

Disclosure of Oil and Gas & Aboriginal Payments Uncertain, Despite Release of Recommendations on Mandatory Disclosure of Payments from Canadian Mining Companies to Governments



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Companies and Aboriginal communities negotiating resource agreements should note the Resource Revenue Transparency Working Group's January 16, 2014 release of its [Recommendations on Mandatory Disclosure of Payments from Canadian Mining Companies to Governments](#). The Recommendations stem from Canada's June 2013 commitment to enhance transparency in the extractive sector. The Working Group is comprised of representatives from the Mining Association of Canada, the Prospectors & Developers Association of Canada (PDAC), Publish What You Pay Canada and the Revenue Watch Institute. The Working Group's transparency initiative is widely supported by Canadian mining companies.

Companies and Aboriginal communities want to know how the reporting would work and whether payments under resource agreements/IBAs will come under the purview of any Canadian requirements. The recommendations do not currently include oil and gas or Aboriginal payments. However, such payments could follow in a second phase of the project, dubbed "transparency 2.0" by Working Group member and PDAC Executive Director, Ross Gallinger, at an Ontario Bar Association address on February 19, 2014. To take effect, the recommendations must next be adopted, following discussions with provincial securities commissions and the provincial finance ministries. Presumably, Aboriginal communities would be consulted about making IBA payments subject to reporting.

The Proposed Reporting Regime

The Working Group recommends that the requirement apply to mining companies making payments over \$100,000 for TSX issuers and \$10,000 for venture exchange participants. All profit taxes, royalties, production entitlements, bonuses, dividends, infrastructure, transportation and terminal fees would be reportable, without exemption. The Working Group recommends that mandatory reporting for public companies be established through provincial securities requirements. Access to this information would provide citizens around the world with tools to promote accountable, responsible and transparent management of natural resources. Companies that fail to report would be penalized consistent with enforcement regimes of provincial securities disclosure requirements.

U.S. Reporting Requirements

Over 100 of the largest Canadian companies listed on U.S. stock exchanges are required to report payments to the U.S. and foreign governments under section 1504 of the US *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the *Dodd-Frank Act*). However, the American Petroleum Institute and others successfully challenged recent rules under this section (SEC Rule 13q-1) which required disclosing the same information to the public. The U.S. District Court for the District of Columbia concluded that Rule 1504 was never meant to require affected companies to disclose information that contract or regulations required be kept confidential, and vacated SEC Rule 13q-1. The U.S. will likely introduce new rules which allow for confidential submission of information under the *Dodd-Frank Act*.

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