



New Reporting Requirements for Extractive Companies on ASX

Context

Transparency groups, including Publish What You Pay Networks⁽¹⁾ have been engaged for some time in efforts to secure stock exchange reporting requirements that require listed companies to disclose their payments made to governments in exchange for access to extractive resources.

In order to produce meaningful information, this reporting should include a high level of disclosure—with data broken down not only on a per country and/or per project basis—but also according to categories of payment (royalties, taxes, bonuses, etc.). Given the high-risk environment in which many extractive companies operate—risks exacerbated by public unrest related to corruption, or perceptions of corruption, between company and government officials—information on the economic relationships between companies and governments is vital to many users of financial data, including investors, creditors, shareholders and host country citizens.

Recognising the reputational risks that accompany a lack of transparency in extractive deal-making, some companies have chosen to disclose their payments to governments voluntarily. However mandatory listing requirements would ensure that this reporting becomes the norm rather than remaining an exception.

New US Standard introduced - Dodd-Frank Act

July 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act last year which, along with financial regulatory reform, includes the most rigorous and comprehensive accounting standards for extractive industry companies to date.⁽²⁾

Under the new law, all domestic and foreign companies registered with the U.S. Securities and Exchange Commission (SEC) must publicly report how much they pay governments for access to their oil, gas and minerals, beginning FY2012⁽³⁾ These payments must be reported on a country-by-country and a project-by-project basis, and will likely cover a wide range of the material benefits that accrue to governments from extractive deals.

Accelerating Global Momentum

The Dodd-Frank legislation will have widespread impact. Of the 32 largest internationally active oil companies, 29 are registered with the SEC or have other SEC reporting requirements. Eight of the world's 10 largest mining companies are also registered with the SEC, and will likely be covered by the final rules.

The adoption of country-by-country extractive company reporting in the U.S. comes amid an accelerating global movement for similar standards at the international level and has provoked calls for the new standard to be replicated in other countries.

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Australia should pass legislation to require all domestic and foreign companies registered with the Australian Stock Exchange to publicly report how much they pay governments for access to their oil, gas and minerals.

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Momentum is building across the European Union to replicate the mandatory reporting standards, with draft proposals expected by November. Klaus Rudischhauser, a senior European Commission official dealing with Africa told the Financial Times:

“The process is launched. We will make a proposal to include mandatory country-by-country disclosure by November, with Dodd-Frank as a minimum [standard]. The question at the moment is, should we include other companies not in the extractive industries such as forestry or consumer goods, and also should there be disclosure of profits in addition to disclosure of taxes.”

In February, the UK Finance Minister publicly supported the plan for new E.U. wide rules. The standards are currently undergoing consideration by the International Accounting Standard Board.

The World Bank recently released its Annual Extractive Industries Report in which it makes special mention of the Dodd-Frank legislation as an international standard to consider.

The Best Way Forward for Australia

As a major global player in the extractive industries and as a country committed to transparency and accountability, Australia should harmonise Australian stock exchange reporting requirements with the U.S.

Just a few months prior to the bill being introduced in the U.S., BHP Billiton at its Forum for Corporate Responsibility meeting in May, committed to publishing its payments to government in each country of operation. Though not yet enacted by BHP Billiton this commitment to voluntary disclosure demonstrates that companies recognise that the benefits of transparency outweigh any costs.

How these Standards relate to the Extractive Industries Transparency Initiative (EITI)

The disaggregation of payment information complements the aims of the Extractive Industries Transparency Initiative (EITI), which works to level the playing field by requiring all companies operating within participating countries to disclose their payments to governments. The EITI's universal company reporting standard helps to mitigate company concerns that unilateral disclosures could somehow put them at a competitive disadvantage. Widespread mandatory listing requirements would further level the playing field, by subjecting most major extractive companies—including an increasing number of state-owned companies—to similar disclosure rules, making visible a large proportion of their activities worldwide.

Endnotes:

(1) Jubilee Australia is a member of the Australian Publish What You Pay Network along with Oxfam Australia and Transparency International.

(2) A handful of other stock exchanges have notable requirements, such as the London Stock Exchange's Alternative Investments Market which puts extra disclosure requirements on extractive industry companies and the Hong Kong Stock Exchange which started mandating country-by-country reporting in early 2010; however to this point nothing has yet reached the level of the US standards.

(3) The SEC will issue final rules establishing exactly how issuers will report information under this legislation in April, 2011.