The Resource Revenue Transparency Working Group

Recommendations on Mandatory Disclosure of Payments from Canadian Mining Companies to Governments

January 16, 2014

Acknowledgements

The Resource Revenue Transparency Working Group would like to thank the many individuals, civil society organizations, companies, government officials, investor institutions and academics that have contributed their knowledge and time over the course of developing this framework.The strong support for this initiative expressed by all stakeholder groups is highly appreciated.

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I. Context for Framework

Every year, approximately $3 trillion in mineral, oil and gas resources are exported worldwide. Revenues from these sectors have the potential to transform economies for the better, in Canada and every country engaged in the extraction of natural resources. Used smartly and efficiently, they can catalyze economic development, spur growth and reduce poverty. Yet, too often this vast potential goes unrealized. In some cases, particularly where good governance is lacking, resource revenues may be lost to corruption, graft or plain mismanagement. In other cases, funds owed to the government are not collected, starving governments of a much-needed source of financing for development. In still others, secret payments and a lack of clarity around who benefits from resource extraction breeds mistrust between communities, governments and companies, generating unstable business environments, threatening the security of supply, and even, in extreme cases, contributing to violent conflict.

Greater transparency surrounding the collection of resource revenues can help to address these issues, and improve the development outcomes of resource extraction for billions of citizens in oil, gas and mineral producing countries. In particular, improved revenue transparency can help to provide citizens and communities with the information necessary to hold their governments accountable; deter corruption and bribery; inform public debate on resource development; assist investors to properly analyze the financial and political risks inherent in extractive sector development; and help companies secure a social license to operate. As recognized by the Extractive Industries Transparency Initiative, it is helpful to citizens and investors alike when disclosure is contextualized, informing improved analysis and decision-making.

Canadian actors have a critical role to play in achieving these outcomes, by working to improve transparency, as almost 60% of the world's mining companies are listed on Canadian stock exchanges. In recent years, the Toronto Stock Exchange alone has handled over 75% of global public mine financings. With Canadian mining companies operating in more than 100 countries worldwide, Canada's ability to impact international natural resource governance standards through domestic action is significant.

In recognition of Canada's impact on global resource governance, the Mining Association of Canada, the Prospectors & Developers Association of Canada, Publish What You Pay Canada, and the Revenue Watch Institute jointly formed the Resource Revenue Transparency Working Group (the "Working Group") in September of 2012. The objective of the Working Group is to develop a reporting framework for Canadian extractive companies – with the overarching goal of establishing greater transparency in the mining sector in Canada and overseas. The access to information resulting from the implementation of the Working Group's recommended framework is meant to provide citizens around the world with the tools they need to achieve accountable, responsible and transparent management of natural resource development. Specifically, the Working Group seeks to develop a framework that, implemented by a regulatory body, would require Canadian mining companies to publicly disclose the payments they make to governments in every country in which they operate, disaggregated by project.

More than 100 of the largest Canadian companies listed on U.S. stock exchanges are already required to disclose this information under securities rules established under Section 1504 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and additional companies will be covered by amendments to the Transparency and Accounting Directives in the EU which includes new mandatory payment reporting requirements passed into law in June and currently being transposed into national law/regulations. In addition, more companies will be covered by rules currently being considered

in Norway and by the EITI, which is now being implemented in 41 countries, with the U.S. and the U.K. also seeking candidacy.

Acknowledging the emergence of mandatory disclosure requirements in a variety of jurisdictions around the world, the Working Group supports incorporating appropriate equivalency mechanisms into its framework, in part to help move towards a globally consistent reporting standard and not create undue reporting burdens for mining companies listed in multiple markets. The Working Group believes that this principle of "equivalency" in reporting is essential, and that the selected venue must include an equivalency mechanism for the implementation of this framework.

II. Venue for Implementation

The Working Group recommends disclosure requirements for Canadian mining companies be mandatory, not voluntary, to ensure that all relevant information is available and accessible to stakeholders, and that companies cannot opt out of compliance. After consideration of the most appropriate venue, or "home," for Canadian disclosure requirements, the Working Group recommends the implementation of a mandatory disclosure framework through securities regulation with a strong equivalency provision to align with other jurisdictions such as the U.S. and the EU. This recommendation aligns with the U.S. model (where such disclosure is regulated by the U.S. Securities and Exchange Commission ("SEC") and recognizes the existing powers of Canadian securities administrators to regulate the disclosures of public entities in Canada.

A consequence of establishing a reporting regime in securities requirements is that disclosure will be mandatory only for public companies. However, the benefits of this approach are clear. Such a regime will take advantage of the experience of the Canadian securities administrators in receiving and managing disclosure filings, and likely require fewer start-up costs than a new reporting and compliance regime. In addition, the use of securities regulation would mean that the disclosure requirements recommended here would extend to foreign companies who seek to raise capital in Canadian markets.

Implementation of mandatory disclosure requirements through provincial securities regulations will require harmonization between provincial securities regulators in order to ensure consistency. Fortunately, strong precedent exists for this, as evidenced by the Canadian Securities Administrators' adoption of national guidance and instruments. While the fragmented nature of the Canadian system may prove more challenging than in countries with a national regulator, the feasibility of implementing mandatory disclosure requirements into provincial securities requirements across Canada is significantly aided by the support observed by the Working Group for this type of disclosure among industry, investors and civil society.[1]

[1]For more information, please see the following summaries of the Working Group's open consultation and workshops, including one dedicated specifically to addressing venue, here: www.pwyp.ca/en/issues/transparency-working-group

III. Equivalency

As noted above, Canadian disclosure requirements need to include explicit recognition and acceptance of equivalent reporting regimes. Any Canadian legislation implementing this framework needs to mandate that a company may comply with Canadian transparency requirements by submitting a report that it has prepared and filed in another jurisdiction to a standard equivalent to Canadian reporting requirements. Such a report will fully satisfy any and all Canadian transparency reporting requirements. The Working Group recommends that equivalent regimes include the current requirements of Section 1504 of the U.S. Dodd-Frank Act and those established by the EU Transparency and Accounting Directives.

In the event that jurisdictions develop and adopt additional similar transparency disclosure requirements, or amend reporting requirements currently deemed equivalent, each would have to be evaluated on a case-by-case basis to determine whether they are sufficiently equivalent to the Canadian standard.

The Working Group suggests that equivalence be determined based on objective criteria, including:

- Scope of reporting;
- Definition of control;
- Payment categories;
- Minimum payment threshold;
- Project definition;
- Exemptions;
- Format of disclosure;
- Regularity of reporting; and
- Standard of verification.

IV. Scope of Reporting

The Working Group recommends a reporting framework that requires all mining companies that are reporting issuers under Canadian securities legislation to publicly disclose certain types of payments related to the commercial development of mineral deposits made to Canadian and foreign governments, including payments made to national and sub-national authorities[2] (i.e. states, provinces, counties, districts, municipalities or territories under a national government, including state-owned enterprises[3]) that meet or exceed a minimum reporting threshold, in each country of operation and for each project, as described in greater detail below.

[2] For the purposes of this framework, the working group did not address payments made to Aboriginal governments. The working group is aware that payments to Aboriginal governments are being considered for inclusion in the process currently being led by NRCan.

[3] State-owned enterprises are defined as companies that are at least majority owned by a foreign government.

V. Definition of "Mining Company"

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.
[t]This definition is appropriate for meeting the intent behind new disclosure requirements, and is in line with the requirements outlined in the EU Transparency and Accounting Directives and those in Section 1504 of the U.S. Dodd-Frank Act.

VI. Control / Subsidiaries

To create a level playing field, the Working Group recommends that companies required to comply with the recommended reporting framework include not only parent companies, but their subsidiaries and any other entities over which the parent company exerts control, directly and indirectly, joint control or significant influence. The Working Group recommends that reporting requirements apply to all companies, their subsidiaries, controlled, and jointly controlled and/or associated entities that fit one or more of the following criteria:

1. The company controls the entity according to the definition of control included in International Financial Reporting Standard (IFRS) 10. Companies will report 100% of the payments made by controlled entities.
2. The company jointly controls the entity through a joint arrangement as defined in IFRS 11. Companies with joint control over an entity will report payments on a proportionate basis, listing the proportionate interest.
3. The company exerts significance influence over the entity according to IAS 28. Companies with significant influence over another entity will report payments on a proportionate basis, listing the proportionate interest.
    a. To avoid duplication, in those cases where a company exerts significant influence over an entity controlled by another publicly-listed company that files mandatory payment disclosure in Canada or another equivalent reporting regime (see: III Equivalency), the company with significant influence will not be required to report.
    b. Where a company exerts significant influence over an entity and cannot reasonably access and verify the information needed to fulfill the disclosure obligation, the company will include the following statement in its filing: "Recognizing the reporting obligation, the issuer has made efforts to obtain the information. However, the issuer has been unable to fulfill the obligation due to an inability to access and verify the required data."

VII. Defining "Commercial Development"

The Working Group recommends that covered companies disclose all payments that fall into the designated categories (described in Section VIII below) and meet the minimum reporting threshold (described in Section IX below) at every stage of the project life-cycle and extractive sector value chain outlined here:

Project Life Cycle:

Value Chain:

Companies would not be required to disclose by project life cycle or value chain stage (e.g., a company does not have to disaggregate payments by value chain stage such as production or transportation). The comprehensive approach of these models simply ensures that the trigger for disclosure of payments is based on the simple act of a covered company making a payment to government, and that the reporting obligation ends at the cessation of payments to government, for instance in the event of the relinquishment or sale of a property. The inclusion of all stages of the value chain complements the Working Group's recommendation to include payments made related to initial exploration phases (including signature bonuses and license fees), to transportation and export phases (including transportation payments, terminal operations fees and export duties) as well as after mine closure (including payments related to remediation) (see Section V).

VIII. Required Payment Categories

The Working Group recommends that disclosure be required for the following types of payments, on a disaggregated and cash basis:

- 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

The fees and bonuses identified are not an exclusive list, and there may be other fees and bonuses a Canadian mining company would be required to disclose; each reporting company will need to consider whether payments it makes fall within the payment types covered by the rules.

These payments are commonly recognized as important components of extractive sector transactions, and are consistent with the payments required to be disclosed under Section 1504 of the Dodd-Frank Act and the minimum reporting requirements of the Extractive Industries Transparency Initiative (EITI). The Working Group also recommends the inclusion of an additional payment disclosure category that represents common payments made by extractive sector companies, which are relevant to citizens and communities in resource-rich countries.

IX. Payment Reporting Threshold

The Working Group recognizes that given the unique nature of the Canadian mining sector, which is comprised of many junior and exploration companies, that a lower reporting threshold than that established in Section 1504 of the U.S. Dodd-Frank Act may be useful in order to ensure reporting by a broad scope of companies. As such, the Working Group recommends proposing two separate thresholds, for large and small issuers in particular – for example, one threshold for issuers listed on the TSX set at $100,000, to be aligned with the U.S. and EU rules, and a second threshold for venture issuers set at $10,000. The threshold for small issuers is seen to be important as, without a lower threshold, a large part of the Canadian mining sector would effectively report no revenue paid. This would not be consistent with one of the objectives of this initiative, which is to communicate the flow of revenues more clearly and credibly.

These thresholds should not limit a company from disclosing at a lower payment threshold, including at the $10,000 level, since these payments may be relevant to citizens and there may be value in reporting at a lower threshold in order to paint a more comprehensive picture of company contributions to local and national economies. Companies may want to work with local communities and other stakeholders to identify whether disclosing at a lower threshold has meaningful benefits.

X. 'Project' Definition

The Working Group recommends that companies disclose information disaggregated by project, but where payment liabilities arise at the entity level they should be reported accordingly. The Working Group recommends, for the purposes of project-level payment disclosure by Canadian companies, that "project" be defined in a manner consistent with the August 2012 rules implementing section 1504 of the U.S. Dodd-Frank Act. The Working Group understands that the term project is routinely employed by mining companies in their disclosure documents and seeks to provide additional guidance that, in the vast majority of cases, should not substantially affect current practice. In the August 2012 rules implementing Dodd-Frank Section 1504, U.S. regulators provided clear guidance to companies on project-level reporting, to make explicit that extractive companies "routinely enter into contractual arrangements with governments for the purpose of commercial development" such that "the contract […] generally provides a basis for determining the payments, and required payment disclosure" established by Section 1504 of

the U.S. Dodd-Frank Act. Consistent with these rules, the Working Group recommends that a project, for the purposes of this reporting, not be defined:

- on basis of its materiality to the company;
- as equivalent to a reporting unit;
- as an aggregation of all activities within a country;
- or as a geologic basin.

While the SEC stated that, in general, legal agreements (e.g. contracts, licenses, leases, concessions, etc.) issued by a government which give rise to payment liabilities should serve as the basis for determining a "project", U.S. regulators also declined to strictly define this term in order to allow some flexibility to issuers "in applying the term to different business contexts."

The EU Parliament and Member States provided further guidance for "project" definition in the legal changes to the EU Transparency and Accounting Directives that are consistent with the intent of the limitations placed on project definition under Section 1504 of the U.S. Dodd-Frank Act. Specifically, the EU has defined a "project" for the purposes of extractive sector payment reporting 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. 'Substantially interconnected' legal agreements should be understood as a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the Government, which gives rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement."

XI. Exemptions

The Working Group recommends that there be no exemptions from the reporting recommended by this framework made for any mining company as defined here.

Reporting exemptions run counter to the spirit of improving transparency with enhanced company disclosures, and would result in uneven reporting and differential treatment of companies. Additionally, reporting requirements established for extractive companies by the EU Transparency and Accounting Directives explicitly do not allow for any exemptions from reporting.

XII. Form of Disclosure

The Working Group recommends that payment disclosure be filed on SEDAR in a separate form on an annual basis. Filing mandatory payment reporting in a separate form is aligned with the approach adopted in the U.K. and the U.S. and allows information to be accessed easily by end users. In addition, the use of a separate form will create clear, consistent standards across companies, and by not including it in offering documents such as the prospectus, it will prevent payment disclosure from delaying other filings. The use of a separate form has additional benefits for governments, communities, and civil society organizations as it will make disclosure documents easy to locate, access, and download. Additionally, a separate form could have utility in other applications, creating a level playing field and a consistent regime for reporting regardless of the venue. The Working Group also recommends that the form include a secure prescribed format that is standard across all companies and allows the user to easily compile, search and sort the data.

XIII. Format of Disclosure

The Working Group recommends that company disclosure of information on payments to governments be reported on a disaggregated basis in an annual securities filing made available to the public in full. Payment reporting information should be disclosed in an electronic format that is broadly accessible to stakeholders and accompanied by clear guidance on how information should be uniformly disclosed by reporting companies.

The Working Group recommends that information be clearly identified and organized for clarity and ease of access. Specifically, consistent with information required for the reporting of payments under Section 1504 of the U.S. Dodd-Frank Act, mining companies subject to such disclosure should be required to clearly indicate the following information:

- 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 (reportable segments for the purposes of financial reporting) of the resource extraction issuer that made the payments;
- the government that received the payments, and the country in which the government is located; and
- the project of the resource extraction issuer to which the payments relate.

The Working Group recommends that disclosure of payments be required in either Canadian currency or in the mining company's reporting currency, and that any currency conversions be clearly identified.

XIV. Regularity of Reporting

The Working Group recommends that the disclosure of payments to governments by Canadian mining companies be required on an annual basis, in line with the fiscal year of reporting companies. Where a company acquires new projects, a reasonable amount of time should be granted to allow for the alignment or implementation of accounting systems necessary to access the required payment data. This amount of time may vary, depending on whether the newly acquired project(s) are already reporting to another jurisdiction or not. In these cases, the starting date for disclosure should be consistent with reporting dates for other filings (e.g., AIF, MD&A).

XV. Verification / Audit Requirements

The Working Group recommends that the verification standard be determined in line with existing securities safeguards and requirements and be consistent with the format of disclosure to provide reasonable assurance.

XVI. Penalties

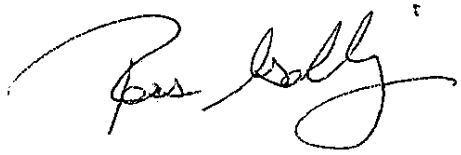
The Working Group recommends that mining companies that fail to report, or report inaccurate information, be given a penalty that is consistent with the current enforcement regime of provincial securities disclosure requirements, and that such penalties are proportionate to the violation and its impact.

XVII. Schedule of Implementation / Effective Date

The Working Group recommends that mandatory disclosure requirements be implemented in an expeditious manner, while providing reporting companies with the appropriate time to adjust their accounting and reporting systems to comply with new disclosure regulations.

The *Recommendations on Mandatory Disclosure of Payments from Canadian Mining Companies to Governments* have been approved by all four member organizations of the Resource Revenue Transparency Working Group, undersigned here.

Claire Woodside Date
Director, Publish What You Pay Canada



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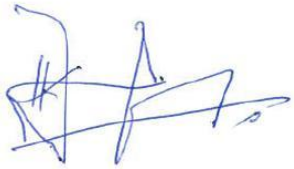

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