



Mandatory Reporting for Extractive Sectors Under Canadian Law

By Catherine Wade, Dentons Canada

The Government of Canada has committed to implement its proposed standards on mandatory reporting of payments for the extractive sectors by June 2015.

Consultation on the proposals was completed earlier this year and the proposals have been announced. The proposals are directed primarily at Canadian and foreign companies operating in the extractive sector, both in Canada and abroad.

Reporting is not limited to publicly traded companies (as in the United States), but rather follows the European Union (EU) model of also applying to larger private companies.

Under the proposals, companies will be required to file reports on a publicly accessible website. The Canadian approach advocates a form of third party verification using recognized accounting standards to ensure accuracy of reporting.

Why?

The underlying rationale is to provide relevant information to citizens to enable them to bring pressure on government to use the financial contributions from this sector to benefit society.

The proposals also provide companies with a tool for communicating their financial contribution to economies in which they operate. Disclosure may provide additional value to investors, potential investors and other financial partners through increased transparency.

This, along with improved consistency, provides visibility on the actual economic cost of particular projects and information necessary for a comparative financial analysis. In short, the proposals should act as an additional accountability tool for assessing the social license of particular companies and the industry.

What payments and to whom?

The proposals require reporting on payments made to governments, wherever located. Unlike the United States and EU, the original Canadian proposal included reporting on payments made to certain Aboriginal groups. However, in late August, the Minister of Natural Resources, Greg Rickford, announced a two-year deferral of this requirement. The reason stated was to allow time for further consultation with Aboriginal groups regarding the proposed disclosures.

The approach taken by the Canadian government is intended to be consistent with the approach taken by the United States and the EU.

The threshold for reporting payments is \$100,000 or more (either cumulative over the year or one-time payments) made to all levels of government, both domestically and internationally. The currency for the threshold is based on the jurisdiction of the regulator; reporting in the United States will be US dollars and in the EU will be euro.

Although the proposal is not entirely prescriptive, the following categories of payments are to be reported on a project-level:

- Taxes levied on the income, production or profits of companies, excluding consumption taxes;
- Royalties;
- Fees, including license fees, rental fees, entry fees and other considerations for licenses and/or concessions;
- Production entitlements, including payments made in-kind;
- Bonuses, such as signature, discovery and production bonuses;
- Dividends paid in lieu of production entitlements or royalties (excludes dividends paid to governments as ordinary shareholders); and
- Payments for infrastructure improvements, such as roads and electricity.

The proposal tries to maintain the model proposed under the Dodd-Frank Act in the United States by defining a "project" as an operational activity performed by an extractive company. The proposal leaves it to the particular company to define the parameters of a project for its reporting purposes, but the definition is to be set in accordance with the company's particular industry and business context.

When?

The Canadian government has set a tight timeline for implementation. It has advised that if the provincial and territorial governments do not implement regulatory requirements within the time specified, the federal government will enact legislation by April 1, 2015 to move the initiative forward.

The federal government has been working to get buy-in from the provincial governments to form a national securities regulator, which could be the regulator for the proposal, if the current securities regulatory regime of 13 regulators is not willing to take it on. To date, only British Columbia, Saskatchewan, Ontario and New Brunswick have agreed to work toward a national securities regulator framework. These four provinces represent approximately 75 per cent of Canadian-listed companies, and 53 per cent of the total market capitalization of Canadian-listed companies.

The actual implementation date remains unclear, particularly as the resources to oversee and enforce the final legislation are not yet identified at the federal government level and the timing of a potential national securities regulator continues to be uncertain. **M**

As a partner in Dentons' Vancouver office, Catherine Wade brings nearly 30 years of experience to her practice, which focuses on securities, corporate finance, and mergers and acquisitions.