

*Transparency Disclosure  
Requirements*

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# Public Policy Initiatives

- There is a particular focus on the extraction industry
  - disclosure requirements are putting greater focus on environmental and social issues
- Disclosure is being used as a means to encourage public policy aims
- Transparency initiatives are designed to:
  - improve accountability by governments in resource rich-countries
  - reduce corruption
  - encourage more funding for social and economic development
- There is also a belief that in some countries, companies may be paying too little for the rights to resources and that transparency disclosure may serve to get the balance right

# Addressing the “Resource Curse”

- Extractive Industries Transparency Initiative
  - 32 countries have provided EITI reports
  - over \$960 billion in total government revenue reported
  - recently announced a new standard to report revenue on a project-by-project basis
- US Congressional mandate in Dodd Frank (Section 1504)/ SEC Rule 13q-1 – mandatory public disclosure by SEC reporting companies starting with 3Q 2013 payments – first reports due May 2014
- Transparency disclosure requirements soon to be adopted for companies in the EU
  - Combination of US and EU requirements will cover 90% of the world’s major extractive companies\*

\* According to Transparency International

# *Payments to Governments by Resource Extraction Issuers*

- SEC Rule is based broadly on the EITI concepts – requires disclosure of payments made in connection with the commercial development of oil, natural gas or minerals
- Detailed disclosure required under the US rule :
  - type and total amount of payments for each project
  - type and total amount of payments made to each government
  - total amount of payments by category (taxes, royalties, fees, etc)
  - currency used and the financial period in which the payments relate
  - government that received the payments and the country in which the government is located
  - business segment of the company that made the payment

# Payments to Governments by Resource Extraction Issuers

Continued

- Many unclear definitional issues :
  - Scope of activities covered by “commercial development of oil, natural gas or minerals” Includes “processing” but not refining. Excludes transportation but includes transportation for export
  - Applies to controlled entities – JVs - operated vs. non operated
  - How to define “project”
  - Payment types - includes taxes, royalties, fees, production entitlements, bonuses, dividends. “Consumption” taxes are excluded. Are excise taxes, port charges, payments for services included?
  - Includes infrastructure payments but not social or community payments – how to distinguish these?
  - How to value “in-kind” payments?
- Clarification on some of these issues needed from SEC

# *Payments to Governments by Resource Extraction Issuers*

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- **API Challenge to SEC Rule**
  - suit filed in the US Court of Appeals claiming the SEC acted arbitrarily and capriciously in assessing the rule's economic implications and in declining to adopt proposals advanced by petitioners at the comment stage that would have addressed economic and commercial implications of the rule
  - lawsuit also claims that the rule's requirement for companies to disclose this information individually and publicly will require companies to reveal trade secrets or pricing strategies to competitors – constituting an infringement of the First Amendment prohibition on compelled speech

# *EU Transparency Initiative*

- EU proposed rules now designed to more closely match US rules and contain a mutual recognition provision
- applies to listed and large\* non-listed oil, gas mining and logging companies in EU
- publish payments (e.g. taxes on profits, royalties and licence fees) in excess of €100,000 to governments and local authorities
- on a country and project basis
  - to allow communities to monitor payments from extraction companies in their local area

\* Defined as a company which exceeds two of the following:  
Turnover €40 million; total assets €20 million; employees 250

# Conflict Minerals

- Dodd-Frank requires SEC reporting companies to disclose:
  - whether their products use minerals that originated in the Democratic Republic of Congo or its adjoining countries (“DRC”)
- The Rule outlines a three step process:

## Step one:

- Determine if “conflict minerals” are **necessary to the functionality of the products** that it manufactured or contracted to be manufactured
- Manufacture does not include mining/extraction of minerals but could include the processing of oil and gas
- “Conflict minerals” currently include gold, tin, tungsten and tantalum which are used in a wide array of products. It could also include any other mineral determined by the US Secretary of State

# Conflict Minerals

*Continued*

## Step two:

- If any such products are identified, the company is required to conduct a **reasonable country of origin inquiry** and disclose in a report to the SEC whether their conflict minerals were sourced from the **DRC**, adjoining areas **or unknown areas** and proceed to Step Three (unless the minerals did not originate in a Covered Country or are from scrap or recycled materials)

## Step three:

- Conduct a **supply chain due diligence** pursuant to a recognized due diligence framework
- File a **conflicts minerals report** that describes any products that contain minerals that are not DRC conflict free
  - “DRC conflict free” means does not directly or indirectly benefit armed groups in a Covered Country
- Report required to be audited

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