated information from statistical inquiries, surveys and censuses in the form of summaries or statistical tables in which no reference to an individual, corporation, association, partnership, institution or business enterprise shall appear.

The National Statistician and all staff of the PSA shall take a solemn oath regarding confidentiality of information. However, confidentiality of information does not apply to:

by using unique tax identification numbers allotted to each taxpayer¹²⁸ but these are classified as sensitive personal information under the DPA.¹²⁹

The proposed national identification system might address data ambiguity issues. While the Supreme Court in *Ople v. Torres*¹³⁰ struck down a previous attempt to institute a national ID system, it did not state this was unconstitutional *per se*. It ruled that the Administrative Order instituting the system: 1) violated the non-delegation principle by exceeding mere implementation of the Administrative Code of 1987; and 2) violated the right to privacy because it lacked safeguards to ensure that personal information would only be processed for unequivocally specified purposes. Conversely, a national ID system which authorized by the implementing agency's enabling law, and provides for safeguards of the personal information to ensure it is not used for purposes other than provided in the enabling law would meet the proscriptions of *Ople v. Torres*. However, the national ID numbers would be classified as sensitive personal information under the DPA, and would necessitate remedial legislation exempting it from its coverage to be used for PH-EITI purposes.¹³¹ While Executive Orders

(a) Information in the form of a list or index of individual business firms, establishments or organizations that contain any or all of the following information:

- (1) The name, address and telephone numbers;
- (2) The business and products that they are engaged in; and
- (3) The specific ranges of number of employees.

(b) Microdata from statistical inquiries or survey form/questionnaire/schedule prepared by the PSA for purposes of research, with care to ensure that identities of a particular person, business or organization will not be disclosed in whatever form; and

(c) Access to census data after one hundred (100) years for historical, genealogical, scientific or other research purposes.

Republic Act No. 10625, Sec. 27: "Penalties. — Respondents of primary data collection activities such as censuses and sample surveys are obliged to give truthful and complete answers to statistical inquiries. The gathering, consolidation and analysis of such data shall likewise be done in the most truthful and credible manner.

To ensure compliance, any violation of this Act shall result in the imposition of the penalty of one (1) year imprisonment and a fine of One hundred thousand pesos (P100,000.00). In cases where the respondent who fails to give a truthful and complete answer to such statistical inquiries is a corporation, the above penalty shall be imposed against the responsible officer, director, manager and/or agent of said corporation. In addition, such erring corporation or any other juridical entity, depending on the category of the enterprise or business concerned whether small, medium or large, shall be imposed a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00).

Any person, including parties within the PSA Board and the PSA, who breach the confidentiality of information, whether by carelessness, improper behavior, behavior with malicious intent, and use of confidential information for profit, are considered guilty of an offense and shall be liable to fines as prescribed by the PSA Board which shall not be less than Five thousand pesos (P5,000.00) nor more than Ten thousand pesos (P10,000.00) and/or imprisonment of three (3) months but not to exceed one (1) year, subject to the degree of breach of information."

¹²⁸ Republic Act No. 8424, Sec. 236: "(I) Supplying of Taxpayer Identification Number (TIN). — x x x Only one Taxpayer Identification Number (TIN) shall be assigned to a taxpayer. Any person who shall secure more than one Taxpayer Identification Number shall be criminally liable under the provisions of Section 275 on 'Violation of Other Provisions of this Code or Regulations in General.'"

¹²⁹ Republic Act No. 10173, Sec. 3(1)(3): "Sensitive personal information refers to personal information: x x x

(3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns;

(4) Specifically established by an executive order or an act of Congress to be kept classified. x x x

¹³⁰ G.R. No. 127685, July 23, 1998.

¹³¹ Republic Act No. 10173, Sec. 3(1)(3): "Sensitive personal information refers to personal information: x x x

(3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns;

Note that the National ID has been described as a "social welfare" card, which would place it in a similar category as social security numbers.

have been issued mandating the creation of the PH-EITI,¹³² these are administrative rules¹³³ which do not amend or repeal statutes, and as such, do not carve out exceptions to privacy laws.¹³⁴ Another constraint is that most files are in a non-searchable pdf format (e.g. GIS), which increases the difficulty of processing information.

While it is arguable that the SEC has the authority to process the information based on the Corporation Code¹³⁵ and SEC Reorganization Act,¹³⁶ it is unlikely that this extends to public disclosure of personal or sensitive personal information under the DPA as it is not a necessary adjunct to its functions. This conservative interpretation is consistent with the Court's sedulous concern as regards the right to privacy, and its application of strict scrutiny review to laws and regulations that potentially infringe upon the right.

2.4.2. Corporation Code

¹³² Executive Order No. 79, Section 14 (2012): "Improving Transparency in the Industry by Joining the Extractive Industries Transparency Initiative. — In order to improve transparency, accountability, and governance in the sector, the government shall support and commit participation in the Extractive Industries Transparency Initiative (EITI). The DENR is mandated to ensure that mechanisms are established to operationalize the EITI in the mining sector, in consultation and coordination with the mining industry and other concerned stakeholders."

Executive Order No. 147, Section 5 (2013): "Powers and Functions of the PH-EITI MSG. — The PH-EITI-MSG shall have the following powers and functions:

- a. Ensure the commitment of the different stakeholders to the implementation of EITI;
- b. Define the strategic direction and scope of EITI in the Philippines;
- c. Craft, publish, review, and update a fully costed Country Work Plan in consultation with key PH-EITI stakeholders and oversee the implementation of the same;
- d. Produce all regular reports with contextual information about the extractive industries as may be required by PH-EITI implementation;
- e. Establish a mechanism for the EITI reconciliation process;
- f. Select and appoint an independent administrator/auditor to reconcile the government and industry reports;
- g. Direct and supervise the PH-EITI Secretariat in its various activities and establish its internal rules of procedure;
- h. Through its various members, conduct outreach to, and capability-building of, various sectors in support of the PH-EITI implementation at national and sub-national levels and communicate and build awareness about EITI and the progress of its implementation in the Philippines; and
- i. Perform such other functions as may be germane to the purpose for which it was created and consistent with this Order and the EITI Principles.

Section 8. Creation of the PH-EITI Technical Working Group and Assistance to PH-EITI. — PH-EITI may create Technical Working Groups composed of departments, bureaus, offices, agencies or instrumentalities of the Government, including government-owned and controlled corporations, and representatives of the business sector and CSOs. All such agencies, offices, and representatives are hereby directed to extend such assistance and cooperation as the PH-EITI may need in the exercise of its powers, execution of its functions, and discharge of its duties and responsibilities.

¹³³ See Executive Order No. 292, Book III, Chapter 2, Section 2 (1987): "Executive Orders. - Acts of the President providing for rules of a general or permanent character **in implementation or execution of constitutional or statutory powers** shall be promulgated in executive orders." (Emphasis supplied) Therefore, Executive Orders are in the nature of administrative rules to fill details

¹³⁴ See Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles vs. Home Development Mutual Fund, G.R. No. 131082, June 19, 2000: "It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law."

¹³⁵ Batas Pambansa Blg. 68, Sections 141, 143 (1980).

¹³⁶ Presidential Decree No. 902-A, Section 3: "The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military."

The Corporation Code mandates¹³⁷ the submission of reports to the SEC such as the election of directors and trustees¹³⁸ and annual report of operations.¹³⁹ For example, all domestic stock corporations are required to submit their General Information Sheet (GIS) to the SEC on a yearly basis.¹⁴⁰ The GIS includes information on a company's stockholders, such as name, nationality, current residential address, Tax Identification No. (TIN), number of shares subscribed and percentage of ownership, the top twenty (20) stockholders in number of shares subscribed,¹⁴¹ and should be certified and sworn to by the corporate secretary, the president, or any duly authorized officer of the corporation. Notably, the new GIS segregates the page containing Tax Identification Numbers of the stockholders, directors and officers from the rest of the form. To comply with the Data Privacy Act of 2012 and Executive Order No. 2, only the SEC may access the TIN and other personal data.¹⁴² However,

¹³⁷ See Corporation Code, Section 143: "Rule-making power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)"

¹³⁸ Corporation Code, Section 26: "Report of election of directors, trustees and officers. — Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected. Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission. (n)

SECTION 141. Annual report of corporations. — Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)

SECTION 143. Rule-making power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

¹³⁹ Corporation Code, Section 141: "Annual report of corporations. — Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)"

¹⁴⁰ See for example, SEC Memorandum Circular No. 16-16, Revision of the General Information Sheet (GIS) and Notification Update Form (NUF): "All covered corporations are directed to use the Revised General Information Sheet and Notification Update Form starting January, 2017."

¹⁴¹ Batas Pambansa Blg. 68 (1980):

SECTION 26. Report of election of directors, trustees and officers. — Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected. Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission. (n)

SECTION 141. Annual report of corporations. — Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)

SECTION 142. Confidential nature of examination results. — All interrogatories propounded by the Securities and Exchange Commission and the answers thereto, as well as the results of any examination made by the Commission or by any other official authorized by law to make an examination of the operations, books and records of any corporation, shall be kept strictly confidential, except insofar as the law may require the same to be made public or where such interrogatories, answers or results are necessary to be presented as evidence before any court. (n)

SECTION 143. Rule-making power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

¹⁴² See SEC Memorandum Circular No. 16-2016:

control can be exercised by a person over a corporation without being the owner of record of the shares. Among the possible modes are proxy¹⁴³ and voting trust agreements¹⁴⁴ which are not required to be reflected in the GIS. Even if provided, the public cannot determine beneficial owners of corporate subscribers unless their GIS are likewise obtained. Parenthetically, the Court in *Narra Nickel* took note of SEC limits on the number of corporate layers to which the Grandfather Rule may be applied per *Palting v. San Jose Petroleum, Inc.*¹⁴⁵ that the rule could not be applied beyond a reasonable level.¹⁴⁶ The Court noted the SEC's limit of two (2) levels for publicly-held corporations or where the shares are traded in the stock exchanges, and three (3) levels for closely held corporations or the shares of which are not traded in the stock exchanges. On the other hand, if a foreign corporation is the subscriber, information is unlikely to be obtained by the Philippines unless a treaty or executive agreement to that effect is existing between the Philippines and the pertinent states (i.e. interconnection of company registers).¹⁴⁷ Mere executive agreements, however, would be constrained by domestic legislation (e.g. Data Privacy Act of 2012).¹⁴⁸ While the Philippines is a signatory to the UN Convention Against Corruption¹⁴⁹ and the UN Convention Against Transnational Organized Crime,¹⁵⁰ their provisions mandate compliance with the domestic laws of the State Parties and are not self-executing.¹⁵¹ Even if these provisions were not incorporated,

“1. In the GIS, the Tax Identification Numbers (TIN) of the Board of Directors/Trustees, Officers and Stockholders of domestic corporations and Resident Agent and Officers in the Philippines of foreign corporations shall be indicated in a separate sheet designated as the TIN Page;

2. In the NUF for foreign corporations, the TIN of Officers shall be accomplished in a separate sheet designated as the TIN Page;

3. The residential addresses of the Directors/Trustees, Officers and Stockholders on pages 3 and 4 of the GIS for stock and non-stock corporations and Resident Agent and Officers in the NUF for foreign corporations shall likewise be indicated in the TIN Page; x x x”

¹⁴³ Batas Pambansa Blg. 68, Sec. 58 (1980).

¹⁴⁴ Batas Pambansa Blg. 68, Sec. 59 (1980).

¹⁴⁵ No. L-14441, December 17, 1966.

¹⁴⁶ *Narra Nickel Mining And Development Corp., et al. vs. Redmont Consolidated Mines Corp.*, G.R. No. 195580, January 28, 2015. Note also its ruling that disproportionate value of shares vs voting rights is indicia of side arrangements re beneficial ownership.

¹⁴⁷ See for example Agreement between the Republic of the Philippines and the Hong Kong Special Administrative Region of the People's Republic of China concerning Mutual Legal Assistance in Criminal Matters, February 23, 2001 (<http://210.5.104.56/treaty/scanneddocs/186.pdf>).

¹⁴⁸ See *Gonzales v. Hechanova*, 9 SCRA 230 (1963).

¹⁴⁹ See <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

¹⁵⁰ See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en.

¹⁵¹ UN Convention Against Corruption (2003): Article 10. Public reporting - Taking into account the need to combat corruption, each State Party shall, **in accordance with the fundamental principles of its domestic law**, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decisionmaking processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, **with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public**;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 46. Mutual legal assistance

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

UN Convention Against Transnational Organized Crime (2000): Article 9. Measures against corruption 1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, **to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures** to promote integrity and to prevent, detect and punish the corruption of public officials.

Article 10. Information x x x 2. A State Party that receives information **shall comply with any request by the State Party that transmitted the information that places restrictions on its use.**” (Emphasis supplied).

treaties are of the same hierarchy as statutes in the domestic sphere and can be amended by subsequent legislation (i.e. Data Privacy Act).¹⁵²

2.4.3. Securities Regulation Code

Reports required by the Securities Regulation Code (SRC) may be useful but only apply to public and reporting corporations listed in Rule 3 of the 2015 SRC Implementing Rules (SRC IRR).¹⁵³ Each public and reporting company must file Form 17-A with the SEC for the fiscal year in which the registration statement was rendered effective by the Commission, and for each fiscal year thereafter, within one hundred five (105) calendar days after the end of the fiscal year.¹⁵⁴ SEC Form 17-A requires disclosure of the beneficial owners of 5% or more of each class of equity securities.¹⁵⁵ The SRC IRR define a beneficial owner or beneficial ownership as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or to direct the voting of such security) and/or investment returns power (which includes the power to dispose of or direct the disposition of such security) provided, however, that this person has an indirect beneficial ownership interest in any security which can be classified as such. All securities of the same class beneficially owned by a person shall be aggregated in calculating the number of shares beneficially owned by such person.¹⁵⁶

¹⁵² See *Abbas v. COMELEC*, 179 SCRA 287, G.R. No. 89651, November 10, 1989. Note however, that domestic legislation should be interpreted so as to avoid conflict with treaty obligations.

¹⁵³ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 3.1.16: “Public company means any corporation with a class of equity securities listed on an Exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities.”

2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 3.1.19: “Reporting company is a corporation that has sold a class of its securities pursuant to a registration under Section 12 of the Code, or a public company, as defined under SRC Rule 3.1.16.”

Republic Act No. 8799, Section 12.1: “Procedure for Registration of Securities. — 12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4. x x x

Republic Act No. 8799, Section 8.1: “Requirement of Registration of Securities. — 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.” x x x

¹⁵⁴ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 17.1.1.1.1.

¹⁵⁵ See SEC Form 17-A, Part III, Item 11 which requires that information be furnished according to SRC Annex C, Part IV, Paragraph (C) as amended re “Security Ownership of Certain Record and Beneficial Owners and Management.”

¹⁵⁶ 2015 Implementing Rules of the Securities Regulation Code, Section 3.1.2:

“3.1.2. Beneficial owner or beneficial ownership means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security); provided, that a person shall be deemed to have an indirect beneficial ownership interest in any security which is:

3.1.2.1. held by members of his immediate family sharing the same household;

3.1.2.2. held by a partnership in which he is a general partner;

3.1.2.3. held by a corporation in which he is a controlling shareholder; or

3.1.2.4. subject to any contract, arrangement or understanding which gives him voting power or investment power with respect to such securities; provided, that the following persons or institutions shall not be deemed to be beneficial owners of securities held by them for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, as long as such shares were acquired by such persons or institutions without the definite and/or clear intention of effecting a change or influencing the control of the Issuer:

3.1.2.4.1. A broker dealer;

3.1.2.4.2. An investment house registered under the Investment Houses Law;

3.1.2.4.3. A bank authorized to operate by the Bangko Sentral ng Pilipinas ("BSP");

3.1.2.4.4. A duly-registered insurance company;

3.1.2.4.5. An investment company registered under the Investment Company Act;

3.1.2.4.6. A pension plan registered with and regulated by the Bureau of Internal Revenue, Insurance Commission or any other regulatory authority; and

The SRC IRR also requires persons who acquire beneficial ownership of 5% of any class of equity securities to submit to the issuer, the Exchange where the security is traded, and the SEC a sworn statement containing the information required by SEC Form 18-A.¹⁵⁷ The form should be filed within five days from the acquisition except where the exceptions in Rule 18.1.3(a) apply, in which case SEC Form 18-AS may be filed instead within 45 days after the end of the year in which the person became obligated to file.¹⁵⁸

The SRC IRR likewise requires directors, officers, and stockholders with beneficial ownership of 10% or more of any class of security of a company to file SEC Forms 23A and 23B.¹⁵⁹ SEC Form 23A is filed when a person initially becomes a director or officer or is a stockholder that has reached the 10% threshold.¹⁶⁰ Subsequent changes of ownership must then be reported under SEC Form 23B.¹⁶¹ SEC Form 23A must be filed with the SEC and the Exchange, if listed, within 10 days from whichever is the earlier of 1) the effectivity of the registration statement; or 2) acquisition or when the person became a director or officer.¹⁶² On the other hand, SEC Form 23B should be filed within 10 days after the close of each month.¹⁶³ These forms are likewise filed with the Philippine Stock Exchange under PSE Disclosure Forms 17-6¹⁶⁴ and 17-7¹⁶⁵ and are accessible online through the PSE EDGE system.¹⁶⁶

While these forms would ostensibly be helpful in ascertaining beneficial ownership, their usefulness was uneven. Some only listed the corporate subscribers as beneficial owners,¹⁶⁷ while others provided more extensive disclosures and listed the indirect beneficial ownership of natural persons.¹⁶⁸ PSE POR-1 Form is clearer relative to SEC Form 23-A and B but likewise halts at the first level of corporate subscribers.¹⁶⁹

2.4.4. Anti-Money Laundering Act of 2001 (AMLA)

The AMLA implementing rules define beneficial owner and politically exposed person for the purpose of regulating money laundering. "Beneficial owner" refers to a natural person who ultimately owns or controls the account and/or the person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.¹⁷⁰ "Politically Exposed Person" (PEP) refers to a natural person who is or has been entrusted with prominent public positions in the Philippines or in a

3.1.2.4.7. An entity whose members are the persons specified above.

All securities of the same class that are beneficially owned by a person, regardless of the form of the beneficial ownership, shall be aggregated in calculating the number of shares that shall be considered as beneficially owned by such person.

A person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership within thirty (30) days from the exercise of any option, warrant or right, or conversion of any security; or pursuant to the power to revoke a trust, discretionary account or similar arrangement; or pursuant to the automatic termination of a trust, discretionary account or similar arrangement."

¹⁵⁷ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 18.1.

¹⁵⁸ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 18.1.2 and 18.1.3(a).

¹⁵⁹ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 23.1.

¹⁶⁰ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 23.1.1.

¹⁶¹ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 23.1.2.

¹⁶² 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 23.1.1.

¹⁶³ 2015 Implementing Rules and Regulations of Securities Regulation Code, Rule 23.1.2.

¹⁶⁴ Initial Statement of Beneficial Ownership of Securities

¹⁶⁵ Statement of Changes in Beneficial Ownership of Securities

¹⁶⁶ <http://edge.pse.com.ph/otherReports/form.do>

¹⁶⁷ See Figure 9.

¹⁶⁸ See Figure 10.

¹⁶⁹ See Figures 11 and 12.

¹⁷⁰ Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 3.b.1.

foreign State, including heads of state or government, senior politicians, senior national or local government, judicial or military officials, senior executives of government or state owned or controlled corporations and important political party officials.¹⁷¹

The AMLA IRR provides that covered institutions take reasonable measures to determine whether a customer or beneficial owner is a PEP.¹⁷² Covered entities must obtain the latest General Information Sheet and list of beneficial owners and beneficiaries from corporate and/or juridical entities.¹⁷³ In cases of higher risk business relationship with such persons including foreign PEPs, a covered institution shall apply enhanced due diligence measures.¹⁷⁴ The requirements for PEPs should also apply to family members or close associates thereof. However, AMLC does not maintain a centralized database of this information and data is requested on an ad hoc basis.¹⁷⁵ Even assuming this information was regularly collected, the AMLA IRR considers information regarding covered or suspicious transactions as confidential, and covered institutions, their officers and employees are prohibited from communicating any information related thereto.¹⁷⁶

¹⁷¹ Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 3.b.2.

¹⁷² Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 9.a.16.

¹⁷³ Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 9.a.5: “Minimum Information/Documents Required for Corporate and Juridical Entities. — Before establishing business relationships, covered institutions shall endeavor to ensure that the customer is a corporate or juridical entity which has not been or is not in the process of being dissolved, wound up or voided, or that its business or operations has not been or is not in the process of being, closed, shut down, phased out, or terminated. Dealings with shell companies and corporations, being legal entities which have no business substance in their own right but through which financial transactions may be conducted, should be undertaken with extreme caution. The following minimum information/documents shall be obtained from customers that are corporate or juridical entities, including shell companies and corporations which have no business substance in their own right but through which financial transactions may be conducted:

(a) Certificates of Registration issued by the Department of Trade and Industry for single proprietors, or by the Securities and Exchange Commission for corporations and partnerships, and by the BSP, for money changers/foreign exchange dealers and remittance agents;

(b) Articles of Incorporation/Partnership;

(c) Latest General Information Sheet which lists the names of directors/trustees/partners, principal stock holders owning at least twenty percent (20%) of the outstanding capital stock and primary officers such as the President and Treasurer;

(d) Beneficial owners and beneficiaries of the corporate and/or juridical entities;

(e) Board or Partners' resolution duly certified by the Corporate/Partners' Secretary authorizing the signatory to sign on behalf of the entity; and

(f) For entities registered outside of the Philippines, similar documents and/or information shall be obtained duly authenticated by the Philippine Consulate where said entities are registered.”

¹⁷⁴ See Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 9.a.9.a: “Enhanced Due Diligence. — Enhanced due diligence shall be applied to customers that are assessed by the covered institution or these Rules as high risk for money laundering and terrorist financing, which enhanced diligence, at a minimum, should observe the following measures:

i. Obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;

ii. Take reasonable measures to establish the source of wealth and source of funds; and

iii. Conduct enhanced ongoing monitoring of the business relationship.”

¹⁷⁵ Per Director Tina Callangan, Corporate Governance and Finance Department, Securities and Exchange Commission.

¹⁷⁶ Republic Act No. 9160, Section 9 (2001): “Prevention of Money Laundering; Customer Identification Requirements and Record Keeping. — (a) Customer Identification. — Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The BSP may conduct annual testing solely limited to the determination of the existence and true identity of the owners of such accounts.

(b) Record Keeping. — All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) Reporting of Covered and Suspicious Transactions. — Covered persons shall report to the AMLC all covered transactions and suspicious transactions within five (5) working days from occurrence thereof, unless the AMLC prescribes a different period not exceeding fifteen (15) working days.

2.4.5. Civil Service Law

The Civil Service Commission (CSC) requires covered public officials or employees to fill out a Statement of Assets and Liabilities¹⁷⁷ and Personal Data Sheet (PDS).¹⁷⁸ While these forms may aid in determining whether stockholders of companies in extractive industries are PEPs, there are several limitations. First, the PDS only requires that the names of the person's spouse, children, and parents be listed¹⁷⁹ while the SALN only mandates listing the names of the person's spouse, children, and relatives to the fourth degree that are in the government service.¹⁸⁰ Should the PEP definition extend to relatives beyond this list, the CSC must amend the form to solicit

Lawyers and accountants acting as independent legal professionals are not required to report covered and suspicious transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

When reporting covered or suspicious transactions to the AMLC, covered institutions and their officers and employees shall not be deemed to have violated Republic Act No. 1405, as amended; Republic Act No. 6426, as amended, Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer and employee of the covered institution shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered or suspicious transaction report in the regular performance of his duties in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other law.

When reporting covered or suspicious transactions to the AMLC, covered persons and their officers and employees are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person or entity, the media, **the fact that a covered or suspicious transaction has been reported or is about to be reported, the contents of the report, or any other information** in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer and employee of the covered person and media shall be held criminally liable.”

Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 9.c.3: “Exemption from Bank Secrecy Laws. — When reporting covered or suspicious transactions to the AMLC, covered institutions and their officers and employees, shall not be deemed to have violated R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer and employee of the covered institution shall be criminally liable.

Revised Rules and Regulations Implementing Republic Act No. 9160 (2012), Rule 9.c.4: “Confidentiality Provisions. — **When reporting covered transactions or suspicious transactions to the AMLC, covered institutions and their officers and employees, are prohibited from communicating,** directly or indirectly, in any manner or by any means, **to any person,** entity, the media, **the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto.** Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, and employee, of the covered institution, or media shall be held criminally liable.”

Republic Act No. 9160, Section 14 (2001): “Penal Provisions. — x x x (d) Breach of Confidentiality. The punishment of imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine pesos (Php500,000.00) but not more than One million Philippine pesos (Php1,000,000.00) shall be imposed on a person convicted for a violation under Section 9(c). In the case of a breach of confidentiality that is published or reported by media, the responsible reporter, writer, president, publisher, manager and editor-in-chief shall be liable under this Act.

¹⁷⁷ Republic Act No. 6713, Sections 3 and 8: “SECTION 3. Definition of Terms. — As used in this Act, the term: x x x

(b) "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

SECTION 8. Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households. x x x”

¹⁷⁸ See for example CSC MC 24-2017, Rule II (Omnibus Rules on Appointments and Other Personnel Actions).

¹⁷⁹ See Figure 1.

¹⁸⁰ See Figure 2 and 3. See also CSC Memorandum Circular 03-2015, January 23, 2015.

this information. Second, interviews with CSC officials¹⁸¹ confirmed that SALNs are not in digital format. Similar to the SEC GIS, these would require manual data encoding upon election/appointment of a new officer which would restrict searchability and cross-referencing as regards other databases. PDS are stored either in physical form or scanned digital form but are not searchable and are subject to the same concerns. Third, SALN forms are not in the possession of the CSC Head Office but are retained by CSC Branch Offices or the offices of the officials/employees.¹⁸² Thus, when attempts were made to obtain the data from the House of Representatives and Senate, staff directed requests to the offices of congressmen and senators which possessed the forms.¹⁸³ Evidently, this would be a time-consuming and quixotic endeavor. On the other hand, PDS forms are stored both in CSC satellite offices and the CSC Head Office which makes for relatively easier retrieval.

3. Recommendations

3.1. Proposed Definition of Beneficial Ownership

Clarity of regulation is integral to achieving the optimal mix between penalties and enforcement. With this in mind, adopting the definition of beneficial ownership in the Implementing Rules of the Securities Regulation Code will reduce the burden of regulatory compliance and minimize regulatory risk and uncertainty. As such, the following definition is proposed:¹⁸⁴

Beneficial owner or beneficial ownership means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security); provided, that a person shall be deemed to have an indirect beneficial ownership interest in any security which is:

- 1) held by members of his immediate family sharing the same household;
- 2) held by a partnership in which he is a general partner;
- 3) held by a corporation in which he is a controlling shareholder; or
- 4) subject to any contract, arrangement or understanding which gives him voting power or investment power with respect to such securities; provided, that the following persons or institutions shall not be deemed to be beneficial owners of securities held by them for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, as long as such shares were acquired by such persons or institutions without the definite and/or clear intention of effecting a change or influencing the control of the Issuer:
 - a. A broker dealer;
 - b. An investment house registered under the Investment Houses Law;
 - c. A bank authorized to operate by the Bangko Sentral ng Pilipinas ("BSP");
 - d. A duly-registered insurance company;
 - e. An investment company registered under the Investment Company Act;
 - f. A pension plan registered with and regulated by the Bureau of Internal Revenue,

¹⁸¹ Per Mr. Marlon TresMaria, Administrative Officer III, Integrated Records Management Office, Civil Service Commission and Ms. Ana Apostol, Special Investigator, Office of Legal Affairs, Civil Service Commission.

¹⁸² Per Mr. Marlon TresMaria, Administrative Officer III, Integrated Records Management Office, Civil Service Commission and Ms. Ana Apostol, Special Investigator, Office of Legal Affairs, Civil Service Commission. *See also* CSC MC 3-2015 re Repository Agency for SALNs.

¹⁸³ Per Ms. Annaliza Ramos, Integrated Records Management Office, Civil Service Commission; Ms. Melinda Sanchez, Office for Human Resource Management and Development, Civil Service Commission; Ms. Rosette Naranjella, Senate OSEC; and Ms. Vilma dela Cruz, Archives Department, House of Representatives.

¹⁸⁴ Taken from Rule 3.1.2, 2015 Implementing Rules And Regulations Of The Securities Regulation Code.

- Insurance Commission or any other regulatory authority; and
- g. An entity whose members are the persons specified above.

All securities of the same class that are beneficially owned by a person, regardless of the form of the beneficial ownership, shall be aggregated in calculating the number of shares that shall be considered as beneficially owned by such person.

A person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership within thirty (30) days from the exercise of any option, warrant or right, or conversion of any security; or pursuant to the power to revoke a trust, discretionary account or similar arrangement; or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

3.2. Proposed Definition of Politically Exposed Persons

The United States definition of politically exposed persons is ambiguous. While the term includes immediate family¹⁸⁵ and close associates, it is unclear whether “immediate family” includes common-law spouses and to what degree of relationship (i.e. consanguinity or affinity) it extends. On the other hand, “close associate” of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.¹⁸⁶ The determination of what is “unusually close,” “in a position to conduct,” and “substantial” is discretionary, ambiguous, expansive, and suboptimal. For this reason, it is recommended that the EU 4AMLD definition be adopted with modifications reflecting our domestic law of public officers.

The following definition is proposed:

“Politically exposed person” is a natural person who is or who has been entrusted with prominent public functions and includes the following:

- 1) heads of State, heads of government, Cabinet Secretaries, Undersecretaries, or Assistant Secretaries;
- 2) members of the House of Representatives or the Senate of the Philippines;
- 3) members of the governing bodies of political parties;
- 4) members of the Supreme Court;
- 5) members of Civil Service Commission, the Commission on Elections, and the Commission on Audit;
- 6) Governor and Deputy Governors of the Bangko Sentral Ng Pilipinas;
- 7) ambassadors and chargés d'affaires;
- 8) officers in the armed forces with the rank of brigadier general/commodore or higher;
- 9) officers of the Philippine National Police with the rank of Senior Superintendent or higher;
- 10) members of the administrative, management or supervisory bodies of State-owned enterprises;
- 11) heads or members of the administrative, management or supervisory bodies of administrative agencies vested with regulatory powers;
- 12) directors, deputy directors and members of the board or equivalent function of an international

¹⁸⁵ The “immediate family” of a senior foreign political figure typically includes the figure’s parents, siblings, spouse, children, and in-laws.

¹⁸⁶ A “close associate” of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

- organization.
- 13) all elective officials of local government units.

The persons enumerated in (1) to (12) shall exclude officials of lesser rank. “Politically exposed person” shall include the immediate family of those enumerated. Immediate family shall be limited to the politically exposed person’s parents, siblings, spouse (legal or common-law), children (legitimate or illegitimate), and in-laws within one degree of affinity.

The MSG may wish to consider whether (6) and (12) are appropriate in the Philippine context.

3.3. Proposed Materiality Threshold

The accounting literature considers materiality important throughout the audit process. At the planning phase, the auditor determines an overall magnitude of materiality to delineate the scope of the audit (i.e. “planning” or “audit” materiality). Auditors then “allocate” a portion of the planning materiality to account balances or classes of transactions (i.e. “tolerable misstatement”) which represents the amount misstated that will not be considered material. At the completion of the audit, detected misstatements are compared to tolerable misstatement in order to determine if these misstatements are material enough to require adjustment of the client’s books. This process is typically referred to as “evaluation” materiality.¹⁸⁷ While the majority of auditing firms use a percentage of income (e.g., 5 percent) to establish planning materiality, others use assets and/or revenues. Variability also exists in determining tolerable misstatements. Some firms use mechanical methods (e.g., a percentage of planning materiality) to allocate while other firms do not allocate planning materiality.¹⁸⁸

Policy makers may also set materiality thresholds based on optimal law enforcement literature. Fixing thresholds at an overly low level will result in information overload, excessive irrelevant information, and dilution effects. On the other hand, setting thresholds at an excessively high level will result in an disproportionate number of false negatives.¹⁸⁹ With these considerations, focusing limited monitoring and enforcement resources on large enterprises would be consistent with the optimal law enforcement literature. Large enterprises are defined in Republic Act No. 9501 as possessing total assets of more than Php100 Million.¹⁹⁰

Section 2.5(a) of the 2016 EITI Standard recommends that implementing countries maintain a publicly available register of the beneficial owners of the corporate entities that bid for, operate or invest in extractive assets. In this regard, the National Statistical Coordination Board produces and revises the Philippine Standard Industrial Classification (PSIC) which serves as a guide in classifying establishments according to their primary economic activity. It serves as a framework for data collection, processing and compilation to ensure uniformity

¹⁸⁷ Messier, Jr., W., Martinov-Bennie, N., and Eilifsen, A., A Review and Integration of Empirical Research on Materiality: Two Decades Later, 24(2) Auditing: A Journal of Practice & Theory, 153, 156 (November 2005).

¹⁸⁸ Messier, Jr., W., Martinov-Bennie, N., and Eilifsen, A., A Review and Integration of Empirical Research on Materiality: Two Decades Later, 24(2) Auditing: A Journal of Practice & Theory, 153, 181 (November 2005).

¹⁸⁹ This is an empirical issue which may be resolved by through a logit regression, where the dependent variable is where X=1 when an entity is used for purposes at odds with EITI standards and X=0 otherwise (See Greene, W., Econometric Analysis, 665-667 (5th ed.). A proxy variable might be AMLA violations. However, this research is data intensive and availability is uncertain.

¹⁹⁰ Based on upper limit of MSME classification in Republic Act No. 9501, Section 3 (2008): “Section 3 of the same Act, as amended, is hereby further amended to read as follows:

‘SEC. 3. Micro, Small and Medium Enterprises (MSMEs) as Beneficiaries. — MSMEs shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have value falling under the following categories:

micro: not more than P3,000,000

small: P3,000,001 - P15,000,000

medium: P15,000,001 - P100,000,000 . . .”

and comparability of industrial statistics produced by government and private sectors. The PSIC is also used by the SEC in its GIS form to classify reporting entities.¹⁹¹

Given the foregoing, the following materiality threshold is proposed:

(1) The following shall be considered qualified entities:

- a. Those entities classified in SEC GIS as “Mining and Quarrying” under the latest Philippine Standard Industrial Classification;¹⁹² AND
- b. With at least Php100 Million in total assets based on audited financial statements submitted to SEC.¹⁹³

(2) The following natural persons shall be required to report the extent of beneficial ownership:

- a. Those that possess beneficial ownership of at least 10% of any class of securities of a qualified entity;¹⁹⁴ OR
- b. Politically Exposed Persons regardless of extent of beneficial ownership.

3.4. Recommendations Regarding Forms and Other Administrative Matters

3.4.1. Beneficial Ownership

Given PH-EITI TWG’s preference that administrative burdens and risk be minimized and that data be sourced from reports currently required by law, the forms that best fit the proposed beneficial ownership definition and materiality threshold are SEC Forms 23-A and 23-B. As worded, GIS provide insufficient information where there are foreign corporate subscribers.¹⁹⁵ Even where there are only domestic corporate subscribers, the process of tracing beneficial ownership is time-consuming and cumbersome as the data is in hard copy or scanned form and not searchable. SEC Forms 23-A and 23-B place the onus of reporting on the beneficial owners - a more efficient proposition as they likely possess the data and/or resources to obtain it. Currently, these forms are only applicable to companies covered by the SRC. The SEC may expand coverage of these forms to other companies by administrative rule. In doing so, the SEC can draw upon its broad quasi-legislative powers under the Corporation Code.¹⁹⁶ Notably, Forms 23-A and 23-B are limited to the total amount and value of the shares

¹⁹¹ Note that the SEC GIS contains a field denominated “Industrial Classification.” Per Director Tina Callangan, Corporate Governance and Finance Department, Securities and Exchange Commission, the PSIC is used to populate this field.

¹⁹² At present, the 2009 Philippine Standard Industrial Classification lists all mining and quarrying industries under Section B. Note that the SEC GIS form contains a portion denominated “Industry Classification” which is filled out by SEC personnel.

¹⁹³ Based on upper limit of MSME classification in Republic Act No. 9501, Section 3 (2008): “Section 3 of the same Act, as amended, is hereby further amended to read as follows:

‘SEC. 3. Micro, Small and Medium Enterprises (MSMEs) as Beneficiaries. — MSMEs shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have value falling under the following categories:

micro: not more than P3,000,000

small: P3,000,001 - P15,000,000

medium: P15,000,001 - P100,000,000 . . .”

¹⁹⁴ Based on threshold set by SEC Form 23-A and 23-B.

¹⁹⁵ See Figure 4.

¹⁹⁶ Note that this may be incorporated in SEC’s authority to promulgate rules reasonably necessary to perform its duties, including enabling it to prevent fraud and abuses by controlling stockholders. Abuses of potential controlling stockholders cannot be prevented if they are not identified.

Corporation Code, Section 141. Annual report or corporations. — Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial

beneficially owned¹⁹⁷ which fails to consider that voting rights are not necessarily homogeneous for all classes of shares, as they may be removed entirely for preferred shares.¹⁹⁸ The forms may further be improved by mandating reporting solely by natural persons of total voting rights instead of permitting reporting by juridical persons and listing of total amount and value of securities.

3.4.2. Politically Exposed Persons

Given PH-EITI TWG's preference that data be sourced from reports currently required by law, the form best suited to account for PEPs is the CSC's Personal Data Sheet. While public officials covered by the proposed PEP definition are legally required to file a Statement of Assets and Liabilities (SALN),¹⁹⁹ the form only requires disclosure of the public officer's spouse, unmarried children below 18 living in the same household, and relatives within four degrees of consanguinity or affinity in the government service²⁰⁰ and does not require disclosure of the public officer's parents, his spouse's parents, or his siblings. Moreover, the SALN's contents are specified by Republic Act No. 6713²⁰¹ which may impede amendment by administrative regulation. Additionally, the physical forms are located in disparate government offices making collation time-consuming and cumbersome.²⁰² Finally,

statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)

Section 143. Rule-making power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

¹⁹⁷ See Figures 5 to 8.

¹⁹⁸ See Corporation Code, Section 6: “Classification of shares. — **The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: Provided, further, That there shall always be a class or series of shares which have complete voting rights.** x x x” (Emphasis supplied)

¹⁹⁹ Republic Act No. 6713, Sections 3 and 8: “SECTION 3. Definition of Terms. — As used in this Act, the term: x x x

(b) "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

SECTION 8. Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households. x x x”

²⁰⁰ See Figure 2 and 3.

²⁰¹ Republic Act No. 6713, Section 8: “Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households. x x x

(B) Identification and disclosure of relatives. — It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission. x x x”

Note however, Sections 12 and 13: “SECTION 12. Promulgation of Rules and Regulations, Administration and Enforcement of this Act. — x x x The Civil Service Commission is hereby authorized to promulgate rules and regulations necessary to carry out the provisions of this Act, including guidelines for individuals who render free voluntary service to the Government. x x x”

“SECTION 13. Provisions for More Stringent Standards. — Nothing in this Act shall be construed to derogate from any law, or any regulation prescribed by any body or agency, which provides for more stringent standards for its official and employees.”

²⁰² Republic Act No. 6713, Section 8: “x x x (A) Statements of Assets and Liabilities and Financial Disclosure. — x x x The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

the SALN includes information from which the identity of the individual is apparent²⁰³ which is personal information covered by the obligations and restrictions of the Data Privacy Act.

On the other hand, submission of the Personal Data Sheet (PDS) is also mandated by the Civil Service Commission (CSC) for public officers covered by the PEP definition. While the PDS only requires the public officer to list his spouse, children, and parents, it may be amended by the CSC to include data required by the PEP definition through its quasi-legislative powers.²⁰⁴ However, the usefulness of these forms is limited as they are merely scanned (not searchable) and stored in the CSC Head Office. Ideally, this data would be in a searchable central database where it can be validated and cross-referenced against SEC digital databases for BO and PEP purposes. This can be addressed through administrative rule-making by the CSC which has the power to “keep and maintain personnel records of all officials and employees in the Civil Service.” As with the SALN, the PDS includes information from which the identity of the individual is apparent²⁰⁵ and is personal information covered by the Data Privacy Act.²⁰⁶ It is therefore recommended that the Department of Finance (DOF) request the Civil Service Commission (CSC) to extract the list of PEPs from the PDS. These requests should be governed by a Data Sharing Agreement between the DOF and CSC that is compliant with the requirements of the National Privacy Commission.²⁰⁷ To ensure compliance with the Data Privacy Act, it is recommended that an advisory

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- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
 - (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
 - (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
 - (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
 - (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.
- (C) Accessibility of documents. — (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.
- (2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.
 - (3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification. x x x”
- ²⁰³ Republic Act No. 10173, Section 3(g) (2012).
- ²⁰⁴ Administrative Code of 1987, Book V, Title I, Chapter 3, Section 12: “Powers and Functions. - The Commission shall have the following powers and functions: x x x
- (2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;” x x x
 - (8) Prescribe all forms for Civil Service examinations, appointments, reports and such other forms as may be required by law, rules and regulations; x x x
 - (18) Keep and maintain personnel records of all officials and employees in the Civil Service; and
 - (19) Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law.”

²⁰⁵ Republic Act No. 10173, Section 3(g) (2012).

²⁰⁶ Note NPC Advisory No. 2017-02 (Access to Personal Data Sheets of Government Personnel): “Disclosure of personal data shall only be allowed when permitted by existing laws. Under the DPA, only those that relate to the position or function of an individual working for the government may be made available to the public. Other types of personal data, especially sensitive personal information, may be released only if necessary to the declared specified, and legitimate purpose of the requesting party.

Thus, when resolving a pending request for access to a PDS, a government agency or office must consider the following:

- 1) The information requested falls under matters of public concern;
- 2) The individual requesting for personal data has declared and specified the purpose of his or her request;
- 3) The declared and specified purpose is not contrary to law, morals, and public policy; and
- 4) The personal data requested is necessary to the declared, specified, and legitimate purpose.

At the same time, the requesting party is obliged to use the data obtained only for the purpose declared at the time of making the request. The individual must also commit to complying with the provisions of the DPA.

x x x In all cases, the rights of the data subject should be respected, including the right to be informed and notified about the processing of his or her personal data.

²⁰⁷ See NPC Circular 16-02, Sections 4, 6, 7, and 8 (Data Sharing Agreements Involving Government Agencies).

opinion be solicited from the National Privacy Commission (NPC).²⁰⁸ As the administrative agency tasked with implementing the provisions of Data Privacy Act, its executive interpretation will likely be respected by the courts.²⁰⁹

3.5. Summary of Recommendations²¹⁰

As regards beneficial ownership, the GIS contains personal information from which the identity of an individual is apparent.²¹¹ The Data Privacy Act requires this personal data to be accurate and kept up to date. Inaccurate or incomplete data must be rectified, supplemented, destroyed or their further processing restricted. As beneficial ownership cannot be accurately ascertained without data regarding domestic and foreign corporate subscribers, using the GIS alone would provide inaccurate information. The better approach would be for the SEC to extend applicability of an amended Form 23-A and 23-B to specified beneficial owners by administrative rule, placing the burden of compliance upon those best able to obtain the data.

As for Politically Exposed Persons, the DOF may request CSC to list the relatives in the Personal Data Sheet for each public officer covered by the PEP definition. However, this would not cover all persons enumerated in the proposed PEP definition until the PDS is amended by the CSC. Moreover, this is personal information under the DPA as the identity of the individual is apparent.

For both BO or PEPs, public disclosure of personal or sensitive personal information without the consent of the public officers may be punishable under the DPA²¹² and may conflict with the EITI Standard which recommends that:²¹³

- implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets which should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.
- information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

²⁰⁸ Republic Act No. 10173, Section 7: “*Functions of the National Privacy Commission.* — To administer and implement the provisions of this Act, and to monitor and ensure compliance of the country with international standards set for data protection, there is hereby created an independent body to be known as the National Privacy Commission, which shall have the following functions: x x x

(l) Comment on the implication on data privacy of proposed national or local statutes, regulations or procedures, issue advisory opinions and interpret the provisions of this Act and other data privacy laws; x x x”

²⁰⁹ R. Agpalo, Statutory Construction 111-112 (2003): “x x x where there is doubt as to the proper interpretation of a statute, the uniform interpretation placed upon it by the executive or administrative officer tasked with its enforcement will be adopted, if necessary to resolve the doubt. The contemporaneous construction is very probably the true expression of the legislative purpose, especially if the construction is followed for a considerable period of time. It is thus entitled to great weight and respect by the courts in interpretation of ambiguous provisions of law, and unless it is shown to be clearly erroneous, contemporaneous construction will control the interpretation of statute by the courts.” See also Phil. Global Communications v. Relova, 145 SCRA 385 (1986).

²¹⁰ Preliminary List of Companies - PH-EITI Country Report, 253-255 (2016)

²¹¹ Republic Act No. 10173, Section 3(g) (2012).

²¹² Republic Act No. 10173, Section 32: “Unauthorized Disclosure. — (a) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).

(b) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party sensitive personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from three (3) years to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00).

²¹³ EITI Standard 2016, Section 2.5(d). See also Figures 13 and 14.

Due to the obligations imposed by the DPA and associated penalties, it is prudent to request for an advisory opinion from the National Privacy Commission which is tasked with implementing the DPA. The Commission is authorized to promulgate these opinions and these are likely to be respected by the courts. The PH-EITI may request for an opinion confirming whether: 1) the publicly disclosure of information according to the EITI Standard would be consistent with the DPA; 2) statutory amendments would necessary to implement it; 3) specific provisions in data sharing agreements between the SEC and CSC are valid; and 4) processing short of public disclosure is compliant with the DPA (e.g. processing and access restricted only to DOF/SEC). The strongest arguments in favor of DPA exemption are that the information processed:

- (1) relates to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;²¹⁴ or
- (2) is necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions.²¹⁵

Should these restrictions prove insurmountable, it is recommended that PH-EITI request the EITI Board for adapted implementation.²¹⁶ These recommendations are incorporated in the revised PH-EITI beneficial ownership roadmap below:

²¹⁴ Republic Act No. 10173, Section 4(c) (2012). In this case, determining the beneficial owners of companies to whom licenses have been granted for exploitation of natural resources is essential to assessing compliance with various regulations (e.g. nationalization requirements [1987 Constitution, Article XII, Section 2], anti-graft provisions [Republic Act No. 3019, Sections 3-6])

²¹⁵ Republic Act No. 10173, Section 4(e) (2012). In this case, the beneficial owners of companies to whom licenses have been granted for exploitation of natural resources is essential to assessing compliance with various regulations enforced by the Securities and Exchange Commission (e.g. Presidential Decree No. 902-A, Section 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships, or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines, and in the exercise of its authority, it shall have the power to enlist the aid and support of and to deputize any and all enforcement agencies of the government, civil or military as well as any private institution, corporation, firm, association or person.; Corporation Code, Section 143. Rule-making power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers.) and the Civil Service Commission (e.g. Administrative Code of 1987, Book V, Title I, Chapter 3, Section 12: “Powers and Functions. - The Commission shall have the following powers and functions: x x x (2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;” x x x)

²¹⁶ EITI Standard 2016, Section 8.1: “*Adapted implementation.* Should the multi-stakeholder group conclude that it faces exceptional circumstances that necessitate deviation from the implementation requirements, it must seek prior EITI Board approval for adapted implementation. The request must be endorsed by the multi-stakeholder group and reflected in the work plan. The request should explain the rationale for the adapted implementation.

The EITI Board will only consider allowing adaptations in exceptional circumstances. In considering such requests, the EITI Board will place a priority on the need for comparable treatment between countries and ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.”

REVISED PH-EITI BENEFICIAL OWNERSHIP ROADMAP

RECOMMENDATIONS	OBJECTIVE	ACTIVITIES	OUTPUTS	PERSONS RESPONSIBLE	TIME FRAME	COST AND FUNDING
1. Definition of beneficial ownership (BO) and institutional framework for BO disclosure	<p>Create a clear definition of BO within the Philippine context</p> <p>Set baseline data as basis for implementation of BO disclosures</p>	<ul style="list-style-type: none"> Engage a technical consultant to conduct scoping study on BO disclosure, including review of existing definitions and policies related to BO and Politically Exposed Persons (PEP) vis-à-vis international standards 	<ul style="list-style-type: none"> Published study on BO disclosure in the Philippine context Recommendations on how to implement BO disclosure in accordance with the EITI Standard MSG-agreed definition of BO and PEP 	MSG and Secretariat	Q1-Q4 2017	<p>Professional fee of the consultant/ lawyer – PHP 660,000 (EGPS/World Bank)</p> <p>Budget for meetings – PHP 480,000 (EGPS/World Bank)</p>
2. Consider links between BO and national reform priorities	<p>Harmonize BO initiatives with national reform agenda on:</p> <ul style="list-style-type: none"> -transparency -accountability -fiscal reforms 	<ul style="list-style-type: none"> Identify national champion/s on BO disclosure Create a multi-stakeholder Technical Working Group on BO disclosure Conduct an inter-agency forum on BO disclosure (including Anti-Money Laundering Council [AMLC] as participant) 	<ul style="list-style-type: none"> Agreed action plan on how to integrate BO disclosure in national reform priorities 	PH-EITI and partner agencies	<p>Q1-Q2 2017</p> <p>Q1 2017</p> <p>Q3 2017</p>	Budget for meetings (EGPS/World Bank)
3. Reporting obligations for BO/PEP	<p>Ensure transparency and accountability of public officials who have interest in extractives</p> <p>To ensure that proposed BO/PEP reporting and public disclosure of data is</p>	<ul style="list-style-type: none"> Develop an action plan to establish mechanism for disclosing BOs/PEPs within legal bounds, including requiring official documents as evidence/ support. Action Plan should include obtaining advisory opinion from National Privacy 	<ul style="list-style-type: none"> Action plan/ strategy on BO/PEP disclosure Advisory opinion from the NPC clarifying obligations of implementing agencies under the DPA for PH-EITI BO reporting 	MSG and Secretariat (with assistance from EITI International Secretariat)	<p>Q1 2017 – Q1 2018</p> <p><i>(parallel with the conduct of the scoping</i></p>	Budget for meetings (EGPS/World Bank)

RECOMMENDATIONS	OBJECTIVE	ACTIVITIES	OUTPUTS	PERSONS RESPONSIBLE	TIME FRAME	COST AND FUNDING
	compliant with Data Privacy Act	<p>Commission regarding beneficial ownership data. The following steps should be taken:</p> <p>1) Conduct informal talks with NPC to obtain feedback regarding the process and content of the request for advisory opinion, as well as the probability of a favorable response</p> <p>2) Based on feedback, file request for advisory opinion with the NPC and liaise with its staff to respond to all related queries/requests for release</p> <p>3) Based on advisory opinion, determine whether remedial legislation is required</p>	NOTE: If data is personal information per advisory opinion, DPA exemptions inapplicable, and redacted list non-compliant, DPA amendments may be necessary to authorize public disclosure.		g study)	
4. Level of detail to be disclosed	Ensure that the information disclosed are relevant, complete, and verifiable	<ul style="list-style-type: none"> • MSG to meet and agree on materiality threshold for disclosure/reporting based on the findings of the scoping study • Coordinate with the Securities and Exchange Commission (SEC), AMLC, and other relevant government agencies regarding Data Privacy Act compliance and disaggregation of available data 	<ul style="list-style-type: none"> • Agreed materiality threshold of data to be disclosed • Agreed level of data disaggregation and sectors covered 	MSG	Q1 2017 – Q1 2018	<p>Budget for scoping study (EGPS/World Bank)</p> <p>Budget for meetings (EGPS/World Bank)</p>

RECOMMENDATIONS	OBJECTIVE	ACTIVITIES	OUTPUTS	PERSONS RESPONSIBLE	TIME FRAME	COST AND FUNDING
5. Data collection	<p>Develop a system for reporting BO data</p> <p>Collect information on BO from extractive companies and government agencies</p>	<ul style="list-style-type: none"> • Coordinate with SEC to make information on BO publicly available and free of charge • Develop reporting templates for BO disclosure • Pilot test BO templates (2 – 3 companies and relevant government agencies) • Finalize the templates • Encourage and expedite digitization of agency databases and execution of data sharing agreements among pertinent agencies • Pilot test and roll-out of the system (training of users) 	<ul style="list-style-type: none"> • Published SEC data on BO • Draft reporting templates on BO and amend regulatory requirements as needed. • Revised templates based on the inputs from testing the templates • Final BO templates for roll-out • Procurement of services to digitize databases and executed data sharing agreements • Populated BO/PEP database 	<p>MSG and Secretariat</p> <p>MSG (with inputs from the scoping study consultant) BIR, MGB, DOE, SEC</p> <p>MSG (with inputs from the scoping study consultant) SEC / CSC</p> <p>Secretariat, participating companies and government agencies</p>	<p>Q2-Q3 2018</p> <p>Q2-Q3 2018</p> <p>Q4 2018</p> <p>Q1 2019</p> <p>Q2 2018-Q4 2019</p> <p>Q1-Q4 2020</p>	<p>Budget for meetings (EGPS/World Bank)</p> <p>Professional fee of the consultant/web development firm – PHP 792,000 (EGPS/World Bank)</p> <p>Pilot testing and roll-out activities – PHP 264,000 (EGPS/World Bank)</p>

RECOMMENDATIONS	OBJECTIVE	ACTIVITIES	OUTPUTS	PERSONS RESPONSIBLE	TIME FRAME	COST AND FUNDING
6. Assuring the accuracy of the data	Ensure that data are accurate, validated, and reliable	<ul style="list-style-type: none"> Hire a third party researcher to gather data from SEC and relevant government agencies, generate a list of beneficial owners, and compare the same with data from the companies 	<ul style="list-style-type: none"> Independent study to further validate disclosures made by companies and agencies 	PH-EITI Secretariat	Q1-Q4 2020	Professional fee of the researcher – PHP 430,000 (EGPS/World Bank)
7. Data timeliness	Ensure that companies and relevant government agencies (SEC, Bureau of Internal Revenue, Philippine Stock Exchange) report/submit data on time	<ul style="list-style-type: none"> Send letters (signed by PH-EITI Focal Person) to companies and relevant government agencies requesting them to submit accomplished BO templates on time and diligently follow up Integrate BO disclosure in the data collection for the annual EITI Country Report 	<ul style="list-style-type: none"> Published EITI Country Report with data/information on BO 	MSG, Secretariat and Independent Administrator (IA)	Q2 2020 Q3-Q4 2020	Budget for the Independent Administrator (GOP)
8. Data accessibility	Ensure that all relevant stakeholders have access to information on BO	<ul style="list-style-type: none"> Disseminate data gathered from the online system to stakeholders 	<ul style="list-style-type: none"> Information, education and communication (IEC) materials, including the EITI Country Report, disseminated during LGU roadshows and other outreach activities 	MSG and Secretariat	Q4 2020 onward <i>(after establishment of the system)</i>	Funds for IEC (GOP)

DETAILS OF PH-EITI BENEFICIAL OWNERSHIP ROADMAP AMENDMENTS

RECOMMENDATIONS	OBJECTIVE	ACTIVITIES	OUTPUTS	PERSONS RESPONSIBLE	TIMEFRAME
<p>Obtain advisory opinion from National Privacy Commission regarding beneficial ownership data</p> <p>NOTE: Placed under #3 (Reporting obligations for PEP)</p>	<p>To confirm whether:</p> <ol style="list-style-type: none"> 1) data in expanded SEC 23-A and 23-B is classified as personal information; 2) Data Privacy Act (DPA) exemptions apply; or 3) whether public disclosure of a redacted list is compliant with the DPA (e.g. listing BOs without other details such as address, UID); and 4) processing of information within the regulatory agency without public disclosure is compliant with the DPA. 	<ol style="list-style-type: none"> 1) Conduct informal talks with NPC to obtain feedback regarding the process and content of the request for advisory opinion, as well as the probability of a favorable response 2) Based on feedback, file request for advisory opinion with the NPC and liaise with its staff to respond to all related queries/requests for release 	<ul style="list-style-type: none"> • Advisory opinion from the NPC clarifying obligations of implementing agencies under the DPA for PH-EITI BO reporting <p>NOTE: If per advisory opinion, data is personal information, DPA exemptions are inapplicable, and redacted list is non-compliant, DPA amendments may be necessary to authorize public disclosure.</p>	<ul style="list-style-type: none"> • PH-EITI National Coordinator / Secretariat 	<ul style="list-style-type: none"> • Q4 2017 – Q1 2018
<p>Obtain advisory opinion from National Privacy Commission regarding politically exposed persons list</p> <p>NOTE: Placed under #3 (Reporting obligations for PEP)</p>	<p>To confirm whether:</p> <ol style="list-style-type: none"> 1) list of relatives in personal data sheet (PDS) is classified as personal information; 2) DPA exemptions apply; 3) in the alternative, whether public disclosure of a redacted list is compliant with the DPA (e.g. listing BOs above threshold without other details such as address, UID); 4) also, whether processing of the information within the designated regulatory agency without public 	<ol style="list-style-type: none"> 1) Conduct informal talks with NPC to obtain feedback regarding the process and content of the request for advisory opinion, as well as the probability of a favorable response 2) Based on feedback, file request for advisory opinion with the NPC and liaise with its staff to respond to all related queries/requests for release 	<ul style="list-style-type: none"> • Advisory opinion from the NPC clarifying obligations of implementing agencies under the DPA for PH-EITI PEP reporting <p>NOTE: If per advisory opinion, data is personal information, DPA exemptions are inapplicable, and redacted list is non-compliant, DPA amendments may be necessary to authorize public disclosure.</p>	<ul style="list-style-type: none"> • PH-EITI National Coordinator / Secretariat 	<ul style="list-style-type: none"> • Q4 2017 – Q1 2018

	disclosure is compliant with the DPA.				
Encourage pertinent regulatory agencies to amend reportorial requirements for BO/PEP reporting NOTE: Placed under #5 (Data collection)	To expand coverage and scope of data collected by the relevant agencies to ensure that database is sufficient for BO and PEP verification.	<ul style="list-style-type: none"> • Beneficial Ownership Expand coverage of SEC Form 23-A and B to non-SRC covered entities. Explore improvements to SEC Form 23-A and B to list voting rights, instead of total number and value of shares beneficially owned. • Politically Exposed Persons Expand coverage of Personal Data Sheet to include other relatives covered by the PEP definition (e.g. public officer's siblings and spouse's parents) 	<ul style="list-style-type: none"> • SEC and CSC amendments of administrative rules to attain the foregoing objectives 	<ul style="list-style-type: none"> • PH-EITI National Coordinator / Secretariat 	<ul style="list-style-type: none"> • Q2 2018 – Q4 2019
Encourage pertinent regulatory agencies to digitize databases and enter into data sharing agreements as regards data for BO/PEP reporting NOTE: Placed under #5 (Data collection)	To ensure that data is easily verified and cross-referenced as against data within and across agencies.	<ul style="list-style-type: none"> • Beneficial Ownership NOTE: SEC GIS and Form 23-A and B are scanned photos and not searchable. • Politically Exposed Persons NOTE: CSC PDS are kept in physical form or scanned photos and not searchable. Data must be manually verified – a time-consuming and error-prone process. 	<ul style="list-style-type: none"> • Procurement of and migration of data to digitized database • Execution of data sharing agreements 	<ul style="list-style-type: none"> • PH-EITI National Coordinator / Secretariat 	<ul style="list-style-type: none"> • Q2 2018 – Q4 2019

DATATYPE	DATA SOURCE	IMPEDIMENTS	RECOMMENDATIONS
Beneficial Owner	<p>SRC Covered Company</p> <ul style="list-style-type: none"> • SEC Form 23-A • SEC Form 23-B • PSE POR-1 Form <p>Other Companies</p> <ul style="list-style-type: none"> • Extend application of SEC Form 23-A and 23-B to non-SRC covered companies <p>SEC GIS used for extensive verification once digital database is procured and implemented.</p>	Contents of forms are not searchable in a central database. Forms are in stored in physical or scanned format.	DOF should expedite ongoing procurement of digital database, thereby facilitating searches for beneficial owners through corporate layering.
		Some corporate subscribers are foreign companies. Requests for information to other countries are made on an ad hoc basis and are not acted upon expeditiously.	DOF may explore linking databases with its counterparts by way of mutual legal assistance agreements.
		The information provided in the GIS regarding share ownership is personal information under the Data Privacy Act (DPA). As such, public disclosure of such information is proscribed. Without amendments to the DPA, it appears that processing of the information may be conducted within the DOF but it cannot be publicly disclosed.	DOF may: 1) request for an advisory opinion from the National Privacy Commission (NPC) to confirm whether: a) data is personal information; b) DPA exemptions apply; c) public disclosure of a redacted list (e.g. only listing names of BOs above 10% threshold without listing other details (e.g. shareholdings, residence address, UID); 2) if advisory opinion states that data is personal information, DPA exemptions are inapplicable, and redacted list is non-compliant, an amendment to the Data Privacy Act may be necessary to authorize public disclosure.
Politically Exposed Persons	CSC Personal Data Sheet	Contents of forms are not searchable in a central database. Forms are in stored in physical or scanned format.	DOF may request CSC Head Office to extract the needed information from the PDS forms in its possession and provide it to DOF in a suitable digital format. This arrangement should be governed by a data sharing agreement, ideally covered by a favorable advisory opinion from the NPC. ²¹⁷
		The information provided in the PDS is insufficient relative to the PEP definition, as it only contains names of the public officer’s spouse, children, and parents. It does not contain the names of the public officer’s siblings, and spouse’s parents.	The DOF may request the CSC to amend the PDS by administrative rule to include the missing information.
		The information provided in the PDS is personal information under the DPA. As such, public disclosure of such information is proscribed. Without amendments to the DPA, it appears that processing of the information may be conducted within the DOF but it cannot be publicly disclosed.	DOF may: 1) request for an advisory opinion from the NPC to clarify whether this is personal information; 2) if this data is confirmed to be personal information, an amendment to the DPA will be necessary to authorize public disclosure.

²¹⁷ See page 15-17 of this Report for more details regarding Data Sharing Agreements.

PEP INITIAL DEFINITION	PEP ASPIRATIONAL DEFINITION	NOTES
<p>“Politically exposed person” is a natural person who is or who has been entrusted with prominent public functions and includes the following:</p> <ol style="list-style-type: none"> 1) heads of State, heads of government, Cabinet Secretaries, Undersecretaries, or Assistant Secretaries; 2) members of the House of Representatives or the Senate of the Philippines; 3) members of the governing bodies of political parties; 4) members of the Supreme Court; 5) members of Civil Service Commission, the Commission on Elections, and the Commission on Audit; 6) Governor and Deputy Governors of the Bangko Sentral Ng Pilipinas; 7) ambassadors and chargés d'affaires; 8) officers in the armed forces with the rank of brigadier general/commodore or higher; 9) officers of the Philippine National Police with the rank of Senior Superintendent or higher; 10) members of the administrative, management or supervisory bodies of State-owned enterprises; 11) heads or members of the administrative, management or supervisory bodies of administrative agencies vested with regulatory powers; 12) directors, deputy directors and members of the board or equivalent function of an international organization. 13) all elective officials of local government units. <p>The persons enumerated in (1) to (12) shall exclude officials of lesser rank.</p> <p>“Politically exposed person” shall include the immediate family of those enumerated. Immediate family shall be limited to the politically exposed person’s parents, legal spouse, and children.</p>	<p>“Politically exposed person” is a natural person who is or who has been entrusted with prominent public functions and includes the following:</p> <ol style="list-style-type: none"> 1) heads of State, heads of government, Cabinet Secretaries, Undersecretaries, or Assistant Secretaries; 2) members of the House of Representatives or the Senate of the Philippines; 3) members of the governing bodies of political parties; 4) members of the Supreme Court; 5) members of Civil Service Commission, the Commission on Elections, and the Commission on Audit; 6) Governor and Deputy Governors of the Bangko Sentral Ng Pilipinas; 7) ambassadors and chargés d'affaires; 8) officers in the armed forces with the rank of brigadier general/commodore or higher; 9) officers of the Philippine National Police with the rank of Senior Superintendent or higher; 10) members of the administrative, management or supervisory bodies of State-owned enterprises; 11) heads or members of the administrative, management or supervisory bodies of administrative agencies vested with regulatory powers; 12) directors, deputy directors and members of the board or equivalent function of an international organization. 13) all elective officials of local government units. <p>The persons enumerated in (1) to (12) shall exclude officials of lesser rank.</p> <p>“Politically exposed person” shall include the immediate family of those enumerated. Immediate family shall be limited to the politically exposed person’s parents, siblings, spouse (legal or common-law), children (legitimate or illegitimate), and in-laws within one degree of affinity.</p>	<p>The initial definition can be more easily implemented as the data is within the Personal Data Sheet. The aspirational definition can be implemented when the PDS is amended to collect data on the expanded coverage of “immediate family.”</p>

ANNEX A - DEFINITIONS | BENEFICIAL OWNER

DEFINITIONS BENEFICIAL OWNER	
FATF ²¹⁸	<p>Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.</p> <p>1) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.</p> <p>2) This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.</p>
EU ²¹⁹	<p>‘Beneficial owner’ means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:</p> <p>(a) in the case of corporate entities:</p> <p style="padding-left: 40px;">(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);</p> <p style="padding-left: 40px;">(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;</p> <p>(b) in the case of trusts:</p> <p style="padding-left: 40px;">(i) the settlor;</p> <p style="padding-left: 40px;">(ii) the trustee(s);</p> <p style="padding-left: 40px;">(iii) the protector, if any;</p> <p style="padding-left: 40px;">(iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;</p> <p style="padding-left: 40px;">(v) any other natural person exercising ultimate control over the trust by means of direct or</p>

²¹⁸ FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, 113 (February 2012 | Updated October 2016).

²¹⁹ EU Directive 2015/849, Article 3(6). Also known as the Fourth Anti Money Laundering Directive or 4AMLD.

	indirect ownership or by other means;
United States	<p>Definition of Beneficial Ownership</p> <p>Section 240 (13d-3), Chapter II, Title XVII of the Code of Federal Regulations</p> <p>(a) For the purposes of sections 13(d) and 13(g)²²⁰ of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:</p> <ul style="list-style-type: none"> (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) Investment power which includes the power to dispose, or to direct the disposition of, such security. <p>(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose of effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.</p> <p>(c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.</p> <p>(d) Notwithstanding the provisions of paragraphs (a) and (c) of this rule:</p> <ul style="list-style-type: none"> (1) (i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (b) of this rule, if that person has the right to acquire beneficial ownership of such security, as defined in Rule 13d-3(a)(§ 240.13d-3(a)) within sixty days, including but not limited to any right to acquire: <ul style="list-style-type: none"> (A) Through the exercise of any option, warrant or right; (B) Through the conversion of a security; (C) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (D) Pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraphs (d)(1)(i)(A), (B) or (C), of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

²²⁰ Section 240 (13d-1). Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d-101).

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in § 240.13d-1(i), and may therefore give rise to a separate obligation to file.

(2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(3) A person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided, that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b);

(ii) The pledgee is a person specified in Rule 13d-1(b)(ii), including persons meeting the conditions set forth in paragraph (G) thereof; and

(iii) The pledgee agreement, prior to default, does not grant to the pledgee;

(A) The power to vote or to direct the vote of the pledged securities; or

(B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the act.

(4) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such securities until the expiration of forty days after the date of such acquisition.

Reportorial Requirements

Section 78, Chapter 2B, Title 15, United States Code Annotated

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(d) Reports by persons acquiring more than five per centum of certain classes of securities

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 or any equity security issued by a Native Corporation pursuant to

section 1629c(d)(6) of Title 43, or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a “person” for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu

of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or in

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(g) Statement of equity security ownership

(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a “person” for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

	<p>(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.</p> <p>(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.</p>
<p>United Kingdom</p>	<p>Small Business, Enterprise and Employment Act of 2015.²²¹</p> <p>A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity, with control defined consistently with the interpretative provisions applying to the new public register of persons with significant control of UK companies introduced in the Small Business, Enterprise and Employment Act 2015 (the “PSC Register”).²²²</p> <p>Schedule of 3 the Small Business, Enterprise and Employment Act of 2015 (herein after referred to as “SBEEA”) amended the Companies Act of 2006 to require companies to keep a register of people who have significant control over the company.²²³</p> <p>Schedule 1A, Part 1 of SBEEA specifies the conditions at least one of which must be met by an individual in relation to a company in order for the individual to be a person with “significant control” over the company.</p> <ul style="list-style-type: none"> a. The person holds, directly or indirectly, more than 25% of the voting rights in the company; b. The person holds, directly or indirectly, more than 25% of the voting rights in the company; c. The person holds, directly or indirectly, to appoint or remove a majority of the board of directors of the company; d. The person has the right to exercise, or actually exercises, significant influence or control over the company; and e. Have the right to exercise, or actually exercise, a significant influence or control over a trust or firm (or similar non-legal arrangement) where that trust or firm meets one or more of the above conditions. <p>Individuals with significant control over a company are either registrable or non-registrable in relation to the company</p> <ul style="list-style-type: none"> a. they are “non-registrable” if they do not hold any interest in the company except through one or more other legal entities over each of which they have significant control and each of which is a “relevant legal entity” in relation to the company b. otherwise, they are “registrable.”²²⁴

²²¹ Small Business, Enterprise and Employment Act 2015. Retrieved from <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>. Accessed on 29 May 2017.

²²² Beneficial Ownership Guide. Retrieved from https://www.ogauthority.co.uk/media/2572/uk_citi_beneficial_ownership_guide_august_2016.pdf. Accessed on 31 May 2017.

²²³ Paragraph 81, Part VII of the Small Business, Enterprise and Employment Act of 2015.

²²⁴ 790C (4), Chapter 1, Part 1, Schedule 3 of SBEEA.

- A relevant legal entity is either “registrable” or “non-registrable” in relation to a company
- a. it is “non-registrable” if it does not hold any interest in the company except through one or more other legal entities over each of which it has significant control and each of which is also a relevant legal entity in relation to the company;
 - b. otherwise, it is “registrable.”²²⁵

Chapter 2, Schedule 3 of SBEEA. Information Gathering Duty of Companies

790D Company’s duty to investigate and obtain information

- (1) A company to which this Part applies must take reasonable steps
 - (a) to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company, and
 - (b) if so, to identify them.
- (2) Without limiting subsection (1), a company to which this Part applies must give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or a registrable relevant legal entity in relation to it.
- (3) The notice, if addressed to an individual, must require the addressee
 - (a) to state whether or not he or she is a registrable person in relation to the company (within the meaning of this Part), and
 - (b) if so, to confirm or correct any particulars of his or hers that are included in the notice, and supply any that are missing.
- (4) The notice, if addressed to a legal entity, must require the addressee
 - (a) to state whether or not it is a registrable relevant legal entity in relation to the company (within the meaning of this Part), and
 - (b) if so, to confirm or correct any of its particulars that are included in the notice, and supply any that are missing.
- (5) A company to which this Part applies may also give notice to a person under this section if it knows or has reasonable cause to believe that the person
 - (a) knows the identity of someone who falls within subsection (6), or
 - (b) knows the identity of someone likely to have that knowledge.
- (6) The persons who fall within this subsection are
 - (a) any registrable person in relation to the company;
 - (b) any relevant legal entity in relation to the company;
 - (c) any entity which would be a relevant legal entity in relation to the company but for the fact that section 790C(6)(b) does not apply in respect of it.
- (7) A notice under subsection (5) may require the addressee
 - (a) to state whether or not the addressee knows the identity of

²²⁵ 790C (8), Chapter 1, Part 1, Schedule 3 of SBEEA.

- (i) any person who falls within subsection (6), or
- (ii) any person likely to have that knowledge, and

(b) if so, to supply any particulars of theirs that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.

(8) A notice under this section must state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(9) The Secretary of State may by regulations make further provision about the giving of notices under this section, including the form and content of any such notices and the manner in which they must be given.

(10) Regulations under subsection (9) are subject to negative resolution procedure.

(11) A company is not required to take steps or give notice under this section with respect to a registrable person or registrable relevant legal entity if

(a) the company has already been informed of the person's status as a registrable person or registrable relevant legal entity in relation to it, and been supplied with all the particulars, and

(b) in the case of a registrable person, the information and particulars were provided either by the person concerned or with his or her knowledge.

(12) A person to whom a notice under subsection (5) is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

(13) In this section

(a) a reference to knowing the identity of a person includes knowing information from which that person can be identified, and

(b) "particulars" means

(i) in the case of a registrable person or a registrable relevant legal entity, the required particulars (see section 790K), and

(ii) in any other case, any particulars that will allow the person to be contacted by the company.

790E Company's duty to keep information up-to-date

(1) This section applies if particulars of a registrable person or registrable relevant legal entity are stated in a company's PSC register.

(2) The company must give notice to the person or entity if the company knows or has reasonable cause to believe that a relevant change has occurred.

(3) In the case of a registrable person, a "relevant change" occurs if

(a) the person ceases to be a registrable person in relation to the company, or

(b) any other change occurs as a result of which the particulars stated for the person in the PSC register are incorrect or incomplete.

- (4) In the case of a registrable relevant legal entity, a “relevant change” occurs if
- (a) the entity ceases to be a registrable relevant legal entity in relation to the company, or
 - (b) any other change occurs as a result of which the particulars stated for the entity in the PSC register are incorrect or incomplete.
- (5) The company must give the notice as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred.
- (6) The notice must require the addressee
- (a) to confirm whether or not the change has occurred, and
 - (b) if so
 - (i) to state the date of the change, and
 - (ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice.
- (7) Subsections (8) to (10) of section 790D apply to notices under this section as to notices under that section.
- (8) A company is not required to give notice under this section if
- (a) the company has already been informed of the relevant change, and
 - (b) in the case of a registrable person, that information was provided either by the person concerned or with his or her knowledge.

790G Duty to supply information

- (1) This section applies to a person if
- (a) the person is a registrable person or a registrable relevant legal entity in relation to a company,
 - (b) the person knows that to be the case or ought reasonably to do so,
 - (c) the required particulars of the person are not stated in the company’s PSC register,
 - (d) the person has not received notice from the company under section 790D(2), and
 - (e) the circumstances described in paragraphs (a) to (d) have continued for a period of at least one month.
- (2) The person must—
- (a) notify the company of the person’s status (as a registrable person or registrable relevant legal entity) in relation to the company,
 - (b) state the date, to the best of the person’s knowledge, on which the person acquired that status, and
 - (c) give the company the required particulars (see section 790K).
- (3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which all the conditions in subsection (1)(a) to (e) were first met with respect to the person.

790H Duty to update information

	<p>(1) This section applies to a person if</p> <ul style="list-style-type: none"> (a) the required particulars of the person (whether a registrable person or a registrable relevant legal entity) are stated in a company’s PSC register, (b) a relevant change occurs, (c) the person knows of the change or ought reasonably to do so, (d) the company’s PSC register has not been altered to reflect the change, and (e) the person has not received notice from the company under section 790E by the end of the period of one month beginning with the day on which the change occurred. <p>(2) The person must—</p> <ul style="list-style-type: none"> (a) notify the company of the change, (b) state the date on which it occurred, and (c) give the company any information needed to update the PSC register. <p>(3) The duty under subsection (2) must be complied with by the later of—</p> <ul style="list-style-type: none"> (a) the end of the period of 2 months beginning with the day on which the change occurred, and (b) the end of the period of one month beginning with the day on which the person discovered the change. <p>(4) “Relevant change” has the same meaning as in section 790E.</p> <p>790I Enforcement of disclosure requirements</p> <p>Schedule 1B²²⁶ contains provisions for when a person (whether an individual or a legal entity) fails to comply with a notice under section 790D or 790E or a duty under section 790G or 790H.</p> <p>790K Required particulars</p> <p>(1) The “required particulars” of an individual who is a registrable person are—</p> <ul style="list-style-type: none"> (a) name,
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²²⁶ This Schedule applies if a notice under Sections 790D and E is served by a company on a person who has a relevant interest in the company, and the person fails to comply with that notice within the time specified in it. The company may give the person a “warning notice” informing the person that it is proposing to issue the person with a “restrictions notice” with respect to the relevant interest.

The effect of a restrictions notice issued with respect to a relevant interest is as follows:

- (a) any transfer of the interest is void,
- (b) no rights are exercisable in respect of the interest,
- (c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder,
- (d) except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise.

An agreement to transfer an interest that is subject to the restriction in sub-paragraph (1)(a) is void.

An agreement to transfer any associated right is void.

An “associated right”, in relation to a relevant interest, is—

- (a) a right to be issued with any shares issued in right of the relevant interest, or
- (b) a right to receive payment of any sums due from the company in respect of the relevant interest.

- (b) a service address,
- (c) the country or state (or part of the United Kingdom) in which the individual is usually resident,
- (d) nationality,
- (e) date of birth,
- (f) usual residential address,
- (g) the date on which the individual became a registrable person in relation to the company in question,
- (h) the nature of his or her control over that company (see Schedule 1A), and
- (i) if, in relation to that company, restrictions on using or disclosing any of the individual's PSC particulars are in force under regulations under section 790ZG, that fact.

(2) In the case of a person in relation to which this Part has effect by virtue of section 790C(12) as if the person were an individual, the “required particulars” are—

- (a) name,
- (b) principal office,
- (c) the legal form of the person and the law by which it is governed,
- (d) the date on which it became a registrable person in relation to the company in question, and
- (e) the nature of its control over the company (see Schedule 1A).

(3) The “required particulars” of a registrable relevant legal entity are—

- (a) corporate or firm name,
- (b) registered or principal office,
- (c) the legal form of the entity and the law by which it is governed,
- (d) if applicable, the register of companies in which it is entered (including details of the state) and its registration number in that register,
- (e) the date on which it became a registrable relevant legal entity in relation to the company in question, and
- (f) the nature of its control over that company.

Chapter 3, Schedule 3 of SBEEA. Register of People with Significant Control

790M Duty to keep register

(1) A company to which this Part applies must keep a register of people with significant control over the company.

(2) The required particulars of any individual with significant control over the company who is “registrable” in relation to the company must be entered in the register once all the required particulars of that individual have been confirmed.

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(6) If the company becomes aware of a relevant change (within the meaning of section 790E)²²⁷ with respect to a registrable person or registrable relevant legal entity whose particulars are stated in the register

²²⁷ 790E, Chapter 2 of Schedule 3 provides for the company's duty to keep information up-to-date regarding registrable person or registrable relevant legal entity registered in the company's PSC register. Failure to comply under this section is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both as provided in 790F of the same Chapter.

- (a) details of the change and the date on which it occurred must be entered in the register, but
- (b) in the case of a registrable person, the details and date must not be entered there until they have all been confirmed.

790N Register to be kept available for inspection

(1) A company's PSC register must be kept available for inspection—

- (a) at its registered office, or
- (b) at a place specified in regulations under section 1136.

(2) A company must give notice to the registrar of the place where its PSC register is kept available for inspection and of any change in that place.

(3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the company's registered office.

(4) If a company makes default for 14 days in complying with subsection (2), an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

790O Rights to inspect and require copies

(1) A company's PSC register must be open to the inspection of any person without charge.

(2) Any person may require a copy of a company's PSC register, or any part of it, on payment of such fee as may be prescribed.

(3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.

(4) The request must contain the following information

- (a) in the case of an individual, his or her name and address,
- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation, and
- (c) the purpose for which the information is to be used.

790R PSC register: offences in connection with request for or disclosure of information

(1) It is an offence for a person knowingly or recklessly to make in a request under section 790O a statement that is misleading, false or deceptive in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—

- (a) to do anything that results in the information being disclosed to another person, or

(b) to fail to do anything with the result that the information is disclosed to another person, knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine (or both);

(ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

790T Protected information

(1) Section 790N and subsections (1) and (2) of section 790O are subject to—

(a) section 790ZF (protection of information as to usual residential address), and

(b) any provision of regulations made under section 790ZG (protection of material).

(2) Subsection (1) is not to be taken to affect the generality of the power conferred by virtue of section 790ZG(3)(f).

Chapter 5, Schedule 3 of SBEEA. Protection from Disclosure

790ZF Protection of information as to usual residential address

(1) The provisions of sections 240 to 244 (directors' residential addresses: protection from disclosure) apply to information within subsection (2) as to protected information within the meaning of those sections.

(2) The information within this subsection is

(a) information as to the usual residential address of a person ^[11]_{SEP} with significant control over a company, and

(b) the information that such a person's service address is his or her usual residential address.

(3) Subsection (1) does not apply to information relating to a person if an application under regulations made under section 790ZG has been granted with respect to that information and not been revoked.

790ZG Power to make regulations protecting material

(1) The Secretary of State may by regulations make provision requiring the registrar and the company to refrain from using or disclosing PSC particulars of a prescribed kind (or to refrain from doing so except in prescribed circumstances) where an application is made to the registrar requesting them to refrain from so doing.

	<p>(2) “PSC particulars” are particulars of a person with significant control over the company</p> <p>(a) including a person who used to be such a person, but (b) excluding any person in relation to which this Part has effect by virtue of section 790C(12) as if the person were an individual.</p> <p>(3) Regulations under this section may make provision as to</p> <p>(a) who may make an application, (b) the grounds on which an application may be made, (c) the information to be included in and documents to accompany an application, (d) how an application is to be determined, (e) the duration of and procedures for revoking the restrictions on use and disclosure, (f) the operation of sections 790N to 790S in cases where an application is made, and (g) the charging of fees by the registrar for disclosing PSC particulars where the regulations permit disclosure, by way of exception, in prescribed circumstances.</p> <p>(4) Provision under subsection (3)(d) and (e) may in particular</p> <p>(a) confer a discretion on the registrar; (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application or revoking the restrictions.</p> <p>(5) Regulations under this section are subject to affirmative resolution procedure.</p> <p>(6) Nothing in this section or in regulations made under it affects the use or disclosure of particulars of a person in any other capacity (for example, the use or disclosure of particulars of a person in that person’s capacity as a member or director of the company).</p>
Germany	<p>Definition of Beneficial Ownership</p> <p>Sections 19 (2), 3 (1) of the Draft Money Laundering Act (MLA)²²⁸</p> <p>A beneficial owner is the natural person who owns or controls the organisation or structure similar to a trust.</p> <p>In the case of organisations (except for foundations), this includes any natural person who directly or indirectly:</p> <p>a. holds more than 25 per cent of the shares in the capital, share capital; b. controls²²⁹ more than 25 per cent of voting rights; or c. exerts control in a comparable way.</p> <p>In the case of foundations with legal capacity and structures similar to trusts, a beneficial owner is any natural person who:</p> <p>a. acts as trustee or trust administrator or protector; b. is a member of the executive board;</p>

²²⁸ The Transparency Register is on its way: new obligations for companies and organisations to disclose their beneficial owners. (May 2017). Retrieved from https://www.gleisslutz.com/fileadmin/editorial_files/PDF_Downloads/Mandanteninfos/2017-05_The_Transparency_Register_is_on_its_way.pdf. Accessed on 01 June 2017.

²²⁹ Control is defined as a controlling influence within the meaning of the laws on corporate groups. If it is not possible to ascertain the beneficial owner beyond doubt, then the organisation’s statutory representatives, managing shareholders or partners are deemed the beneficial owners (Section 3 (2) of the MLA).

	<p>c. has been appointed beneficiary; or d. directly or indirectly exercises controlling influence on asset or revenue management in some other way.</p> <p>Section 3 (3) of the MLA</p> <p>If no natural person has yet been appointed as the beneficiary, then the group of natural persons in whose favour the assets are managed or distributed is deemed the beneficial owner.</p> <p>Notification Obligations</p> <p>Section 20 (1) of the MLA</p> <p>The obligation to notify the transparency register applies to all legal entities governed by private law as well as registered partnerships.²³⁰</p> <p>Section 21 of the MLA</p> <p>The notification obligation also applies to administrators of trusts, the trustees of foundations without legal capacity, whose purpose is a vested interest, as well as the trustees of similar structures provided that the administrator's or trustee's residence or registered office is in Germany.</p> <p>Details to be Indicated on the Transparency Register</p> <p>Section 19 of the MLA</p> <p>The transparency register must be notified of the following details regarding the beneficial owner</p> <ul style="list-style-type: none"> a. First and surname; b. date of birth; c. place of residence; and d. type and extent of the economic interest.²³¹ <p>Exemption to the Duty to Notify the Register</p> <p>Section 20 (2) of the MLA</p> <p>The duty to notify the transparency register is deemed to have been met if the beneficial owners' details are already evident from documents and entries in public registers which can be accessed electronically.²³²</p> <p>Legal Consequences of Infringements</p> <p>Section 56 of the MLA</p>
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²³⁰ This includes all corporations, commercial partnerships ("OHG", "KG") as well as foundations with legal capacity, associations, cooperatives and professional partnerships.

²³¹ The details on the type and extent of the economic interest have to clearly indicate the basis of the beneficial owner's control, for example the level of shares or voting rights, the role as statutory representative, managing director, partner or beneficiary, or the extent to which control is exercised in some other way.

²³² It does not apply if the beneficial owner or his or her details change. In these cases, the transparency register must be informed separately even if the altered information can be found in another register.

	<p>Infringements of transparency duties under the Money Laundering Act constitute a regulatory offence and may be punished by a fine. For simple infringements, a fine of up to EUR 100,000 is possible; serious, repeated or systematic infringements may be punished by a fine of up to EUR 1 million or up to twice the economic benefit derived from the infringement.</p> <p>Section 57 of the MLA</p> <p>Final and binding notices are published on the regulatory authorities' website for a minimum period of five years, stating the name of the person responsible and the type and nature of the infringement ("naming and shaming").</p>
<p>France</p>	<p>Monetary and Financial Code of France²³³</p> <p>Article L. 561-2-2 of Monetary and Financial Code (MFC) of France</p> <p>The effective beneficiary shall be the individual who, directly or indirectly, controls the client,²³⁴ or the individual for whom a transaction is executed or an activity is carried out.</p> <p>Business relationship or transaction can involve several beneficial owners. Pursuant to Article R. 561-7 of the MFC, professionals subject to this regulation must be able to prove to the Autorité des marchés financiers (AMF) (Financial Markets Regulator) that they have conducted due diligence to identify the beneficial owner/s and verify its/their identity. Law makers have set criteria for determining the beneficial owners, depending on whether they are:²³⁵</p> <p>a. companies;</p> <p>Article R. 561-1 of the MFC</p> <p>Where the client is a company, the professional must consider the following as the beneficial owner(s):</p> <ul style="list-style-type: none"> - Either the natural person(s) who hold(s) directly or indirectly 25% of the capital or voting rights in the company. Where appropriate, the calculation of this percentage takes into account the chain of ownership. - Or the natural person(s) who exercise(s), by any other means, control over the management, administrative and governing bodies of the company or over its shareholders' general meeting. <p>b. collective investment scheme; or</p> <p>Article R. 561-2 of the MFC</p> <p>The professional must consider as beneficial owner(s) those natural persons who:</p> <ul style="list-style-type: none"> - Hold, either directly or indirectly, more than 25% of the units or shares in the CIS. The

²³³ Monetary and Financial Code of France, Legislative Section. Retrieved from <https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations>. Accessed on 31 May 2017.

²³⁴ The client may be understood as a natural person, legal person or legal arrangement. It may consist in a business relationship or an occasional client which uses the services of a professional for the sole purpose of preparing or completing a non-recurring transaction. **Article 56-2-1.** A business relationship shall be created when an individual or legal entity enters into a professional or commercial relationship which is intended, at the time when the contact is established, to be of a certain duration.

²³⁵ Guidelines on the notion of beneficial owner with regard to the fight against money laundering and terrorist financing. (2013, February 12). Retrieved from http://www.amf-france.org/technique/multimedia?docId=workspace://SpacesStore/cd847b2e-7724-4b04-bae4-56dc23cef82a_en_1.3_rendition. Accessed on 31 May 2017.

calculation of this percentage takes into account the chain of ownership; or

- Exercise a power of control over the administrative or management bodies of the CIS or, as appropriate, of the management company or asset management company representing the said CIS

c. any other legal persons.

Article R. 561-3 of the MFC

1. Where the client is a legal entity not referred to in Articles R.561-1 and R.561-2 of the Monetary and Financial Code (neither a company nor a CIS), the professional must consider as beneficial owners those natural persons who meet one of the following requirements:

- They are destined, by way of a legal act which appointed them for the purpose, to hold the voting rights attached to at least 25% of the shares of the legal entity;
- They belong to a group in whose main interest the legal entity has been set up or operates, when the natural persons who are the beneficial owners have not yet been appointed; or

2. Where the client operates under a “fiducie”²³⁶, the professional shall consider as beneficial owners those natural persons who meet one of the following requirements:

- They are destined, by way of a legal act which appointed them for the purpose, to hold the voting rights attached to at least 25% of the assets transferred to the fiduciary assets;
- They belong to a group in whose main interest the “fiducie” has been incorporated or operates, when the natural persons who are the beneficial owners have not yet been appointed;
- They hold the voting rights attached to 25% of the assets of the “fiducie” at least;
- They are either individuals, fiduciaries or beneficiaries pursuant to the provisions set forth in Title XIV of Book III of the French Civil Code.

3. Where the client conducts business within the framework of a special purpose fund governed by foreign law, the professional shall consider as beneficial owners those natural persons who meet one of the following requirements:

- They are destined, by way of a legal act which appointed them for the purpose, to hold the voting rights attached to at least 25% of the assets transferred to a special purpose fund governed by foreign law;
- They belong to a group in whose main interest the special purpose fund has been incorporated or operates, when the natural persons who are the beneficial owners have not yet been appointed; or
- They hold the voting rights attached to at least 25% of the assets of the special purpose fund.

²³⁶ The concept of fiducie was introduced in the Civil Code of France (Article 2011) by Law of 19 February 2007. It is defined as “the operation by which one or several constituents transfer the properties, the rights or the warrants, or a set of properties, rights or warrants, present or future, to one or some fiduciary (trustee) who, holding them separated from its own properties, act in a purpose determined for the benefit of one or several beneficiaries.”

Registration Requirements.

Article 561-5 of MFC

Financial institutions are required to identify the beneficial owner of legal entities before or during the course of establishing a business relationship or conducting transactions with occasional customers. The required items to identify a beneficial owner are the name, the first names of the natural person concerned, as well as other identity elements, in particular date and place of birth.²³⁷

Article 561-5

I. Before entering into a business relationship with their client or assisting said client with the preparation or execution of a transaction, the entities referred to in Article L. 561-2 shall identify their client and, where applicable, the effective beneficiary of the business relationship, by means of appropriate methods and shall verify said indemnificatory elements upon presentation of any probative written document.

The shall identify their occasional clients in the same way and, where applicable, the effective beneficiary of the business relationship, where they suspect that the transaction could relate to money laundering or to terrorist financing or, in the manner stipulated in a decree issued following consultation with the Conseil d'Etat, where the transactions are of a certain kind or exceed a certain amount.

Article 561-8 of MFC

Financial institutions must check the consistency of the collected data regarding beneficial owners. If a financial institution cannot identify the beneficial owner through appropriate documentation, it is required not to open the account, start business relations or perform the transaction.²³⁸

Article 561-8

Where an entity is unable to identify its client or to obtain information on the object and nature of the business relationship, it shall not execute any transaction, regardless of the particulars, and shall not establish or pursue any business relationship. Where it has been unable to identify its client or to obtain information on the object and nature of the business relationship and the relationship has nevertheless been established pursuant to Article L. 561-5, it shall terminate it.

²³⁷ G-20 Anti-Corruption Working Group, Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements. Retrieved from https://star.worldbank.org/star/sites/star/files/g20_bo_country_guide_france.pdf. Accessed on 31 May 2017.

²³⁸ Ibid.

ANNEX B - DEFINITIONS | POLITICALLY EXPOSED PERSON

	DEFINITIONS POLITICALLY EXPOSED PERSON
FATF ²³⁹	<p><i>Foreign PEPs</i> are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p><i>Domestic PEPs</i> are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p><i>Persons who are or have been entrusted with a prominent function by an international organisation</i> refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.</p> <p>The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.</p>
EU ²⁴⁰	<p>‘Politically exposed person’ means a natural person who is or who has been entrusted with prominent public functions and includes the following:</p> <p>(a) heads of State, heads of government, ministers and deputy or assistant ministers;</p> <p>(b) members of parliament or of similar legislative bodies;</p> <p>(c) members of the governing bodies of political parties;</p> <p>(d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;</p> <p>(e) members of courts of auditors or of the boards of central banks;</p> <p>(f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;</p> <p>(g) members of the administrative, management or supervisory bodies of State-owned enterprises;</p> <p>(h) directors, deputy directors and members of the board or equivalent function of an international organisation.</p> <p>No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;</p>
United States ²⁴¹	<p>Bank Secrecy Act Anti-Money Laundering Examination Manual</p> <p>The term "politically exposed person" generally includes a current or former senior foreign political figure, their immediate family, and their close associates. More specifically:</p> <ul style="list-style-type: none"> • A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation.²⁷⁰ In addition, a senior foreign political figure includes

²³⁹ FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, 123 (February 2012 | Updated October 2016).

²⁴⁰ EU Directive 2015/849, Article 3(9). Also known as the Fourth Anti Money Laundering Directive or 4AMLD.

²⁴¹ Bank Secrecy Act Anti-Money Laundering Examination Manual. Retrieved from https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf. Accessed on 13 July 2017.

See also <https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/ffiec-bsa-aml-examination-manual.pdf>. Accessed on 13 July 2017.

	<p>any corporation, business, or other entity that has been formed by, or for the benefit of, a senior foreign political figure.</p> <ul style="list-style-type: none"> • The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children, and in-laws. • A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure. <p>Banks also should consider various factors when determining if an individual is a PEP including:</p> <ul style="list-style-type: none"> • Official responsibilities of the individual's office. • Nature of the title (e.g., honorary or salaried). • Level and nature of authority or influence over government activities or other officials. • Access to significant government assets or funds. <p>Banks should exercise reasonable judgment in designing and implementing policies, procedures, and processes regarding PEPs. The opening of an account is the prime opportunity for the bank to gather information for all customers, including PEPs. Commensurate with the identified level of risk, due diligence procedures should include, but are not necessarily limited to, the following:</p> <ul style="list-style-type: none"> • Identify the accountholder and beneficial owner, including the nominal and beneficial owners of companies, trusts, partnerships, private investment companies, or other legal entities that are accountholders. • Seek information directly from the account holder and beneficial owner regarding possible PEP status. • Identify the accountholder's and beneficial owner's country (ies) of residence and the level of risk for corruption and money laundering associated with these jurisdictions. • Obtain information regarding employment, including industry and sector and the level of risk for corruption associated with the industries and sectors. • Check references, as appropriate, to determine whether the account holder and beneficial owner is or has been a PEP. • Identify the account holder's and beneficial owner's source of wealth and funds. <ul style="list-style-type: none"> • Obtain information on immediate family members or close associates either having transaction authority over the account or benefiting from transactions conducted through the account. • Determine the purpose of the account and the expected volume and nature of account activity. <p>Make reasonable efforts to review public sources of information. These sources will vary depending upon each situation; however, banks should check the accountholder and any beneficial owners of legal entities against reasonably accessible public sources of information (e.g., government databases, major news publications, commercial databases and other databases available on the Internet, as appropriate).</p>
United Kingdom ²⁴²	<p>Regulation 14 of the Money Laundering Regulations 2007</p> <p>(4) A relevant person who proposes to have a business relationship or carry out an occasional</p>

transaction with a politically exposed person must—

(a) have approval from senior management for establishing the business relationship with that person;

(b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and

(c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.

(5) In paragraph (4), “a politically exposed person” means a person who is—

(a) an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by—

(i) a state other than the United Kingdom;

(ii) a Community institution; or

(iii) an international body, including a person who falls in any of the categories listed in paragraph 4(1)(a) of Schedule 2;

(b) an immediate family member of a person referred to in sub-paragraph (a), including a person who falls in any of the categories listed in paragraph 4(1)(c) of Schedule 2; or

(c) a known close associate of a person referred to in sub-paragraph (a), including a person who falls in either of the categories listed in paragraph 4(1)(d) of Schedule 2.

(6) For the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (5)(a), a relevant person need only have regard to information which is in his possession or is publicly known.

Paragraph 4, Schedule 2 of the Money Laundering Regulations 2007

Politically exposed persons

(1) For the purposes of regulation 14(5)—

(a) individuals who are or have been entrusted with prominent public functions include the following—

(i) heads of state, heads of government, ministers and deputy or assistant ministers;

(ii) members of parliaments;

(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, other than in exceptional circumstances;

(iv) members of courts of auditors or of the boards of central banks;

(v) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; and

(vi) members of the administrative, management or supervisory bodies of state-owned enterprises;

(b) the categories set out in paragraphs (i) to (vi) of sub-paragraph (a) do not include middle-ranking or more junior officials;

(c) immediate family members include the following—

	<p>(i) a spouse; (ii) a partner; (iii) children and their spouses or partners; and (iv) parents;</p> <p>(d) persons known to be close associates include the following—</p> <p>(i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in regulation 14(5)(a); and (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in regulation 14(5)(a).</p> <p>(2) In paragraph (1)(c), “partner” means a person who is considered by his national law as equivalent to a spouse.</p>
Germany ²⁴³	<p>Section 6 (2) of Money Laundering Act</p> <p>(2) A higher risk shall be assumed in particular in the following cases, and the application of the enhanced due diligence requirements set forth below should be required accordingly:</p> <p>1. the obliged entity shall adopt appropriate risk-based procedures to determine whether the contracting party and, if applicable, the beneficial owner is a natural person who exercises or has exercised a prominent public function, or is an immediate family member or person known to be a close associate of such a person as defined in Article 2 of Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29). As a rule, public functions below the national level are not considered as prominent unless their political significance is comparable with similar positions at the national level. The obliged entity which must clarify whether the contracting party or the beneficial owner is a close associate of a person who exercises a prominent public function shall be required to do so only to the extent that such relationship is known to the public, or it has reason to believe that such a relationship exists; however, it is not required to conduct investigations into the matter. The following shall apply if the contracting party or beneficial owner is a politically exposed person in this sense:</p> <p>a) the establishment of a business relationship by a person acting on behalf of the obliged entity shall be subject to the approval of a superior; b) adequate measures shall be adopted to determine the origin of the assets or property to be used in the business relationship or transaction; and c) the business relationship shall be subject to enhanced continuous monitoring.</p> <p>In the event that the contracting party or beneficial owner first exercises a prominent public function during the course of the business relationship, or the obliged entity only becomes aware that the contracting party or beneficial owner exercises a prominent public function after the business relationship is established, the superior of the person acting on behalf of the relevant obliged entity shall be required to approve the continuation (rather than the establishment) of the business relationship. The contracting party shall provide the obliged entity with the necessary clarifying information and advise it without undue delay of any</p>

²⁴³ Money Laundering Act, Federal Financial Supervisory Authority. Retrieved from https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG_en.html. Accessed on 01 June 2017.

	<p>changes arising during the course of the business relationship. Where the contracting party or beneficial owner is a politically exposed person who exercises a prominent public function in Germany or as a member of the European Parliament who has been elected in Germany, or who has not exercised a prominent public function for at least one year, the general due diligence requirements under section 3 shall apply, subject to a risk assessment being carried out in the individual case.</p> <p>Pursuant to the above-mentioned provision, Germany adopts the definition of politically exposed person as defined in Article 2 of Commission Directive 2006/70/EC of 01 August 2006²⁴⁴ stated as follows:</p> <p style="text-align: center;">Article 2</p> <p style="text-align: center;">Politically exposed persons</p> <p>1. For the purposes of Article 3(8) of Directive 2005/60/EC, ‘natural persons who are or have been entrusted with prominent public functions’ shall include the following:</p> <p>a) heads of State, heads of government, ministers and deputy or assistant ministers; b) members of parliaments; c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances; d) members of courts of auditors or of the boards of central banks; e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; f) members of the administrative, management or supervisory bodies of State-owned enterprises.</p> <p>None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.</p>
<p style="text-align: center;">France²⁴⁵</p>	<p>Article L. 561-10 (2)²⁴⁶ of the Monetary and Financial Code defines politically exposed persons (PEP) as follows:</p> <p>“The customer is a person residing in another European Union Member State or a third country and who is exposed to specific risks by virtue of political, judicial or administrative functions he or she exercises or has exercised on behalf of another country or those exercised currently or in the past by direct family members or persons known be closely associated with him or her.”</p> <p>The following functions as listed in Article R. 561-18 I of the Monetary and Financial Code shall lead to a customer being classified as a PEP:</p> <p>“1. Head of State, head of government, or member of a national government or of the European Commission; 2. Member of a national parliamentary assembly or of the European Parliament; 3. Member of a supreme court, a constitutional court or another high court whose decisions</p>

²⁴⁴ Commission Directive 2006/70/EC of 01 August 2006. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0070>. Accessed on 01 July 2016.

²⁴⁵ AMF Position-Recommendation 2013-23, Guidelines on the notion of politically exposed persons in connection with anti-money laundering and counter-terrorist financing.

²⁴⁶ “The client is an individual residing in another Member State of the European Union or in a third country who is exposed to particular risks on account of the political, jurisdictional or administrative functions he performs or has performed on behalf of another State or of those that direct members of his family or individuals known to be closely associated with him perform or have performed.”

- are not open to appeal, apart from in exceptional circumstances;
4. Member of a court of auditors;
 5. Head or member of the executive body of a central bank;
 6. Ambassador, chargé d'affaires, consul-general or career consul;
 7. General or senior officer in command of an army;
 8. Member of the board of directors, executive board or supervisory board of a public corporation;
 9. Head of an international public institution established by treaty.”

Per Article R. 561-18 II of the Monetary and Financial Code, the following are considered as direct family members of a PEP:

- “A spouse or de facto spouse”;
- “A partner bound by a French civil partnership or similar partnership registered under foreign law”;
- “Parents, children, sons-in-law and daughters-in-law, together with their spouses and civil partners bound by a French civil partnership or similar partnership registered under foreign law.”

The following are considered as known close associates of a PEP pursuant to Article R. 561-18 III of the aforementioned code:

- “Any individual identified as the joint beneficial owner, with the customer, of a legal entity”;
- “Any individual known to maintain a close business relationship with the customer.”

Figure 1 - Civil Service Commission Personal Data Sheet

CS Form No. 212 Revised 2017		PERSONAL DATA SHEET					
<p>WARNING: Any misrepresentation made in the Personal Data Sheet and the Work Experience Sheet shall cause the filing of an administrative/criminal case/s against the person concerned.</p> <p>READ THE ATTACHED GUIDE TO FILLING OUT THE PERSONAL DATA SHEET (PDS) BEFORE ACCOMPLISHING THE PDS FORM.</p> <p>Print legibly. Tick appropriate boxes (<input type="checkbox"/>) and use separate sheet if necessary. Indicate N/A if not applicable. DO NOT ABBREVIATE. <input type="text"/> 1. CS ID No. <input type="text"/> (Do not fill up for CSC use only)</p>							
I. PERSONAL INFORMATION							
2. SURNAME							
FIRST NAME				NAME EXTENSION (JR., SR)			
MIDDLE NAME							
3. DATE OF BIRTH (mm/dd/yyyy)		16. CITIZENSHIP		<input type="checkbox"/> Filipino <input type="checkbox"/> Dual Citizenship <input type="checkbox"/> by birth <input type="checkbox"/> by naturalization Pls. indicate country:			
4. PLACE OF BIRTH		If holder of dual citizenship, please indicate the details.					
5. SEX		<input type="checkbox"/> Male <input type="checkbox"/> Female					
6. CIVIL STATUS		<input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Other/s:		17. RESIDENTIAL ADDRESS			
7. HEIGHT (m)				House/Block/Lot No. Street			
8. WEIGHT (kg)				Subdivision/Village Barangay			
9. BLOOD TYPE				City/Municipality Province			
10. GSIS ID NO.				ZIP CODE			
11. PAG-BIG ID NO.				18. PERMANENT ADDRESS			
12. PHILHEALTH NO.				House/Block/Lot No. Street			
13. SSS NO.				Subdivision/Village Barangay			
14. TIN NO.				City/Municipality Province			
15. AGENCY EMPLOYEE NO.				ZIP CODE			
		19. TELEPHONE NO.					
		20. MOBILE NO.					
		21. E-MAIL ADDRESS (if any)					
II. FAMILY BACKGROUND							
22. SPOUSE'S SURNAME		23. NAME OF CHILDREN (Write full name and list all)		DATE OF BIRTH (mm/dd/yyyy)			
FIRST NAME							
MIDDLE NAME							
OCCUPATION							
EMPLOYER/BUSINESS NAME							
BUSINESS ADDRESS							
TELEPHONE NO.							
24. FATHER'S SURNAME							
FIRST NAME							
MIDDLE NAME							
25. MOTHER'S MAIDEN NAME							
SURNAME							
FIRST NAME							
MIDDLE NAME							
<i>(Continue on separate sheet if necessary)</i>							
III. EDUCATIONAL BACKGROUND							
26. LEVEL	NAME OF SCHOOL (Write in full)	BASIC EDUCATION/DEGREE/COURSE (Write in full)	PERIOD OF ATTENDANCE		HIGHEST LEVEL/ UNITS EARNED (if not graduated)	YEAR GRADUATED	SCHOLARSHIP/ ACADEMIC HONORS RECEIVED
			From	To			
ELEMENTARY							
SECONDARY							
VOCATIONAL / TRADE COURSE							
COLLEGE							
GRADUATE STUDIES							
<i>(Continue on separate sheet if necessary)</i>							
SIGNATURE			DATE				

Figure 2 - Civil Service Commission SALN Form (Page 1)

Revised as of January 2015
 Per CSC Resolution No. 1500088
 Promulgated on January 23, 2015

SWORN STATEMENT OF ASSETS, LIABILITIES AND NET WORTH

As of _____
 (Required by R.A. 6713)

Note: *Husband and wife who are both public officials and employees may file the required statements jointly or separately.*
 Joint Filing Separate Filing Not Applicable

DECLARANT:	_____	POSITION:	_____
	(Family Name) (First Name) (M.I.)	AGENCY/OFFICE:	_____
ADDRESS:	_____	OFFICE ADDRESS:	_____
	_____		_____
SPOUSE:	_____	POSITION:	_____
	(Family Name) (First Name) (M.I.)	AGENCY/OFFICE:	_____
		OFFICE ADDRESS:	_____

UNMARRIED CHILDREN BELOW EIGHTEEN (18) YEARS OF AGE LIVING IN DECLARANT'S HOUSEHOLD

NAME	DATE OF BIRTH	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____

ASSETS, LIABILITIES AND NETWORTH

(Including those of the spouse and unmarried children below eighteen (18) years of age living in declarant's household)

1. ASSETS

a. Real Properties*

DESCRIPTION <small>(e.g. lot, house and lot, condominium and improvements)</small>	KIND <small>(e.g. residential, commercial, industrial, agricultural and mixed use)</small>	EXACT LOCATION	ASSESSED VALUE <small>(As found in the Tax Declaration of Real Property)</small>	CURRENT FAIR MARKET VALUE	ACQUISITION		ACQUISITION COST
					YEAR	MODE	

Subtotal: _____

b. Personal Properties*

DESCRIPTION	YEAR ACQUIRED	ACQUISITION COST/AMOUNT

Subtotal : _____

TOTAL ASSETS (a+b): _____

* Additional sheet/s may be used, if necessary.

Figure 3 - Civil Service Commission SALN Form (Page 2)

2. LIABILITIES*

NATURE	NAME OF CREDITORS	OUTSTANDING BALANCE

TOTAL LIABILITIES: _____

NET WORTH : Total Assets less Total Liabilities = _____

* Additional sheet/s may be used, if necessary.

BUSINESS INTERESTS AND FINANCIAL CONNECTIONS

(of Declarant / Declarant's spouse/ Unmarried Children Below Eighteen (18) years of Age Living in Declarant's Household)

I/We do not have any business interest or financial connection.

NAME OF ENTITY/BUSINESS ENTERPRISE	BUSINESS ADDRESS	NATURE OF BUSINESS INTEREST &/OR FINANCIAL CONNECTION	DATE OF ACQUISITION OF INTEREST OR CONNECTION

RELATIVES IN THE GOVERNMENT SERVICE

(Within the Fourth Degree of Consanguinity or Affinity. Include also Bilas, Balae and Inso)

I/We do not know of any relative/s in the government service)

NAME OF RELATIVE	RELATIONSHIP	POSITION	NAME OF AGENCY/OFFICE AND ADDRESS

I hereby certify that these are true and correct statements of my assets, liabilities, net worth, business interests and financial connections, including those of my spouse and unmarried children below eighteen (18) years of age living in my household, and that to the best of my knowledge, the above- enumerated are names of my relatives in the government within the fourth civil degree of consanguinity or affinity.

I hereby authorize the Ombudsman or his/her duly authorized representative to obtain and secure from all appropriate government agencies, including the Bureau of Internal Revenue such documents that may show my assets, liabilities, net worth, business interests and financial connections, to include those of my spouse and unmarried children below 18 years of age living with me in my household covering previous years to include the year I first assumed office in government.

Date: _____

Figure 4 - SEC GIS Form 2016 (Page 3)

GENERAL INFORMATION SHEET
STOCK CORPORATION

===== PLEASE PRINT LEGIBLY =====					
CORPORATE NAME:					
TOTAL NUMBER OF STOCKHOLDERS:			NO. OF STOCKHOLDERS WITH 100 OR MORE SHARES EACH:		
TOTAL ASSETS BASED ON LATEST AUDITED FINANCIAL STATEMENTS:					
STOCKHOLDER'S INFORMATION					
NAME AND NATIONALITY	SHARES SUBSCRIBED				AMOUNT PAID (PhP)
	TYPE	NUMBER	AMOUNT (PhP)	% OF OWNERSHIP	
1.					
	TOTAL				
2.					
	TOTAL				
3.					
	TOTAL				
4.					
	TOTAL				
5.					
	TOTAL				
6.					
	TOTAL				
7.					
	TOTAL				
TOTAL AMOUNT OF SUBSCRIBED CAPITAL				0.00%	0.00
TOTAL AMOUNT OF PAID-UP CAPITAL					

INSTRUCTION: SPECIFY THE TOP 20 STOCKHOLDERS AND INDICATE THE REST AS OTHERS
 Note: For PDTC Nominee included in the list, please indicate further the beneficial owners owning more than 5% of any class of the company's voting securities. Attach separate sheet, if necessary.

Figure 9 - PSE Form 17-7 (Atlas Mining)

SECURITIES AND EXCHANGE COMMISSION
Metro Manila, Philippines

FORM 23-B

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES
Filed pursuant to Section 23 of the Securities Regulation Code

Check box if no longer subject to filing requirement

1. Name and Address of Reporting Person SM INVESTMENTS CORPORATION (Last) (First) (Middle) 10F SM ONE ECOM CENTER BLDG HARBOR DRIVE MOA (Street) COMPLEX CB 01-04 PASAY CITY (City) (Province) (Postal Code)		2. Issuer Name and Trading Symbol ATLAS CONSOLIDATED MINING AND DEV CORP.		3. Tax Identification Number 000-169-020		5. Statement for Month/Year June 2015		7. Relationship of Reporting Person to Issuer (Check all applicable) Director <input type="checkbox"/> 10% Owner <input type="checkbox"/> Officer <input checked="" type="checkbox"/> Other (specify below) <input type="checkbox"/>	
		4. Citizenship Filipino		6. If Amendment, Date of Original (Month/Year) NA					
Table 1 - Equity Securities Beneficially Owned									
1. Class of Equity Security	2. Transaction Date (Month/Day/Year)	4. Securities Acquired (A) or Disposed of (D)			3. Amount of Securities Owned at End of Month		4. Ownership Form: Direct (D) or Indirect (I)	5. Nature of Indirect Beneficial Ownership	
		No. of Shares	(A) or (D)	Price	%	Number of Shares			
Common Shares		Total direct holdings as of January 31, 2015			28.88%	802,785,791	D		
		Total direct holdings as of June 30, 2015			28.88%	802,785,791	D		
		Total indirect holdings as of January 31, 2015			0.92%	6,480,244	I	Atlas shares owned by Pitmanbridge Holdings, Inc., a subsidiary of SM Investments Corporation.	
	06.04.2015	1,472,700	(A)	7.04					
	06.10.2015	1,472,700	(A)	8.95	0.14%	2,045,400			
		Total indirect holdings as of June 30, 2015			0.88%	9,405,644			
		Total direct & indirect holdings as of June 30, 2015			29.76%	812,191,435			

(Print or Type Responses)

If the change in beneficial ownership is 50% of the previous shareholdings or is equal to 5% of the outstanding capital stock of the issuer, provide the disclosure requirements set forth on page 3 of this form.

Reminder: Report on a separate line for each class of equity securities beneficially owned directly or indirectly:
(1) A person is directly or indirectly the beneficial owner of any equity security with respect to which he has or shares:
(A) voting power which includes the power to vote, or to direct the voting of, such security; and/or
(B) investment power which includes the power to dispose of, or to direct the disposition of, such security.
(2) A person will be deemed to have an indirect beneficial interest in any equity security which is:
(A) held by members of a person's immediate family sharing the same household;
(B) held by a partnership in which such person is a general partner;
(C) held by a corporation of which such person is a controlling shareholder; or
(D) subject to any contract, arrangement or understanding which gives such person voting power or investment power with respect to such security.

Figure 10 - PSE Form 17-7 (Atlas Mining)

SECURITIES AND EXCHANGE COMMISSION
Metro Manila, Philippines

FORM 23-B

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES
Filed pursuant to Section 23 of the Securities Regulation Code

REVISED

Check box if no longer subject to filing requirement

1. Name and Address of Reporting Person [REDACTED]		2. Issuer Name and Trading Symbol Atlas Consolidated Mining and Development Corporation (AT)		3. Tax Identification Number [REDACTED]		5. Statement for Month/Year Aug-16		7. Relationship of Reporting Person to Issuer (Check all applicable) <input checked="" type="checkbox"/> EMPLOYEE <input checked="" type="checkbox"/> OFFICER (give title below) [REDACTED] <input type="checkbox"/> 10% Owner <input type="checkbox"/> Other (specify below)	
4. Citizenship Filipino		6. If Amendment, Date of Original (Month/Year)							
Table 1 - Equity Securities Beneficially Owned									
1. Class of Equity Security	2. Transaction Date (Month/Day/Year)	4. Securities Acquired (A) or Disposed of (D)			3. Amount of Securities Owned at End of Month		4. Ownership Form: Direct (D) or Indirect (I)	5. Nature of Indirect Beneficial Ownership	
		No. of Shares	(A) or (D)	Price	%	Number of Shares			
Common Shares (Beginning)					0.48	10,000,100	D		
					21.75	453,963,461	I	AT shares owned by [REDACTED] corporation	
Common Shares Transacted	15-Aug-16	233,334	A	3.87					
Common Shares (Ending)					0.49	10,233,434	D		
					21.75	453,963,461	I	AT shares owned by [REDACTED] corporation	

(Print or Type Responses)

If the change in beneficial ownership is 50% of the previous shareholdings or is equal to 5% of the outstanding capital stock of the issuer, provide the disclosure requirements set forth on page 3 of this form.

The PSE makes no representation on the accuracy, validity, correctness and completeness of the information stated in the respective PORs of listed companies. The PSE shall use the information contained in the POR submitted by the company in computing a company's weight in the index and this may be updated or adjusted consistent with the policy of the Exchange in managing the PSEI and sector indices.



Apex Mining Co., Inc.
APX

PSE Disclosure Form POR-1 - Public Ownership Report
Reference: Amended Rule on Minimum Public Ownership

Report Type

- Monthly
 Quarterly
 Others

Report Date Jun 30, 2017

Computation of Public Ownership

Number of Issued and Outstanding Common Shares	6,227,887,491
Less: Number of Treasury Common Shares, if any	0
Number of Outstanding Common Shares	6,227,887,491

Less :

A. Directors

Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
RAMON Y. SY	44,598,312	0	44,598,312	0.72
WALTER W. BROWN	59,743,202	0	59,743,202	0.96
GRACIANO P. YUMUL, JR.	1,501,000	0	1,501,000	0.02
MODESTO B. BERMUDEZ	1	2,000,000	2,000,001	0.03
JOSE EDUARDO J. ALARILLA *	1	0	1	0
DENNIS A. UY	1	0	1	0
JOSELITO H. SIBAYAN	299	0	299	0
	105,842,816	2,000,000	107,842,816	1.73

Figure 12 - PSE POR-1 Form (Apex Mining) (Page 2)

B. Officers				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
SILVERIO BENNY J. TAN	17,508,747	0	17,508,747	0.28
GIL A. MARVILLA	647,767	0	647,767	0.01
	18,154,514	0	18,154,514	0.29

C. Principal/Substantial Stockholders				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
PRIME METROLINE HOLDINGS, INC.	2,511,329,207	0	2,511,329,207	40.32
MONTE ORO RESOURCES & ENERGY, INC.	564,730,109	0	564,730,109	9.07
LAKELAND VILLAGE HOLDINGS, INC.	474,613,599	0	474,613,599	7.62
DEVONCOURT ESTATES, INC.	423,904,339	0	423,904,339	6.81
A. BROWN COMPANY, INC.	330,193,698	0	330,193,698	5.3
	4,304,770,952	0	4,304,770,952	69.12

D. Affiliates				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
-	0	0	0	0
	0	0	0	0

E. Government				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
-	0	0	0	0
	0	0	0	0

F. Banks				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
METROPOLITAN BANK & TRUST CO.	70,000	0	70,000	0
H.K. SHANGHAI BANKING CORP/ANDERSON MA	6,250	0	6,250	0
PCI BANK	1,300	0	1,300	0
	77,550	0	77,550	0

G. Employees				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
-	0	0	0	0
	0	0	0	0

H. Lock-Up Shares				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
-	0	0	0	0
	0	0	0	0

I. Others				
Name	Direct	Indirect	Total direct & indirect shares	% to Total Outstanding Shares
-	0	0	0	0
	0	0	0	0

