

## Key Takeaways

On 28 October 2014 the Australian Greens Party introduced its draft Corporations Amendment (Publish What You Pay) Bill 2014 (**Bill**). The Bill, if passed by both houses of the Federal Parliament, would amend the Australian Corporations Act 2001 (Cth) (**Corporations Act**) to impose a mandatory disclosure regime on affected companies. It would require disclosure to relevant foreign government entities of any eligible payments of AU\$100,000 or more by specified affected companies engaged in 'resource extraction' anywhere in the world.

## Background

The Bill stems from the "Publish What You Pay" group, a movement that advocates for greater transparency for payments made by companies in "extractive industries". In particular, the movement seeks to tackle corruption in developing countries where Western companies have been accused of making undeclared payments to government officials. The Bill aims to align Australia with US, UK, EU and Canadian transparency standards for extractive industries and ensure that the benefits from the revenue derived by these industries flows directly to the affected country's population.

## Which Companies Would Be Affected?

The reporting requirements under the Bill are intended to apply to any of the following entities required to prepare a financial report for a financial year under the Corporations Act and engaged in one or more "resource extraction activities" or "resource extraction projects" anywhere in the world, or a holding company of a body corporate that does so. The entities are:

- Australian public companies (both listed and unlisted);
- large proprietary companies (i.e. companies with more than 50 employees, revenues in excess of AU\$25 million, or assets with a value in excess of AU\$12.5 million).

There is also a reporting requirement that applies to public companies or large proprietary companies that participate in a joint venture or similar arrangement that engages in one or more resource extraction activities, or is a holding company of a body corporate that does so, will also be required to report under the Bill.

## What are "Resource Extraction Activities" and "Resource Extraction Projects"?

The Bill defines "resource extraction activities" as those that involve the:

- exploration, prospecting, discovery, development or extraction of minerals, oil, natural gas or similar materials; or
- logging of primary (i.e. old growth) forests under this definition.

"Resource extraction projects" are defined as any one or more resource extraction activity governed by a contract, licence, lease, concession or similar arrangement under which payments (or payments in kind) are made to a Government Entity.

## What are "Government Entities"?

"Government Entities" is a broad concept and includes:

- the Australian Commonwealth and a government of a State or Territory;
- the government of a foreign country (or part of a foreign country);
- authorities of any government referred to in this definition; and
- any company controlled by a government referred to in this definition.

## What Sorts of Payments Will this Regime Cover?

A reportable payment (including a payment in kind) to a Government Entity in relation to a resource extraction activity may include:

- production entitlements;
- taxes levied on the income, production or profits of a company (not including taxes levied on the personal income of individuals or on consumption or sales);
- royalties;
- dividends;
- signature, discovery or production bonuses;
- licence fees, rental fees, entry fees or other consideration for licences or concessions;
- infrastructure improvements;
- social payments;
- security services.

## Is There a Threshold That Applies to the Payments That Must be Disclosed?

All payments (together with any other payment that, including the payment, make-ups a series of related payments) made in a financial year that cumulatively are valued at AU\$100,000 or more would need to be disclosed on a country-by-country, project-by-project basis.

## How Are They to be Disclosed?

Reporting entities would be required to prepare annual "publish what you pay" reports which are lodged with ASIC. ASIC would then make the contents of these reports on its website. The prescribed contents of these reports will be set out in the Corporations Regulations (which would be determined around the time the Bill receives Royal Assent). The report would need to contain the total amount of that kind of reportable payment in relation to the project and the total amount of all reportable payments made in relation to that project for each resource extraction project that the reporting company (or their subsidiary) is engaged in.

A "publish what you pay" report included in financial statements will also be subject to requirements that apply to the financial statements or the financial report in general, such as those requirements that apply to notes and directors' declarations, compliance with accounting standards and regulations and audit of annual financial reports. If a reporting entity does not lodge financial reports with ASIC, then the "publish what you pay" report shall be lodged with ASIC when they are reported to lodge financial reports under an exemption or ASIC relief or otherwise, as soon as practicable after it is prepared.

## Will There Be ASIC Relief Available in Certain Circumstances?

There is provision in the Bill for ASIC to make an order relieving a holding company from a requirement in respect of a subsidiary if any of the following apply:

- severe long term restrictions substantially hinder the holding company in the exercise of its rights over the assets or management of the subsidiary;
- the information necessary to comply with the requirement cannot be obtained without disproportionate expense or undue delay;
- the subsidiary is a subsidiary of the holding company only because the holding company holds shares in the subsidiary for the sole purpose of selling them;

and because of one of the above circumstances, the holding company does not include any other financial information relating to the subsidiary in its consolidated financial statements.

## Potential Issues

The compliance burden will be a concern for some reporting entities. However, the impact of this will be limited to the extent that the final legislation is consistent with its international equivalents in major jurisdictions.

The scope of reportable activities and reporting entities captured by the Bill's current scope is unclear (i.e. it is unclear whether companies engaged in complementary services for extractive industries, such as the construction of necessary infrastructure, would be required to report payments).

In addition, the Bill also only covers direct payments made to Government Entities. The status of payments made by foreign third parties engaged by an Australian company is not addressed in the Bill.

The Bill was introduced into Parliament on 28 October 2014 and a second reading moved at this time. It is currently in its earliest stages of consideration, but as the Bill progresses through Parliament, we will monitor its progress and provide further updates on any additional compliance requirements or any changes to the scope of its proposed operation.

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