



February 7, 2012

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-4628

Re: Comments of EarthRights International on International Developments Related to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Cross,

EarthRights International (ERI) submits this Comment to draw the Commission's attention to developments in two foreign jurisdictions – South Korea and Peru – that demonstrate the international effects of Section 1504 and the significance beyond our borders of the standards set by the Commission to implement Section 1504.

South Korea

In December 2010, Assemblyman Cho Seung-Soo and ten other legislators introduced in the Korean National Assembly a proposal to amend the Overseas Resources Development Act.¹ This bill requires all Korean companies conducting overseas natural resource projects to report the government payments associated with those projects to the Korean Government. The Korean Financial Services Commission is in turn directed to make those reports public annually, and to deliver them to the National Assembly.² Assemblyman Cho was motivated by the desire to protect investors, promote transparency, and bring to light cases in which bribery, subsidies to host governments, and contracts in which the deployment of Korean troops is promised in return for access to resources expose Korean taxpayers to financial risks.

Although Assemblyman Cho is a member of the political opposition, his bill was submitted to the chief of staff of the legislature's Knowledge Economy Committee (KEC), which issued a report concluding that in light of EITI and Section 1504, it would be appropriate to require Korean extractive companies to disclose their payments to the governments in which they operate.³ The report does note, however, that the Legislature should consider whether the amendment – which, unlike Section 1504, would apply only to domestic companies – would create disadvantages for Korean industry, clearly signaling that the Committee would look to the level of disclosure established internationally and would not likely approve of disclosure standards that exceed the rules for Section 1504.⁴

Although the bill did not pass during the 2011 session of the National Assembly, Assemblyman Cho

1 See Proposal to Amend to the Overseas Resources Development Act (2010) (S. Korea), attached hereto as Appendix A (original in Korean). The bill was submitted with at least ten other members of the National Assembly as co-sponsors.
2 *Id.* arts. 19-2 & 19-3. In its original form, the bill also calls for the disclosure of natural resource contracts, and for financial transaction disclosures that exceed the reach of Section 1504.
3 See Kim Ho Sung, Chief of Staff, Knowledge Economy Committee, Korean National Assembly, *Report on the proposal to amend the Overseas Resource Development Act* (June 2011), attached hereto as Appendix B (original in Korean).
4 Moreover, the report concludes that the aspects of Assemblyman Cho's bill that go beyond Section 1504 – i.e. contract disclosures – are not appropriate and does not approve of them.

intends to introduce a new payment transparency bill that includes only items that were approved by the KEC report. Given the thumbs-up from the KEC, a political shift toward policies favoring economic justice,⁵ and predictions that a coalition likely including Assemblyman Cho's Democratic Labor Party will win Korea's legislative elections later this year,⁶ it is believed that the legislation has a strong chance of passing in the near-term, especially if the Commission issues strong rules on Section 1504.

Peru

In January of this year, members of the ruling party in the Peruvian Congress introduced the Proposed Law on Transparency and Access to Information in the Non-renewable Natural Resource Extraction Industries.⁷ This bill creates a Permanent Multisectoral Commission (PMC) that will collect information on the payments made by all large and medium-sized extractive companies to all Peruvian government entities at all levels. The PMC is to publish annual reports presenting the payment data, and all information used to reconcile company payments with government revenues is directed to be published on a disaggregated basis.⁸

The legislative proposal is the culmination of Peru's accession to EITI and thus has a somewhat different purpose from Section 1504. It specifically aims to allow reconciliation and verification of industry payments and government receipts, and the responsible oversight of Peru's natural resource revenues. Crucially, however, it reaffirms the commitment to transparency in the extractives sector that also undergirds Section 1504. To that end, it guarantees the availability of payment disclosure information by explicitly making an exception to the confidentiality policy that normally governs tax disclosures, and ensures that information related to extractive industry payments is subject to Peru's version of the Freedom of Information Act.⁹

While the legislative proposal is still merely a bill, the fact that it has been proposed by legislators from the governing party in a government that has moved to increase the revenues collected from extractive companies¹⁰ suggests that it stands a strong chance of passing in the near term.

Conclusions

The enactment of Section 1504 has helped to crystallize a global norm of payment transparency. The administrative record in this rulemaking process already reflects progress in the European Union, Australia, and Canada. However, as the materials submitted with this Comment demonstrate, other –

5 See, e.g., Lee Sun-young, "Korean political parties shifting policies leftward," *Korean Herald* (Jan. 30, 2012), at <http://www.koreaherald.com/national/Detail.jsp?newsMLId=20120130000981>.

6 See, e.g., "Open alliance for the ruling party," *Dong-A Ilbo* [East Asia Daily] (Jan. 19, 2012), at <http://english.donga.com/srv/service.php3?biid=2012011980368>; Andy Jackson, "The coming year in South Korean politics," *Asiancorrespondent.com* (Jan. 4, 2012), at <http://asiancorrespondent.com/73121/the-coming-year-in-south-korean-politics/>; Andy Jackson, "With blood in the water, Korean progressives in an electoral feeding frenzy," *Asiancorrespondent.com* (Dec. 27, 2011), at <http://asiancorrespondent.com/72769/with-blood-in-the-water-korean-progressives-in-an-electoral-feeding-frenzy/>.

7 "Perú: Proyecto de Ley busca transparentar pagos que hace la industria extractiva al gobierno," *Servicios en Comunicación Intercultural Servindi* (Jan. 17, 2012), at <http://servindi.org/actualidad/57552>.

8 See Legislative Proposal on Transparency and Access to Information in the Non-renewable Natural Resource Extraction Industries (2012) (Peru), attached hereto as Appendix C (original in Spanish).

9 *Id.* arts. 5 & 6.

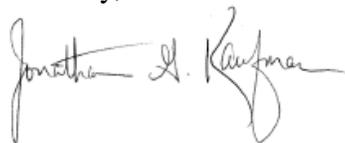
10 Felipe Bedoya, "Peru Negotiates Windfall Profits Tax," *Revenue Watch Institute Blog* (Oct. 18, 2011), at <http://www.revenuewatch.org/news/blog/peru-negotiates-windfall-profit-tax>.

perhaps less likely – regions of the world are looking to the U.S. for leadership and are preparing to follow suit. In Korea, legislators have explicitly recognized that Section 1504 opens the door for a new international standard that is appropriate for Asian economies as well as Western ones. In Peru, the governing party is acknowledging that disaggregated data on government payments does *not* constitute business secrets, but rather public information that is necessary for responsible revenue management.

However, these potential advances are still fragile, and we fear that if the Commission further delays the rules or undermines the effectiveness of its rules with exemptions and weak definitions, it will derail the progress we are seeing around the world. We call on the Commission to swiftly enact rules consistent with the statutory language that honor and advance the shared understanding of a strong international norm of payment transparency on which Section 1504, the EU proposal, and the bills in Korea and Peru are based.

We thank the Commission for this additional opportunity to supplement the record and address critical issues in the rulemaking process, and are available to provide further information as requested.

Sincerely,



Jonathan G. Kaufman
Staff Attorney
EarthRights International

Cc:

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission

The Honorable Luis A. Aguilar
Commissioner
U.S. Securities and Exchange Commission

The Honorable Daniel M. Gallagher
Commissioner
U.S. Securities and Exchange Commission

The Honorable Elisse B. Walter
Commissioner
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Mr. Mark Cahn
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Appendix A

Bill to Amend to the Overseas Resources Development Act (2010) (S. Korea)

Amendment to the Overseas Resources Development Act (Representative Sponsor: Assemblyperson Cho Seung-Soo)

Submitted: December 2010

Sponsored by: Currently more than 10 assemblypersons

Editor's note: The Overseas Resources Development Act has for many years required all developers of overseas resources (mineral, agricultural or livestock) to report their activities to the government. The Act also authorizes the government to create special purposes companies for overseas resources development.

Reasons for Proposal

With the increasing interest in developing and owning natural resources, public and private entities' participation in such projects have also increased. However, the terms of contracts of those projects and the nature of the expenses thereof have not been disclosed, restricting the Government's supervision on the subsidies and loans made toward those projects and possible bribes to the host governments. Also, the relationship between natural resources development and our Government's deployment of troops is not being clearly disclosed.

In June 2008, the Energy Ministers of G8 plus China, India and Korea welcomed in their Joint Statement the implementation of the Extractive Industries Transparency Initiative (EITI) by the countries exporting oil and gas as well as minerals, and also the United States recently passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, both of which are the efforts to improve transparency and accountability in the overseas resource-extractives sector.

In keeping pace with this trend, this Amendment requires all enterprises participating in overseas resources development to prepare business reports, which shall contain details of the business including contracts made with host governments and details of expenses, and submit them to the Government. The Amendment also requires the Financial Services Commission (hereafter referred to as FSC) to disclose the said business reports to the public, and to submit and report them to the National Assembly, thereby protecting the related investors and guaranteeing the transparency and viability of the projects.

Highlights of the Amendment

- A. A corporation organized under the laws of Korea is required to submit a business report, which shall contain the details of the overseas resources project and its expenses, to the competent Minister and the FSC, and they may be examined by relevant officials. (Article 19-2)
- B. The FSC is required to annually disclose the business reports to the public, thereby insuring the transparency of the project and the protecting the investors. (Article 19-3)
- C. The FSC is required to submit the business reports to the National Assembly no later than March of each year. The business reports shall contain related documents such as copies of contracts and agreements signed by the government, local governments, and public institutions with the host government. If required by the Assembly, the Chairman of the FSC shall attend the Assembly to answer questions regarding the business report. (Article 19-4)

Amendment to the Overseas Resources Development Act

The Overseas Resources Development Act shall be amended as follows:

The Article 19 shall be amended as follows:

Article 19 (Reporting and Inspections)

- (1) The competent Minister may, when deemed necessary, order an overseas resources developer of Republic of Korea nationality to report on the business or submit documents thereon.
- (2) The competent Minister may have public officials under his control inspect or investigate books, documents, and other things necessary for conducting business at the offices of an overseas resources developer of Republic of Korea nationality.
- (3) The public officials inspecting or investigating in accordance with paragraph (2) shall carry certificates identifying their authority and present them to the relevant persons.

The following new Articles 19-2 to 19-4 shall be inserted:

Article 19-2 (Reporting and Investigations on Corporations)

- (1) A corporation organized under the laws of Korea is required to submit a business report, which shall contain the details of overseas resources projects and their expenses, to the competent Minister and the Financial Services Commission.
- (2) The business report under paragraph (1) must include expenses and revenues prescribed by Presidential Decree, and shall include expenses such as government subsidies, loans, taxes, use fees, and license fees, and revenues such as operating revenues and incidental revenues.
- (3) When deemed necessary, the competent Minister and the Chairman of the FSC, in regards to the submitted business report under paragraph (1), may have relevant public officials inspect books, documents, and other things necessary for conducting business at the offices or places of business of the corporation.
- (4) In order to conduct the inspection under paragraph (3), the inspected corporation must be notified of the inspection plan seven (7) days prior to the inspection, including the date, purpose, and contents of the inspection; provided, however, that the preceding shall not apply where an urgent inspection is necessary or it is deemed that the purpose of the inspection may not be achieved due to destruction of evidence if the corporation is notified in advance.
- (5) The public officials under paragraph (4) shall carry certificates identifying their authority and present them to the relevant persons.
- (6) Necessary matters such as the procedure and method of preparing the business reports under paragraph (1) and its due date shall be prescribed by the Presidential Decree.

Article 19-3 (Disclosure of Business Reports)

- (1) The Financial Services Committee, for the purpose of enhancing transparency in overseas resources development and investor protection, shall disclose annually the business reports submitted pursuant to Article 19-2 Paragraph 1.
- (2) The scope and method of the disclosure in Paragraph 1 shall be set forth in the Presidential Decree.

Article 19-4 (Submission of the business report to the National Assembly)

- (1) The FSC is required to submit the business reports under paragraph 1, Article 19-3 to the National Assembly no later than March of each year.
- (2) The business reports under paragraph (1) shall contain related documents such as copies of

contracts and agreements signed by the government, local governments, and public institutions (entities defined by Article 4 of the Act on the Management of Public Institutions) with the host government.

- (3) If required by the Assembly, the Chairman of the FSC shall attend the Assembly to answer questions regarding the business report under paragraph (1).

The following subparagraphs under Paragraph 2, Article 24-2 shall be inserted:

(Article 24-2 - A person falling under one of the following shall be punished to imprisonment up to 5 years and a fine up to 50 million Korean won).

3. A person who has not submitted a business report or submitted a fraudulently prepared business report under Paragraph 1, Article 19-2.
4. A person who has rejected, obstructed or evaded inspections under Paragraph 3, Article 19-2.

Addenda

The Act shall enter into force 3 months after the date of its promulgation.

Appendix B

Kim Ho Sung, Chief of Staff, Knowledge Economy Committee, Korean National Assembly, *Report on the proposal to amend the Overseas Resource Development Act* (June 2011)

Report on the proposal to amend the Overseas Resources Development Act

[representative sponsor: congressman Cho Seung-Soo]

2011. 6.

by Kim Ho Sung, Chief of Staff, Knowledge Economy Committee

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Introduction

1. The proposal was sponsored by 11 congressmen, including Cho Seung-soo; proposed on December 16, 2010; submitted to the Committee on December 17, 2010.
2. Intent of the proposal
 - a. While there has been a recent increase in investment by Korean governmental and private business entities in resource-rich countries, the lack of information about contracts with governments and payments made to governments for the commercial development of resources has raised concerns about bribery, public subsidies, and troop deployments.
 - b. In 2008, China, India, Korea, and the Energy Ministers of the G8 launched EITI. Recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law in the U.S.
 - c. In resonance with the global trend, the proposal is designed to protect investors and promote transparency by requiring the industry to disclose such information as contracts

and payments and report the information to the Financial Services Commission and the National Assembly.

3. Summary

- a. Corporations incorporated pursuant to the statutes of Korea shall submit to the competent Minister and the Financial Services Commission business reports that include the terms and payments for commercial development of resources. Public officials are conferred the authority to investigate the reports. (proposed article 19-2)
- b. The Financial Services Commission shall disclose the business reports every year to promote transparency and protect investors in the commercial development of foreign resources. (proposed article 19-3)
- c. Financial Service Commission shall submit to Congress business reports on the commercial development of foreign resources, including contracts made by Korean governmental entities with host governments, no later than March of each year. If called upon by Congress, the Chairman of the Financial Service Commission is required to testify before the National Assembly regarding business reports. (proposed article 19-4)

Review

1. Global trend toward promoting transparency in extractive industries
 - a. Extractive Industries Transparency Initiative (EITI)
 - i. EITI, which was announced by Tony Blair at the World Summit for Sustainable Development, is an international human rights movement with a voluntary code of conducts that aims to ensure that revenues from oil, gas and mining extraction serve as a basis for economic growth and poverty reduction by requiring industry to disclose their payments and host governments to disclose their earnings.
 - ii. In resource-rich countries in Africa and Middle East, governments are not accountable to their citizens. While officials steal the proceeds of natural resource extraction, citizens remain mired in poverty. EITI addresses the recourse curse by tracing revenues and expenditures in the extractive industries.
 - iii. EITI participants include about 35 resource-rich countries, 17 countries including UK and the US, and about 50 multinational corporations in the extractive industries.
 - b. Dodd-Frank Wall Street Reform and Consumer Protection Act
 - i. Dodd-Frank was signed into law in July 2010. In response to financial crisis, it strengthens regulation of financial markets and institutions.
 - ii. It takes the form of amendments to existing statutes in the area of financial regulation, such as the Bank Holding Company Act of 1956 and the Securities Exchange Act of 1934, rather than enacting a new law. It adds one section to the Exchange Act entitled “Disclosure of payments by resource extraction issuers.”
 - iii. The section requires resources extraction issuers to include in an annual report information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government for the purpose

of the commercial development of oil, natural gas, or minerals. The purpose of the section is to protect investors. The details on disclosure are consistent with EITI guidelines.

- iv. Payments include taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits. Payments also include the type and total amount made for each project and to each country.

2. Comparison between the global trend and the proposal

- a. The proposal was inspired by, among others, EITI and Dodd-Frank. Below is the comparison between the EITI Guidelines and the proposal in terms of intent and contents.

- b. In terms of intent

- i. The reasons for the proposal are that for lack of information about contract terms and payments, concerns arose over bribery of host governments, a lack of oversight of Korean governmental subsidies given to Korean extractive industries, and the deployment of troops in return for investment in host countries.
- ii. It should be noted that the proposal advocates disclosure of governmental subsidies and other support for industry.
- iii. The approach, which goes further than the EITI (which only requires disclosure of payments by industry to host governments), is seen from the perspective of the constitutional right of public access to information.

- c. In terms of contents

- i. The information that is required to be disclosed by the proposal includes: (i) payments by resource extraction issuers, (ii) contracts made by governmental (or state controlled) resource extraction issuers, (iii) contracts made by (Korean) government in relation to resource extraction.
- ii. What is common between the proposal, EITI, and Dodd-Frank is the disclosure of payments to host governments. Other provisions set the proposal apart from EITI and Dodd-Frank.

3. Comparison between corporate disclosure requirements in place in Korea and the proposal

- a. corporate disclosure requirements in Korea

- i. Articles 159, 160, and 163 of the Financial Investment Services and Capital Markets Act and rules promulgated thereunder provide that a stock-listed corporation and other corporations specified by Presidential Decree shall submit their business reports to the Financial Services Commission and the Korea Exchange. The Financial Services Commission and the Korea Exchange shall disclose the information.
- ii. See chart below

Corporations and Matters Subject to Regular Disclosure under Current Laws and Regulations

Companies required to	<ul style="list-style-type: none"> • Corporations listed on the KOSPI Exchange • Issuers who have listed any of the following securities on the securities
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submit reports	<p>exchange: equity securities other than stocks; unsecured corporate bonds; convertible bonds; bonds with warrant, participating bonds, or exchangeable bonds; instruments representing preemptive rights to new stocks; securities depository receipts; or derivative-combined securities</p> <ul style="list-style-type: none"> • Issuers who publicly offered or sold stocks and/or securities listed above • Issuers who are corporations subject to external audit under the Act on External Audit of Stock Companies, if the number of persons who hold each securities are 500 persons or more
Matters to be included in business reports	<ul style="list-style-type: none"> • An overview of the company; details of its business; remuneration of executives; matters concerning financial affairs and annexed statements; accounting auditor's audit opinion; director's management diagnosis and analysis; matters concerning the organization of the company and its affiliated companies; matters concerning shareholders; matters concerning executives and employees; details of transactions with interested parties; other matters necessary for investor protection • If the corporation has a subsidiary company, matters concerning the corporation's financial affairs and other matters shall be described on the basis of consolidated financial statements, and its separate financial statements shall be included there.
Accompanying documents excluded from public disclosure	<ul style="list-style-type: none"> • Accounting auditor's audit reports' auditor's audit report; auditor's opinion letter of assessment on the current status of operation of the internal monitoring system of the corporation; conglomerate's combined financial statements; professional verification; business report; internal accounting management system operation report.

- iii. In short, companies required to report regularly include stock-listed corporations and issuers who have listed equity securities other than stocks and other securities on the securities exchange; the business reports should include matters such as details of business, matters concerning finance, matters concerning its organization and affiliated companies. The companies shall submit accounting auditor's audit reports, business reports and etc. as accompanying documents
- iv. In addition, section 28 of the KOSPI Market Disclosure Regulation provides that KOSPI-listed corporations are free to disclose business matters which may have material influence on the decisions of investors or about which the investors must be informed regarding investment in natural resources.

b. Comparison

- i. The section compares current laws with the proposal to determine whether the disclosures required by the proposal are already covered by current laws and regulations on corporate disclosure.
- ii. There is little overlap between the information disclosed under the laws and regulations on corporate disclosure and that required by the proposal, such as contracts and payments.
- iii. For corporations whose only business is natural resource development, overall expenditure on resource development could be captured through the existing

disclosure requirements for “financial matters.” However, there appears to be no means of capturing net payments made to host governments in current law or regulation. Moreover, the disclosure of contracts is completely foreign to the current corporate disclosure system.

- iv. The “exploration and evaluation of mining resources” provision of K-IFRS [the International Financial Reporting Standards, as adopted by Korea] does not cover the information required by proposal.

4. Opinion of Korean extractive industry on the proposal

- a. The Energy & Mineral Resources Development Association of Korea (EMRD) opposes the proposal for the following reasons:
 - i. It is unfair to regulate only the extractive industries, because there is no proof that extractive industries are more lenient on bribery than other industries.
 - ii. The disclosure of payments and contracts raises concerns about business secrets.
 - iii. The proposal could put Korean extractive industry at a disadvantage with respect to foreign extractive industries.

5. Conclusion of the Committee

- a. The proposal is designed to protect investors and promote corporate transparency by requiring governmental and private business entities to disclose payments and contracts for the purpose of commercial development of oil, natural gas, and mining.
- b. The proposal requires: (i) disclosure of business contracts, expenditures, and revenue, (ii) submission to Congress of contracts made by governmental business entities, (iii) submission to Congress of contracts made by government in relation to resource development.
- c. It seems to be inappropriate to require submission of contracts to Congress, because it could breach confidentiality clauses and contracts are usually protected business secrets.
- d. There seems to be no problem with implementing “the disclosure of payments made to foreign governments for the purpose of commercial development of oil, natural gas, and mining” to promote transparency in light of the standards of EITI and Dodd-Frank.
- e. However, we need to take into account potential adverse impacts, e.g. the possible consequence of putting domestic industry at a disadvantage with respect to foreign ones. In terms of how to legislate, the Financial Investment Services and Capital Markets Act can be amended to include payment disclosure in its corporate disclosure system.
- f. Given the need to monitor governmental support of extractive industries – including the guarantee and construction of infrastructure in host countries, the type and dollar amount of such governmental support both per project and per agency would need to be reported to Congress as part of the oversight of the Executive branch.

Appendix C

Legislative Proposal on Transparency and Access to Information in the Non-renewable Natural Resource Extraction Industries (Peru) (2012)

Legislative Proposal

Transparency and Access to Information in the Non-renewable Natural Resource Extraction Industries

Art. 1 – Objectives of the Law

The objectives of this Law are to contribute to transparency of tax and non-tax payment streams for the concession contracts and resource usage contracts arising from the activities of non-renewable resource extraction industries in Peru; and to grant to the Permanent Multisectoral Commission created for this end – or such Commission as acts in its place – effective mechanisms to obtain the information and to make transparent the flow of payments and the use of resources obtained by the State from the non-renewable extractive industries.

Art. 2 – Objectives of the “Permanent Multisectoral Commission for the Pursuit and Supervision of Transparency of Payment Streams and the Use of Resources Received by the State from the Mining and Hydrocarbon Extraction Industries”

The objectives of the “Permanent Multisectoral Commission for the Pursuit and Supervision of Transparency of Payment Streams and the Use of Resources Received by the State from the Mining and Hydrocarbon Extraction Industries” (“Permanent Multisectoral Commission”) or such Commission that acts in its place, are the following:

1. To reconcile through independent means the tax and non-tax payments made by extractive companies in Peru with the revenues received by State agencies from such extractive companies.

The reconciliation of payments and revenues should be accomplished according to the criteria, procedures, and standards established by EITI, to which the Peruvian Government has acceded.

2. To make transparent the use of extractive industry revenues at all levels of Government and, particularly, in the regional and local jurisdictions in which the extractive industries locate their relevant productive activities.
3. To make transparent the concessionary contracts granted to extractive companies in Peru, as well as the processes by which such contracts and concessions are granted.
4. To make its reports, which will include the results of the abovementioned actions, available to the public and to the Congress of the Republic.

Art. 3 – Scope of Authority of the Permanent Multisectoral Commission

All large and medium-sized extractive companies in the mining, petroleum, and natural gas sectors are within the scope of authority of the Permanent Multisectoral Commission.

All large and medium-sized extractive companies in the mining, petroleum, and natural gas sectors are obligated to present to the Permanent Multisectoral Commission all information required by the Commission on the subjects covered by this Law.

Art. 4 – Reports of the Permanent Multisectoral Commission

The Permanent Multisectoral Commission will prepare, present, and publish the following reports:

1. The “Report on Reconciliation of Payments and Revenues from Extractive Industries”: This Report will include the contrasted and/or reconciled data on all payments made by extractive companies and the revenues received from the companies by all relevant public agencies and levels of Governments, jointly with the opinion and recommendations of the conciliating firm. This Report will be published annually.
2. The “Report on the Audit of Concession Contracts”: This Report should include the results and opinions of the auditor or investigator on legal compliance with respect to the processes and procedures applied in the granting of concessionary contracts during the audited period. It will also contain an analysis of the prior procedures leading to the signing of the respective concessionary contracts. This Report will be published annually.
3. The “Annual Report of the Commission”: This Report should contain a detailed declaration of all the activities accomplished by the Commission, including financial statements.

Art. 5 – Responsible Authorities for Reconciliation and Validation

For the preparation of the Report on Reconciliation of Payments and Revenues from Extractive Industries or its validation, the Presidency of the Council of Ministers, the Ministry of Economy and Finance, the Ministry of Energy and Mines, the National Tax Administration Superintendency, the Institute of Geology, Mining, and Metallurgy, and the state-owned enterprise PERUPETRO and any public entity in possession of relevant information will inform the administrator or auditor designated by the Permanent Multisectoral Commission of all tax payments (including the Mining Assessment and the Special Mining Tax) and non-tax payments which they have received in the previous year based on the payment obligations of the owners of the concessions.

Confidentiality of tax information does not apply to information provided for the purposes of compliance with this Article.

Art. 6 – Nature of the Information

All information in the possession of the public agencies concerned with the procedure for determining and releasing the *canon minero* [mining tax that is redistributed to the producing region], mining royalty, natural gas royalty, redistributive tax on hydrocarbons, and concessionary fees constitutes public information and is subject to Law No. 27806, Law on Transparency and Access to Public Information.

Art. 7 – Presentation of the Information

The Presidency of the Council of Ministers, the Ministry of Economy and Finance, the Ministry of Energy and Mines, the National Tax Administration Superintendency, the Institute of Geology, Mines, and Metallurgy, and the state-owned enterprise PERUPETRO will provide and publish all information required for the preparation of the reconciliation studies mentioned in Article 4 in a disaggregated manner, for each of the extractive companies that falls within the scope of this Law.

Art. 8 – Regulations

The regulations for this Law will be approved by means of a Supreme Decree endorsed by the President of the Council of Ministers, the Minister of Economy and Finance, and the Minister of Energy and Mines within ninety (90) calendar days after this law goes into effect.

Art. 9 – Repeal Provision

All provisions that are contrary to this law are hereby repealed.

Explanation of Motivations

I) Antecedents

On March 16, 2005, the National Government of Peru expressed its support for the Declaration of the London Conference on the Extractive Industries Transparency Initiative (EITI), promoted by the Government of the United Kingdom as a member of the G8.

On May 15, 2005, the Minister of Energy and Mines, in the name of the Government of Peru, declared the adherence of the National Government of Peru to the principles of EITI and to its implementation process, especially in the energy and mining sector, among civil society organizations, extractive companies (principally petroleum, mining, and natural gas) and the Peruvian state.

During the month of June 2005, the “EITI Implementation Action Plan” was formulated with the participation of the Ministry of Energy and Mines, representatives of other Peruvian state agencies, companies, and civil society organizations.

At the same time, the Ministry of Energy and Mines signed a Memorandum of Understanding with the International Bank of Reconstruction and Development (IBRD) and the International Development Association (IDA), with the objective of realizing the initial stages of EITI implementation.

The abovementioned Memorandum of Understanding entailed the necessity of approving the EITI Implementation Action Plan and of creating a Working Group “that would institutionalize and give permanence to the EITI implementation process” and execute the Action Plan.

By means of Supreme Decree No. 027-2006-EM,¹¹ the EITI Implementation Action Plan was approved, and the EITI Working Group was created.

Supreme Decree No. 027-2006-EM established the Working Group for a period ending December 2006, at which time it would present a “Complementary Action Plan.”

By means of Supreme Decree No. 030-2007-EM,¹² the mandate of the Working Group was extended to June 2008.

The mandate of the Working Group was extended once more by means of Supreme Decree No. 044-

¹¹ Published May 12, 2006.

¹² Published June 5, 2007.

2008-EM¹³ until December 31, 2009.

The mandate of the Working Group was extended a final time by means of Supreme Decree No. 020-2010-EM¹⁴ until December 31, 2010.

II) The creation of the “Permanent Multisectoral Commission for the Pursuit and Supervision of Transparency of Payment Streams and the Use of Resources Received by the State from the Mining and Hydrocarbon Extraction Industries”

By means of Supreme Decree No. 028-2011-EM,¹⁵ the Permanent Multisectoral Commission for the Pursuit and Supervision of Transparency of Payment Streams and the Use of Resources Received by the State from the Mining and Hydrocarbon Extraction Industries was created.

This Multisectoral Commission, which is permanent, is tasked with gathering information, supervising, pursuing, and monitoring transparency and the use of the resources and fiscal revenues received by the State in any form from the mining and hydrocarbon industries.

This policy is restricted to these two extractive industries.

The abovementioned Commission is also responsible for actions targeted to implement and develop EITI in our country.

The specific objective posited by the policy is to complete the process of EITI validation, as well as to complete and publish the results of the second National Extractive Industries Transparency Report.

In order to achieve this objective, the Commission will use all the inputs provided by the prior Working Group, created by Supreme Decree No. 027-2006-EM and which was not a permanent commission.

The Multisectoral Committee is subject to the Ministry of Energy and Mines.

It is established that the Multisectoral Commission is permanent in nature, in accordance with the terms of Article 36, subsection 3 of Law No. 29158,¹⁶ the Organic Law on Executive Power.

III) Essential Content of the Proposed Law on Transparency and Access to Information in the Non-Renewable Natural Resource Extraction Industries

1) Objectives of the law

The objectives of the Law are:

¹³ Published September 6, 2008.

¹⁴ Published April 20, 2010.

¹⁵ Published June 11, 2010.

¹⁶ “Permanent Multisectoral Commissions – Created with specific goals in order to fulfill the functions of monitoring, auditing, or publishing technical reports. They are formally created by means of a supreme decree endorsed by the President of the Council of Ministers and the authorities for the involved Sectors. They are governed by Internal Regulations approved by Ministerial Resolution for the Sector to which they are subject.”

- a) To contribute to transparency of tax and non-tax payment streams for the concession contracts and resource usage contracts arising from the activities of non-renewable resource extraction industries in Peru.
- b) To grant to the Permanent Multisectoral Commission created for this end – or such Commission as acts in its place – effective mechanisms to obtain the information and to make transparent the flow of payments and the use of resources obtained by the State from the non-renewable extractive industries.

2) Scope of Authority of the “Permanent Multisectoral Commission”

All large and medium-sized extractive companies in the mining, petroleum, and natural gas sectors are within the scope of authority of the Permanent Multisectoral Commission.

All large and medium-sized extractive companies in the mining, petroleum, and natural gas sectors are obligated to present to the Permanent Multisectoral Commission all information required by the Commission on the subjects covered by the proposed Law.

3) Reports of the “Permanent Multisectoral Commission”

The Permanent Multisectoral Commission will prepare, present and publish the following reports: the “Report on Reconciliation of Payments and Revenues from Extractive Industries,” the “Report on the Audit of Concession Contracts,” and the “Annual Report of the Commission.”

4) Capacity of the Reconciler and/or Validator and Obligations of Public Functionaries

For the preparation of the Report on Reconciliation of Payments and Revenues from Extractive Industries or its validation, The Presidency of the Council of Ministers, the Ministry of Economy and Finance, the Ministry of Energy and Mines, the National Tax Administration Superintendency, the Institute of Geology, Mining, and Metallurgy, and the state-owned enterprise PERUPETRO and any public entity in possession of relevant information will inform the administrator or auditor designated by the Permanent Multisectoral Commission of all tax payments (including the Mining Assessment and the Special Mining Tax) and non-tax payments which they have received in the previous year based on the payment obligations of the owners of the concessions.

Confidentiality of tax information does not apply to information provided for the purposes of compliance with this Article.

5) Nature of the Information

The proposed law establishes that all information in the possession of the public agencies concerned with the procedure for determining and releasing the *canon minero*, mining royalty, natural gas royalty, redistributive tax on hydrocarbons, and concessionary fees constitutes public information and is subject to Law No. 27806, Law on Transparency and Access to Public Information.

6) Presentation of the Information

The proposed law establishes that the Presidency of the Council of Ministers, the Ministry of Economy and Finance, the Ministry of Energy and Mines, the National Tax Administration Superintendency, the Institute of Geology, Mines, and Metallurgy, and the state-owned enterprise PERUPETRO will provide

and publish all information required for the preparation of the reconciliation studies mentioned in Article 4 in a disaggregated manner, for each of the extractive companies that falls within the scope of this Law.

Effect of the Enactment of the Policy on National Legislation

The proposed Law establishes mechanisms for transparency and access to information in the non-renewable natural resource extraction industries; as such it includes a very specific exception to the guarantee of confidentiality of tax information.

Cost-Benefit Analysis

The proposed Law has no additional cost implications to the Public Treasury and will generate very significant benefits for the Peruvian state because it will make transparent all the payments and revenues received by the State, at all levels, coming from the non-renewable natural resource extraction industries, these actions constituting mechanisms for the fight against corruption.