

Legal update

Update on Canadian transparency reporting obligations in the mining and resource industries

April 2017

Corporate finance and securities

Mining and resources

The Canadian *Extractive Sector Transparency Measures Act* (ESTMA) came into force in June 2015, imposing reporting obligations on certain Canadian businesses engaged in the commercial development of oil, gas or minerals in Canada and abroad. Businesses with a connection to the province of Quebec may also be required to separately report pursuant to *An Act respecting transparency measures in the mining, oil and gas industries* (the Quebec Act) which came into force in October 2015.

This update summarizes the key considerations for ensuring compliance with Canadian transparency legislation.

Application

As we have [previously reported](#), Canadian companies engaged in such industries are required under ESTMA to report annually to Natural Resources Canada (NRCan) on certain categories of payments made to domestic and foreign governments (and related bodies) if they are either:

- Listed on a stock exchange in Canada; **or**
- Not listed on a stock exchange in Canada but have a place of business in Canada, do business in Canada or have assets in Canada and meet at least two of the following conditions for at least one of their two most recent financial years:
 - \$20 million in assets
 - \$40 million in revenue
 - employ an average of at least 250 employees

The Quebec Act, administered by the *Autorité des marchés financiers* (the Authority), imposes similar reporting obligations on companies engaged in the mining, oil and gas industries if they are either:

- Listed on a stock exchange in Canada and have their head office in Quebec; **or**

- Not listed on a stock exchange in Canada but have an establishment in Quebec, exercise activities or have assets in Quebec and, meet at least two of the following conditions for at least one of their two most recent financial years:
 - \$20 million in assets
 - \$40 million in revenue
 - employ an average of at least 250 employees

Timeline for disclosure

Companies with a financial year-end of December 31 are required to file their first reports by May 30, 2017, as the legislation requires that the first reports be filed 150 days after the first financial year-end following the coming into force of the legislation (and excluding financial years in progress at that time).

Payments to be disclosed

Payments of C\$100,000 or more made in relation to the commercial development of oil, gas or minerals must be disclosed if they fall within one of the following categories: taxes, royalties, fees, production entitlements, bonuses, dividends and infrastructure improvement payments. A series of payments in the same category made to the same payee and amounting to C\$100,000 or more must also be disclosed. In assessing whether payments are made to the same payee, departments, ministries, trusts, boards, commissions, corporations, bodies or other authorities that perform or are established to perform a power, duty or function on behalf of a particular level (e.g., national, regional, municipal, local authority) of government must be grouped together. For example, if several fee payments are made to the National Energy Board, Environment Canada and NRCan (which are all Canadian federal bodies) that add up to \$100,000 in a year, a fee payment of \$100,000 would be reportable.

Payments to aboriginal governments

Both ESTMA and the Quebec Act provide for a two-year deferral of the requirement to disclose payments to aboriginal governments, and the requirement to disclose such payments is effective June 1, 2017. The guidance published by NRCan clarifies that this means that companies with a December 31 fiscal year-end will need to include payments made for the period between June 1, 2017, and December 31, 2017, in their reports due May 30, 2018.

Under ESTMA, payments required to be disclosed will include payments to (i) aboriginal governments in Canada, (ii) bodies established by two or more aboriginal governments in Canada and (iii) trusts, boards, commissions, corporations or bodies or authorities that are established to exercise or perform, or that exercise or perform, a power, duty or function of government for either (i) or (ii).

Under the Quebec Act, payments required to be disclosed will include payments to (i) the Kativik Regional Government, (ii) native nations represented by all the band councils, or councils in the case of northern villages, of the communities forming the native nation, the Makivik Corporation, the Cree Nation Government, native communities represented by band councils, groups of communities so represented or, in the absence of such councils, any other native groups, (iii) bodies established by at least two native groups referred to in (ii), and (iv) boards, commissions, trusts or corporations or other bodies that exercise, or are established to exercise, powers or duties of government for any body referred to in (i) to (iii).

Substitutions

Companies subject to ESTMA or the Quebec Act and also subject to the European Union's *Accounting and Transparency Directives* (the Directives) may satisfy their reporting obligations by submitting a report prepared pursuant to the Directives. Should the deadline for filing pursuant to the Directives extend beyond the deadline under

ESTMA or the Quebec Act, in order to rely on the substitution exemption companies are required to notify NRCan or the Authority (as applicable) of their intention to submit a substitute report prior to the ESTMA or Quebec Act deadline.

Companies subject to the Quebec Act may similarly rely on a report submitted pursuant to ESTMA.

We note that the US Securities and Exchange Commission rule discussed in our [last legal update](#) was eliminated on February 14, 2017, by President Trump pursuant to a joint resolution of Congress passed under the *Congressional Review*.

Form of disclosure

Reporting entities under ESTMA are required to enroll with NRCan by completing and submitting a [contact form](#). Reports submitted to NRCan are published on [NRCan's website](#). Reporting entities under the Quebec Act are required to file their reports on SEDAR.

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