New disclosure obligations for Quebec mining, oil and gas companies

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Quebec mining, oil and gas companies are henceforth subject to the imposing disclosure regime under the *Act respecting transparency measures in the mining, oil and gas industries* (the "**Act**"), which came into force last October 21.

This statute echoes the *Extractive Sector Transparency Measures Act* (Canada),[1] which took effect on June 1, 2015, and follows a global trend to increase the transparency of mining, oil and gas exploration and development. The measures provided for in the Act are aimed at discouraging and detecting corruption, as well as fostering the social acceptability of these activities.

Under the Act, the *companies subject to the Act* are required to declare in a statement, as of the next fiscal year following their current fiscal year on October 21, 2015, the *payments covered* by the Act made to *payees* for each project and country in which they have operations. Furthermore, this obligation extends to the subsidiaries controlled by a company subject to the Act. The statements will be made public for five years.

Companies subject to the Act

Is subject to the Act any company which engages in exploration for or development of mineral substances or hydrocarbons and which meets any of the following requirements:

> its securities are listed on a stock exchange in Canada and its head office is in Quebec; or
> it has an establishment in Quebec, exercises activities or has assets in Quebec and, based on its consolidated financial statements, meets at least two of the following three conditions for at least one of its two most recent fiscal years: $20 million or more in assets, $40 million or more in revenue, an average of 250 employees or more.

Payments covered

The payments covered are monetary payments or payments in kind made to the same payee during a fiscal year, where the total value of those payments is equal to or greater than $100,000.

The following payments are subject to disclosure:

> taxes and income tax, other than consumption taxes and personal income taxes

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royalties
fees, including rental fees, entry fees, regulatory charges and any other consideration for licences, permits or concessions
production entitlements
dividends other than those paid as an ordinary shareholder of a person subject to the Act
bonuses, including signature, discovery and production bonuses
contributions for infrastructure construction or improvement

Payees

The Act defines a payee as a government, a body established by two or more governments, a municipality or an aboriginal community,[2] as well as an agent exercising powers or duties for such payees.

Application and administration of the Act

The administration of the Act is assigned to the Autorité des marchés financiers ("AMF").

To avoid duplication, the Act provides that a statement filed in accordance with the requirements of another state may be substituted for the statement required under Quebec law if the government has determined by regulation that the requirements of that state are an acceptable substitute.

The statement must be accompanied by a certificate made by an officer or director of the company subject to the Act, or by an independent auditor, attesting that the information contained in the statement is true, accurate and complete.

In addition to the investigative powers generally available to the AMF under the *Act respecting the Autorité des marchés financiers* (chapter A-33.2), the Act gives it the power to require the communication of any document or information considered useful for purposes of the Act. This includes a list of the mining, oil or gas exploration or development projects in which the company subject to the Act has an interest, an explanation of how the disclosed payments were calculated, and a statement of any policies implemented for purposes of meeting the obligations under the Act.

The AMF may also require an audit by an outside independent auditor of the statement or the documents pertaining to the disclosed payments.

Penalties

Lastly, significant penalties are provided for a failure to comply by a company subject to the Act. In particular, the Act provides for administrative monetary penalties for which the directors and officers are jointly and severally liable, unless they demonstrate that they exercised due care and diligence to prevent the failure which led to the penalty. In addition, the penal provisions provide for a fine of up to $250,000 for a failure to comply with certain significant provisions of the Act.

Quebec mining, oil and gas companies will be well-advised to stay informed of the regulations that will be passed by the provincial government and which could provide for exceptions or extensions to the requirements of the Act regarding the companies subject to the Act, the payments covered and the payees concerned.

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[1] *Need to Know* newsletter, june 2015.
[2] A transitional period is provided for regarding payments made to aboriginal communities. The Act will apply to these communities beginning on June 1, 2017.

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