

Canadian Mining Industry Groups Release Recommendations for Payment Transparency Disclosure

In 2013, Prime Minister Stephen Harper adopted a G8 initiative towards payment transparency in Canada's resource extraction industries. In an attempt to provide the framework of choice to meet the Government's objective, the Resource Revenue Transparency Working Group (the "**Working Group**") has released its recommendations for a framework of transparency disclosure rules regarding the mining industry (the "**Recommendations**"). The Working Group includes the Mining Association of Canada, the Prospectors and Developers Association of Canada, Publish What You Pay Canada and the Revenue Watch Institute. In short, the Working Group recommends that provincial securities commissions adopt a framework requiring all reporting issuers to disclose project-level payments made to domestic and foreign governments. This article summarizes the Working Group's Recommendations and provides readers with an understanding as to their effect on and use for public mining companies going forward.

Recommended Disclosure Requirements

To foster a global reciprocal reporting standard, the Recommendations reflect US and UK payment transparency frameworks on most counts. The suggested scope of reporting requires:

...all mining companies that are reporting issuers under Canadian securities legislation to publicly disclose certain types of payments related to the commercial development of mineral deposits made to Canadian and foreign governments, including payments made to national and sub-national

authorities (i.e. states, provinces, counties, districts, municipalities or territories under a national government, including state owned enterprises) that meet or exceed a minimum reporting threshold, in each country of operation and for each project.

1. All Public Companies and their Subsidiaries

The Working Group recommends full public disclosure, without the opportunity for exemption, for all mining companies listed on the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSX-V"). The scope of reporting includes the issuer's subsidiaries and those entities over which the issuer exerts joint control or significance as defined by the International Financial Reporting Standards (IFRS). The Recommendations do not include disclosure obligations for private companies.

2. Covered Payments Capture Full Revenue Stream

The Recommendations' payment trigger applies on a disaggregated and cash basis to mandate disclosure for payments to domestic and foreign governments. Referencing Canada's unique mining sector, the Working Group suggests two payment thresholds to prompt disclosure: \$100,000 for TSX listed issuers and \$10,000 for TSX-V listed issuers. This means that issuers must disclose each payment or series of related payments meeting their respective thresholds. The covered payments are broadly defined to include:

- profit taxes (including profit, income, and production taxes);
- royalties (including royalties-in-kind);
- fees (including license fees, rental fees, and concession fees);
- production entitlements (by value and volume);
- bonuses (including signature, discovery, and production bonuses);
- dividends (including a withholding tax);

- infrastructure payments required by law or contract (road, railway, port construction); and
- transportation and terminal operation fees.

3. Disclosure on a Per Project Basis over Life of the Project

The Working Group recommends a framework whereby issuers must disclose payments made over the life of a project from exploration to remediation, and over the value chain of a project, from exploration to export. Specifically, the framework includes disclosure for any environmental remediation payments made after a company has sold its interest in a project. Issuers are encouraged to monitor developments in disclosure of payments to First Nations self-governments. Notably, this issue was not explicitly covered in the Recommendations but it is one we understand the Canadian Government is committed to regulating.

4. Annual Disclosure Separate from Other Filings

The Working Group recommends full public disclosure be filed annually on SEDAR, separate from any prospectus requirements. The disclosure would include the total amount of payments by category, currency used, financial period, business segment, receiving government body, and the project to which the payment relates.

5. Disclosure to be Verified, Audited, and Subject to Penalties

The Recommendations endorse penalties for failure to report or inaccurate reporting. Reporting issuers should pay attention to this especially in light of Canada's increasing legislative and

enforcement action under the anti-corruption regime of the *Corruption of Foreign Public Officials Act*¹ and the *Criminal Code*.²

Effect of the Recommendations

To comply with Prime Minister Harper's adoption of the G8 payment transparency regime in Canada, either a federal or provincial body, or a combination of both, must adopt and pass disclosure requirements. The Working Group is lobbying the B.C. and Ontario securities commissions to adopt its proposed standards, harmonized at the provincial level across the country, without waiting for potentially more conservative federal standards.

Issuers Should Prepare for Disclosure

Issuers should use these recommendations as an opportunity to prepare internal accounting systems to track payment disclosure by project as legislators are expected to introduce mandatory reporting and disclosure requirements in 2014. In addition to tracking payments, issuers should stay informed with about the legislative process and check confidentiality clauses in contracts that may give rise to any payment liability for mineral resources. The Working Group suggests that the use of the proposed standards are more than disclosure requirements but also as a credible means to demonstrate an issuer's beneficial local contributions.

The full text of the Recommendations may be found [here](#).

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¹ SC 1998, c 34.

² RSC 1985, c C-46.

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[a cautionary note](#)

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