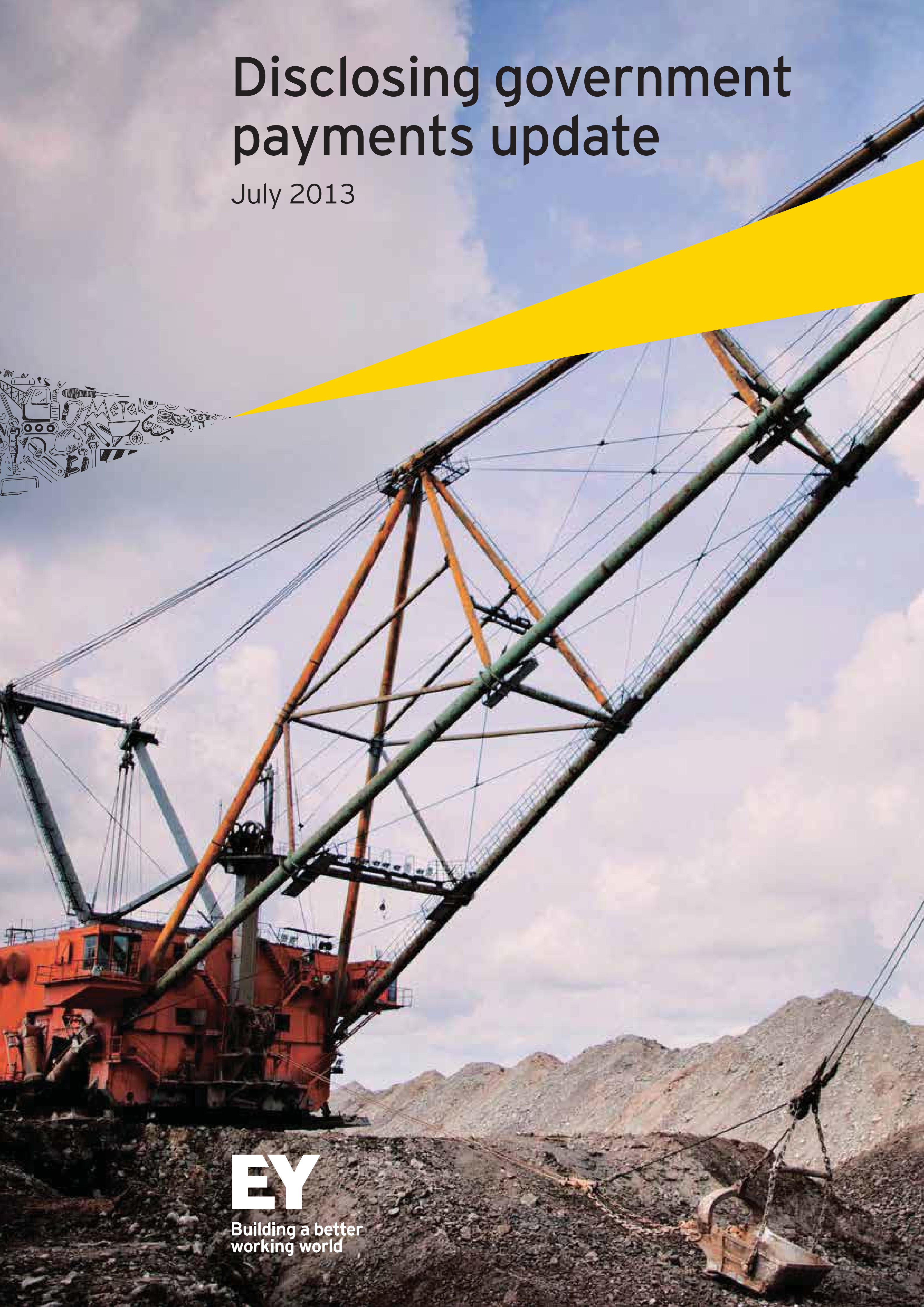
Disclosing government payments update

July 2013



Building a better working world

Disclosure requirements for payments to governments for natural resource extractive industries

This is an update to our *Disclosing government payments* report that was published in March 2013. As mentioned then, it is estimated that over 3.5 billion people live in countries with extensive oil, natural gas and mineral resources. With good governance that fosters sustainable development, these natural resources can add greatly to the quality of life for the people of such countries. Proper development can foster broad economic growth beyond the natural resources and go a long way to reducing poverty significantly and the social problems that it creates. Further, there is a broad view that greater transparency in the natural resource extractive industries will support proper development.

Initially, three major efforts emerged to require disclosure of government payments. The first was the Extractive Industries Transparency Initiative (EITI), which is a set of reporting standards published by a coalition of companies, governments and non-governmental organizations (NGOs). EITI was followed by legislation enacted in the United States under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires certain disclosures by natural resource extractive companies that are subject to the reporting requirements of the US Securities and Exchange Commission (SEC). The SEC issued a final rule implementing the Dodd-Frank Act last summer but that rule has most recently been vacated by the US District Court and is now subject to being re-written by the SEC. Finally, the European Union (EU) has recently enacted a new directive dealing with financial reporting that includes requirements for certain large natural resource extractive industry undertakings and public interest entities to report payments to governments.

A fourth initiative has also been developed in Canada. On 7 September 2012, Publish What You Pay Canada, The Revenue Watch Institute, the Mining Association of Canada, and the Prospectors and Developers Association of Canada announced the launch of the Extractive Resource Revenue Transparency Working Group (the Working Group) to make a recommendation to improve mining transparency in the country. On 14 June 2013, the Working Group released its draft recommendations (for comments to be submitted by 1 September 2013).

The following is a brief summary of each of the four initiatives and the current status of each, along with a high-level, side-by-side comparison of the reporting requirements from each set of rules.

Extractive Industries Transparency Initiative

The EITI was started in 2002 with the goal of enhancing good governance of natural resource development through improving transparency and accountability in the extractive industries. The EITI Association is an organization of sponsoring countries, natural resource extractive companies, other NGOs representing civil society interests and partner organizations that have come together to develop a framework for the disclosure of payments to governments, based on two primary elements:

- Companies will publish (disclose) what they pay to governments, and governments will publish what they receive in an EITI report.
- A multi-stakeholder group of governments, companies and civil society oversee the disclosure process.

Adoption of the EITI standard is discretionary, and implementation is the responsibility of individual countries. For a country to become EITI compliant, it must first meet five sign-up requirements before being admitted as an EITI candidate country. Over the next year and a half, the country must complete the EITI validation process, which includes 21 separate requirements that are reviewed and confirmed by the EITI Association.

In effect, the EITI framework and disclosure requirements must be adopted into individual country law, therefore impacting extractive industry companies that operate within the country. The framework also requires the payment reports to be based on accounts that have been audited to international standards. The EITI Association independently validates the laws or regulations and the independent auditing process before the country is deemed to be EITI compliant, and countries must maintain adherence to all the EITI rules to retain that status. Presently, the EITI Association has designated 23 countries as compliant and 16 others as "candidates" that are implementing the EITI rules. In addition, EITI Association has temporarily suspended compliant/candidate status for five countries. The following is a summary of the status of EITI countries from the EITI website as at July 31:

	Compliant countries
1	Albania
2	Azerbaijan
3	Burkina Faso
4	Cote d'Ivoire
5	Gabon
6	Ghana
7	Guinea
8	Iraq
9	Kazakhstan
10	Kyrgyz Republic
11	Liberia
12	Mali
13	Mauritania
14	Mongolia
15	Mozambique
16	Niger
17	Nigeria
18	Norway
19	Peru
20	Republic of the Congo
21	Tanzania
22	Togo
23	Zambia

	Candidate countries
1	Afghanistan
2	Cameroon
3	Chad
4	Guatemala
5	Honduras
6	Indonesia
7	Sao Tome and Principe
8	Solomon Islands
9	Tajikistan
10	The Philippines
11	Timor-Leste
12	Trinidad and Tobago

	Suspended status (four are still considered as "candidate" countries)
1	Central Africa Republic
2	Democratic Republic of Congo
3	Madagascar
4	Sierra Leone
5	Yemen

Dodd-Frank Wall Street Reform and Consumer Protection Act

Under Section 1504 of the Dodd-Frank Act, Congress added Section 13(q) to the Securities Exchange Act of 1934, which mandates the SEC to issue a rule requiring issuers engaged in the commercial development of oil, gas or minerals to disclose the amount of payments by type, by project and by government annually. Congress enacted the rule to increase the transparency of payments made to governments by issuers for commercially developing their natural resources.

In August 2012, the SEC issued its final rule (the Rule) to comply with Section 1504 of the Dodd-Frank Act. The Rule requires all issuers (companies subject to SEC reporting requirements) engaged in the commercial development of oil, natural gas or minerals to annually disclose payments to the US federal and foreign governments. Companies will have to disclose the type and amount of payments by project and by government for all payments that equal or exceed US$100,000 individually or in aggregate. Disclosures must be made in electronic format using the Extensible Business Reporting Language (XBRL) on a new Form SD that will be due 150 days after the issuer's fiscal year-end but that will not be subject to an independent audit. Disclosures must be made for fiscal years ending after 30 September 2013. The SEC made reference to the EITI and its reporting requirements; however, the reporting requirements differ. Because the US is a supporting country to the EITI, there was some thought that the SEC might consider allowing companies that conform to the EITI to have complied with the Section 1504 reporting rule. However, the SEC established a separate reporting requirement and outlined a different disclosure requirement based on a Congressional mandate.

On 11 October 2012, the US Chamber of Commerce, American Petroleum Institute (API), Independent Petroleum Association of America (IPAA) and the National Foreign Trade Council sought a court order declaring Section 1504 of the Dodd-Frank Act "null, void, and with no force or effect." The plaintiffs in the lawsuit argued that the SEC failed to fully consider the competitive effects of the regulation, which was mandated by the Dodd-Frank Act. The requirement to disclose payments that may be contrary to either local law or by contract will lead to a loss of business for US companies bidding on resources in countries where such disclosures are barred.

The US District Court (the Court) issued a decision on 2 July 2013 vacating the SEC Rule implementing Section 1504 of the Dodd-Frank Act that requires extractive industry companies to disclose payments to the US federal and foreign governments.

The Court sided with the plaintiffs in the lawsuit remanding the Rule back to the SEC to be redrafted. The Court suggested that the SEC's interpretation of two key provisions in the law was "arbitrary and capricious." The SEC must now appeal the decision, redraft the Rule taking into consideration the Court's ruling or reissue its Rule in similar form but with greater justification for its position.

The Rule was scheduled to become effective for fiscal years ending after 30 September 2013. It appears likely that the effective date for implementing the disclosure requirement will be pushed back, but nonetheless companies subject to SEC reporting, will need to consider this extractive disclosure requirement in the future.

European Union amendments to financial reporting directives

In October 2011, the European Commission issued two proposals to amend the EU's Transparency Directives and the Accounting Directives, which, in part, included a new directive dealing with the preparation of financial statements. The EU proposals contained new requirements to disclose payments to governments by certain large undertakings and public interest entities engaged in natural resource extraction or logging. Although the new requirements are based on the EITI rules, the underlying requirements differ.

In June 2013, the European Parliament enacted a new Accounting Directive and Transparency Directive that repealed the Fourth and Seventh Accounting Directives on Annual and Consolidated Accounts and introduces the new obligation for large extractive and logging companies to report the payments they make to governments (also known as "country-by-country reporting" or CBCR). The transparency rules are very similar to the proposed directive, however, there are some important differences. The Accounting Directive and Transparency Directive are to establish rules that are equivalent to (and in some cases exceed) the disclosure requirements of SEC Rule 13q-1 as promulgated by the final SEC rule that was later vacated discussed above. Together, the combined scope of the EU and US laws on mandatory disclosures are expected to affect a significant portion of the world's extractive industries and signify the continuing consolidation of international transparency promotion efforts.

An important modification to the proposed directive provides for "equivalence clause" reporting so that undertakings that are required to report payments in other jurisdictions will satisfy the reporting requirement (see Article 46 of Chapter 10). Power is granted to the European Commission to adopt such equivalence criteria on the basis of specific criteria, for example, the content and frequency of the reporting obligation. Presumably the final SEC rule adopting the Dodd-Frank Act disclosure requirements in the US might have met the equivalence requirements. However that rule will be re-drafted by the SEC and its replacement may not meet the standard.

Member States must adopt the Accounting Directive and Transparency Directive within two years of its entry into force, though they may provide that the transposed rules apply to financial statements for financial years beginning on January 1, or during the calendar year of the year following the transposition deadline.

Canadian recommendations on mandatory disclosure of payments to governments

The Working Group seeks to develop a framework that requires greater transparency by Canadian mining companies to disclose their payments to governments, by project, in every country in which they operate. Many of the largest Canadian companies are already reporting either voluntarily or under Section 1504 of the Dodd-Frank Act. More companies will also be covered under the soon-to-be-launched EU legislation.

The recommended framework aligns very closely with the US and EU frameworks, but acknowledging the fact that the Canadian sector includes many exploration and junior mining companies, it has a lower reporting threshold than that which is required by the Dodd-Frank Act. The recommendations have been released for input from interested stakeholders with the aim to agree to a framework by the end of 2013.

The following pages are a side-by-side comparison of the four reporting requirements or regimes. Unless noted otherwise:

- Information regarding the Canadian proposal is based upon the recommendation paper on mandatory disclosure of payment from Canadian mining companies to governments.
- The information relating to the Dodd-Frank Act Section 1504 and the SEC Rule is based on the Rule subject to the issues raised by the US District Court in its decision to vacate the Rule.

	Dodd-Frank Act Section 1504 SEC Rule 13(q) (Vacated and to be re-written by the SEC)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canadian recommendations paper (the draft)
To which industries do the rules apply?	Disclosure of payments to governments is required for "resource extraction issuers." A resource extraction issuer is any issuer engaged in the "commercial development of oil, natural gas or minerals."	Disclosure is required of large undertakings and public interest entities active in the extractive industry and the logging of primary forests.	EITI reporting must apply to all extractive industry companies.	The draft applies to Canadian extractive companies.
What entities or undertakings are required to comply with the disclosure requirement?	The Rule applies broadly to all US and foreign private issuers (including those that are government owned), regardless of their size or the scope of their activities, that are a "resource extraction issuer." The Rule does not apply to foreign private issuers that are exempt from Exchange Act reporting obligations and publish their home country annual reports under Exchange Act Rule 12g3–2(b).	Large undertakings and public interest entities active in applicable industries. "Large undertakings" are defined as undertakings that exceed two of the following three criteria: (1) Balance sheet total assets of €20m (2) Net turnover of €40m Or (3) Average number of employees equals 250 for the year "Public interest entities" means entities governed under the laws of a Member State with securities traded on a regulated exchange of any Member State, certain credit institutions and certain insurance entities.	All extractive industry companies (including international, national and state-owned companies) operating in that country.	All publicly listed extractive industry companies must comply.

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Are there any exemptions available (e.g., small issuers)?	There are no exemptions.	Private undertakings that do not meet the definition of "large undertaking" (described above) are not required to report. Note that public interest entities are required to report regardless of their size.	An entity may be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would be immaterial.	The draft recommends that there are no exemptions.
Are there any exemptions available if issuer files under some other extractive transparency reporting initiatives?	There are no exemptions.	The final rule includes an "equivalence clause" that may allow companies to publish a report on the basis of the mandatory requirements of a third country, provided that these are considered equivalent to the EU requirement.	This may be addressed in each enacting country's provisions.	Yes — it recommends exemptions for US and EU reporters. Others would be evaluated on a case-by-case basis.
Are there any exemptions available to certain payments where they are prohibited from being disclosed under a government or some other requirement?	No, the SEC will not allow for any exemptions from disclosure, even when disclosure may be prohibited by a country or a confidentiality clause in a contract. However, in its ruling, the US District Court vacated the Rule on the grounds that the Rule should provide for the reporting of payments on a confidential basis that would be compiled and summarized by the SEC.	The Accounting Directive contains no exception from its disclosure requirements for payments to governments even if there are laws in the country of extraction or logging forbidding such disclosures. The Accounting Directive also does not indicate a possibility for non-reporting where contract provisions prohibit the required disclosures.	There do not appear to be exemptions for these types of payments; however, each enacting country may have established different criteria.	This is not covered by the draft.
Is the reporting mandatory?	Yes	Yes	Yes, if adopted by country.	Yes
Is the annual report required to be audited?	No	No, however, the European Parliament may call for an external audit of the information at some point in the future.	Yes	Yes — it recommends that the verification standard be determined in line with existing securities safeguards and be consistent with the format of disclosure to provide reasonable assurance.

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How are the impacted industries defined?	Activities subject to disclosure include exploration, extraction, processing, export and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for any such activity. The Rule does not include marketing, transportation, refining or smelting activities. Logging activities are not included.	Article 36 of the Accounting Directive defines an "undertaking active in the extractive industry" as "an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed ...," which includes: ▸ Mining of certain metals and minerals ▸ Extraction of crude petroleum and natural gas ▸ Quarrying ▸ Extraction of peat and salt ▸ Operation of gravel and sand pits The logging of primary forests is defined to include "naturally regenerated forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed." Note that the final rule added "prospecting," which was not in the proposed directive. The EU requirements do not include processing, export and the acquisition of licenses, which are activities included in the SEC Rule.	While extractive industries are referenced generally, the EITI criteria repeatedly refer to oil, gas and mining. Each enacting jurisdiction may expand the scope to include logging and other extractive industries not specifically mentioned.	The Working Group recommends the following definition of "mining company": "a company that engages in the commercial development of minerals [i.e., makes any of the payments required], and is a reporting issuer under Canadian securities legislation."

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How do the rules apply to consolidated groups?	Any payments made by the issuer, a subsidiary of the issuer or another entity it controls (based upon facts and circumstances as defined under Rule 12b-2). The SEC defines control as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.	If the parent undertaking is required to prepare consolidated financial statements, it must also prepare the report of payments to governments on a consolidated basis. When a consolidated report is prepared, the subsidiaries are not required to report separately.	Those companies operating in the jurisdictions that have adopted EITI are required to report their payments to the federal and local governments.	Companies with at least a 50% ownership and/or controlling interest in a company must report on a consolidated basis in line with IFRS10. Consolidated Financial Statements. Companies holding a 20%–50% ownership interest in an entity, joint venture, partnership or similar investment arrangement will be required to report related payments on a proportionate-share basis, listing the relevant ownership interest — unless the reporting company is not able to reasonably access and verify the information.
What payments must be disclosed?	The Rule requires disclosure of all payments (including in-kind payments) that are "not de-minimis," including: ▸ Taxes that are based upon corporate income, production and profits (payments for taxes levied on consumption, such as value added taxes, personal income taxes or sales taxes are not required to be disclosed) ▸ Royalties ▸ Fees (including licensing fees) ▸ Production entitlements ▸ Bonuses ▸ Dividends (these need not be disclosed if paid as common or ordinary shareholders and under same terms as other shareholders unless the dividend is paid in lieu of production entitlements or royalties) ▸ Infrastructure improvements, such as building a road or railway (not including social payments, such as costs to build schools)	Payments are defined to include: ▸ Production entitlements ▸ Taxes levied on the income, production or profits of companies ▸ Royalties ▸ Dividends ▸ Signature, discovery and production bonuses ▸ License fees, rental fees, entry fees and other considerations for licenses and/or concessions ▸ Payments for infrastructure improvements Undertakings subject to the disclosure requirement must include in their reports any non-ordinary dividend payments paid to a host government, such as any dividends paid in lieu of production entitlements or royalties. According to the recitals to the Accounting Directive, such companies will not be required to disclose dividends paid to a host government as a common or ordinary shareholder of that undertaking as long as the dividend is paid to the government under the same terms as to other shareholders.	The following revenue streams should be included in the payments to be reported: ▸ Host government's production entitlement ▸ National state-owned company production entitlement ▸ Profit taxes ▸ Royalties ▸ Dividends ▸ Bonuses (such as signature, discovery, production) ▸ License fees, rental fees, entry fees and other considerations for licenses and/or concessions, as well as other significant benefits to government as agreed by the multi-stakeholder group	Payments are 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 (i.e., withholding tax) ▸ Infrastructure payments as required by law or contract (e.g., building a road or railway) ▸ Transportation and terminal operations fees ▸ Fines/penalties paid to government

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How are in-kind payments valued?	Issuer may report in-kind payments at cost, or if cost is not determinable, fair market value, and must include a brief description of how the value was determined.	Payments in kind are to be reported based on their fair value and volume. Where reported in value, notes should describe how such value was determined.	Where agreements based on in-kind payments, infrastructure provisions or other barter-type arrangements play a significant role in the oil, gas or mining sectors, the multi-stakeholder group is required to agree to a mechanism for incorporating benefit streams under the agreements into its EITI reporting process.	This is not covered by the draft.
To which governmental body(s) do the rules apply?	The Rule does not apply to any US governmental entities other than the Federal Government. The definition of "foreign government" includes a department, agency or instrumentality of a foreign government or a company owned by a foreign government. This would include the government of a state, province, county, district, municipality or territory under a foreign government.	"Government" includes any federal or national, regional or local authority of a Member State or of a third country. This includes a department, agency or undertaking controlled by that authority. "Control" is defined in the same manner that is used for determining members included in a consolidated financial statement.	Payments made to the national government as well as payments to local governments must be reported. Payments that may be immaterial for the national government may be material to the local government and must be reported.	Payments 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).
Is there a materiality or de-minimis threshold below which no disclosure for payments is required?	Any payment (single or series of related payments) that equals or exceeds US$100,000 during the respective fiscal year will be required to be disclosed.	Various materiality thresholds have been considered. The most recent proposal by the European Parliament stipulates that payments need not be disclosed if a single payment or multiple related payments do not exceed €80,000.	Companies are required to report only material payments. Materiality is determined ahead of time as members of the multi-stakeholder group develop the criteria.	Two separate thresholds are recommended: One threshold for issuers listed on the Toronto Stock Exchange set at US$100,000, to be aligned with the US and EU rules, and a second threshold for venture issuers set at US$10,000.
Should payments be reported on cash or accrual basis?	Payments are required to be disclosed on a cash basis.	Cash or accrual basis is not specified in the proposed directive.	The EITI criteria does not specify cash or accrual; however, the amounts reported are verified pursuant to an audit of the payments under international auditing standards.	Payments are required to be disclosed on a disaggregated and cash basis.

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What currency should companies use for the disclosures?	In either US dollars or the issuer's reporting currency. Translation, if applicable, can be in one of three ways: (1) By translating at the exchange rate existing at time of payment (2) Using the weighted average of the exchange rate during the period Or (3) Based upon the exchange rate as of the issuer's fiscal year-end The issuer must disclose the method used to calculate the currency conversion.	The directives do not address currency.	The currency is not addressed.	The draft recommends that disclosure of payments be in either Canadian currency or in the mining company's reporting currency, and that any currency conversions be clearly identified.
Do the rules provide any relief for situations where obtaining data for disclosure is overly burdensome?	No relief provided.	The European Parliament and the European Commission have proposed that, where entities prepare a consolidated report on payments to governments, an undertaking need not include payments in its report where: (1) Severe long-term restrictions hinder the parent undertaking in the exercise of its rights over the assets or management of a subsidiary undertaking Or (2) The information necessary for the preparation of the consolidated report cannot be obtained without disproportionate expense or undue delay	No relief provided; however, enacting jurisdictions may provide for relief under their provisions.	This is not covered in the draft.
How should the payments be reported?	Disclosures must be presented on a new Form SD, which should include a brief statement in the body of the form entitled "Disclosures of Payments by Resource Extraction Issuers" directing users to the exhibit detailing payment information, which is subject to Exchange Act Section 18 liability. The form will not require officer certifications.	Reporting will depend on implementation by each Member State.	Companies file their information pursuant to the agreed-upon reporting templates.	Disclosures should be submitted in an annual securities filing, in an electronic format that is broadly accessible to stakeholders, with clear guidance on how information should be uniformly disclosed by reporting companies.

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What kind of detail of each payment needs to be made available in the disclosure?	Each payment will be disclosed and listed in the attached exhibit to Form SD as follows: ‣ By type and total amount of payments made for each "project" ‣ By type and total amount of payments made to each government ‣ Total amount of the payments, by category ‣ Currency used to make the payments ‣ Financial period in which the payments were made ‣ Business segment that made the payments ‣ The government that received the payments and the country in which the government is located ‣ The project of the issuer to which the payments relate Only "material" payments are required to be reported. The SEC Rule provided that payments in their aggregate or individually exceeding US$100,000 are subject to reporting. Note that the disclosure requirements in the Rule were vacated by the SEC. In the decision, the US District Court suggested that an issuer would report the information to the SEC that might subsequently compile data so as to accommodate any prohibition that may exist under local country laws.	The report is required to include the following: ‣ The total amount of payments, including payments in kind, to each government within a financial year ‣ The total amount per type of payment, including payments in kind, to each government within a financial year ‣ Whenever the payments have been attributed to a specific project, the amount per type of payment, including payments in kind, for each such project within a financial year and the total amount of payments for each such project ‣ The original proposal provided that reporting would be required only when "material to the recipient government;" the final directive contains no reference to materiality. Instead, "any payment, whether made as a single payment or as a series of related payments" must be included in the report if it is €100,000 or more within a financial year.	Companies file their information pursuant to the agreed-upon reporting templates.	Consistent with Section 1504 of the Dodd-Frank Act, the report is required to include the following: ‣ The total amounts of payments made, by category ‣ The currency used to make the payments ‣ The financial period in which the payments were made ‣ The business segment of the resource extraction issuer that made the payments ‣ The government that received the payments, and the country in which the government is located ‣ The project of the resource extraction issuer to which the payments relate

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What about entity-level payments versus project-level payments? Do they need to be apportioned to the project?	Certain payments (such as corporate taxes) may be disclosed at the entity level rather than apportioned to the project level.	Only payments that may be attributed to a project are disclosed for that project. The Directive allows for entity-level reporting in a similar manner to the SEC Rule. Payments made by the undertaking for obligations levied at the entity level may be disclosed at the entity level rather than the project level.	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	This is not covered in the draft.
Is the term "project" defined?	The SEC did not define the term "project;" however, the Rule requires disclosure at both the project and country level. The SEC noted that issuers typically present information on a project basis in their Exchange Act filings. The SEC indicated that this is the level of project disclosure that it expects.	The Directive defines "project" as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project."	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	The Working Group recommends that "project" be defined in a consistent manner with the SEC rules implementing Section 1504 of the Dodd-Frank Act.
Is the phrase "business segment" defined?	It should be consistent with the reportable segments used by the issuer for financial reporting purposes.	No, the EU proposals do not require disclosure of payments by business segment.	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	No, it is not covered in the draft.
What is the effective date for these rules?	Resource extraction issuers will be required to comply with the rule for fiscal years ending after 30 September 2013; however, they won't be required to report payments made before 1 October 2013. As a result, many entities will report payments for a partial year in their first annual disclosures. Since the US District Court has vacated the SEC Rule, it has been remanded back to the Agency for re-writing. It is likely the effective date of the reporting requirements will be deferred.	Member States must adopt the Accounting Directive and Transparency Directive within two years of its entry into force, though they may provide that the transposed rules apply to financial statements for financial years beginning on January 1, or during the calendar year, of the year following the transposition deadline.	The EITI provisions are enacted within each country that is a candidate for becoming EITI compliant. The actual date of enactment will vary by country.	This is to be determined — comments to be received by the Working Party by 1 September 2013.

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Is there a regular reporting deadline?	Form SD will be required to be filed no later than 150 days after a issuer's fiscal year-end.	In general, the report is required to be filed within six months after the year-end of the undertaking.	The EITI criteria do not specify a filing deadline; however, continuous filing is suggested where possible. The information to report is subject to audits under international standards; therefore, filing when the audited financials are released is likely.	The draft recommends that the disclosure of payments to governments by Canadian mining companies be on an annual basis, in line with the fiscal year of reporting companies.
What is the electronic format of filing (e.g., PDF)?	The exhibit will be required to be formatted in an interactive format with Extensible Business Reporting Language (XBRL) tags.	This is not addressed in the directive.	This is not addressed.	Disclosures should be submitted in an annual securities filing.
Must wholly owned subsidiaries file separate reports if the parent has filed a consolidated report on payments to governments?	Such subsidiaries shall not be required to separately file but would file a notice on Form SD providing an explanatory note that the required disclosure was filed by its parent and the date the parent filed the disclosure. In addition, the parent must note its filing the disclosure on behalf of its subsidiary.	A subsidiary undertaking that is subject to the disclosure requirement must draw up a report for payments to governments that it itself has made, if those payments have not been included in a consolidated report (i.e., if its parent undertaking is not required to prepare consolidated financial statements pursuant to the Accounting Directive and/or is not subject to the laws of a Member State).	Those companies operating in the jurisdiction that have enacted the EITI provisions are required to file.	The draft does not address this.
Are there penalties for failing to comply with the relevant disclosure or reporting requirement?	While not explicitly stated in the Rule, the SEC could suspend and/or revoke a company's registration under Section 13 of the Exchange Act due to failure to make the required periodic filings with the SEC.	Article 47 of the amended directives on annual financial statements, consolidated financial statements and related reports of certain types of undertakings provides that the Member States are to provide rules for penalties for the infringement of the national provisions adopted pursuant to the proposed directive.	The EITI criteria do not specifically address penalties; however, the enacting jurisdictions address this.	The draft recommends that mining companies that fail to report, or report inaccurate information, be given a penalty that is consistent with the current enforcement regime of provincial securities disclosure requirements, and that such penalties are proportionate to the violation and its impact.

Challenges

As can be seen, there are disclosure standards pending for US SEC registrants, identified undertakings in the EU and a potential similar requirement in Canada. These disclosure standards all vary, so it will be a challenge for affected companies to ensure compliance since they may be subject to all three standards. Every country looking to become EITI compliant will establish disclosure and reporting standards that may differ from those outlined above for the US SEC and the EU directive requirements.

Even though the SEC Rule was vacated by the US District Court, there will likely be a final rule that must be complied with for some reporting period in the not too distant future. Although the current SEC Rule as presently drafted does not allow for any exemption from disclosure, even when disclosure may be prohibited by a country or a confidentiality clause in a contract, it is likely the SEC will adopt a rule that accommodates such an exemption. Companies should closely monitor the SEC to see how it complies with the US District Court's decision. For example, will the revised require confidential reporting to the SEC, which could then provide a compilation of data that meets the Congressional intent of the Dodd-Frank Act Section 1504?

Companies subject to the US rules will also need to determine how to report payments made under any joint operating arrangements. The reporting requirements for these arrangements are not clear because the SEC did not provide guidance on proportional reporting of payments made under joint operating agreements. The European directive is equally unclear as to whether the rules will apply to joint ventures, though multiple stakeholders in the legislative process have indicated their intent for such payments to be included. In addition, companies subject to the US rules will need to evaluate foreign entities to determine whether the entity could be considered a foreign government under the SEC's definition, which includes companies that are majority owned by a foreign government (e.g., a utility may be considered a foreign government).

There will need to be some judgment exercised in determining appropriate "project level" disclosure. We believe that the SEC will look to other disclosures (e.g., those made in other public documents) to evaluate a company's determination of a "project." Similarly, entities will need to consider whether suppliers, contractors and other third parties with whom they do business meet the definition of a "government entity" for which disclosure of payments is required.

All companies will want to identify the level of disclosure and reporting that will satisfy all standards to which they may be subject. That will mean identifying the appropriate level of granularity required among the disclosure requirements and establishing processes to gather the payment data and assembling for proper reporting. For example, identifying differences between cash basis and accrual reporting will also need to be considered and the related processes to compile the right information for the reporting standard.

How EY can help

EY has been at the forefront of research and analysis associated with a wide range of issues underlying resource nationalism and its impact on natural resource development.

EY can help companies with:

Our multidisciplinary network: Our network includes dedicated forensic, assurance and tax policy professionals who assist energy clients from across industries and in countries around the world. As needed, our teams access the deep knowledge and resources of EY, tapping into professionals with core competencies in information technology, environmental health and safety (EHS), internal audit, supply chain risk management, sustainability reporting and a range of other key areas.

Our established methodology:

We have an established five-step methodology to efficiently deliver your tax transparency reporting, including country-by-country reporting (CBCR) requirements as set out above. This is supported by effective data management tools (below) and is often undertaken together with a broader economic impact analysis to quantify your contribution to local and national economies.

1 Identify

- Define reporting requirements: taxes and countries in scope
- Develop template disclosures and consider where these should be reported
- Develop a "taxonomy" specific for your organization
- Consider wider economic impact analysis

2 Diagnose

- Review existing tax data collection tools and financial reporting templates
- Assess existing technology to support data collection
- Undertake a gap analysis to be able to deliver on objectives (e.g., resource and technology capabilities)

3 Design

- Customize data collection templates for each country
- Extract data for in-scope countries
- Consider agreed-upon procedures for internal/ external audit review

4 Deliver

- Collect, analyze and consolidate data
- Validate and identify exceptions
- Reporting within agreed templates
- Carry out susceptibility analysis to identify areas of vulnerability

5 Sustain

- Develop repeatable process
- Evaluate effectiveness on an annual basis
- Review extent of internal/ external audit support
- Reconsider economic impact analysis

Our data management: At EY, our forensic data analytics approach can be utilized to capture, track and report on payments as required under Dodd-Frank Act Section 1504. Our unique methodology groups related data and builds models of relationships among and between people, documents and events, giving clear visibility into high volumes of disparate data through visual analytics and customized reporting dashboards. Our forensic data analytics leverage proprietary EY technology, which is supported by subject matter resources in both model-based data mining and in the different global payments required by Dodd-Frank Act Section 1504. The data captured by using these forensic data analytics can be used to complete the Form SD exhibit detailing payment information in XBRL tags.

Our global reach: EY is a globally integrated organization, bringing together more than 167,000 people across 152 countries. With competencies in assurance, tax, advisory and transactions, our professionals are ready to address your needs regardless of your geography or the complexity of your operations.

About EY's Global Mining & Metals Center

With a strong but volatile outlook for the sector, the global mining and metals sector is focused on future growth through expanded production, without losing sight of operational efficiency and cost optimization. The sector is also faced with the increased challenges of changing expectations in the maintenance of its social license to operate, skills shortages, effectively executing capital projects and meeting government revenue expectations.

EY's Global Mining & Metals Center brings together a worldwide team of professionals to help you succeed — a team with deep technical experience in providing assurance, tax, transactions and advisory services to the mining and metals sector. The Center is where people and ideas come together to help mining and metals companies meet the issues of today and anticipate those of tomorrow. Ultimately it enables us to help you meet your goals and compete more effectively.

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About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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