

Congress Passes Legislation Requiring Oil, Gas and Mining Companies to Report Payments to Government

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The U.S. Congress passed legislation that required oil, gas, mining, and other extractive industry companies to report to the Securities Exchange Commission (“SEC”) their payments to governments. The legislation was added as an amendment to the Wall Street Reform and Consumer Protection Act, which was sponsored by Senator Christopher Dodd (D-CT) and Representative Barney Frank (D-MA), and voted into law on July 15, 2010.

The premise of the bill is that transparency, in the long run, supports human rights, and helps limit corruption in countries where few benefits from mineral wealth typically reach the general population. The bill requires all companies that are securities issuers under U.S. law to report to the SEC on their payments in an annual report. The legislation covers most, but not all, major multinational companies, but does not encompass a number of state-owned companies that are primarily active in their own jurisdictions and have no presence in the U.S., and thus are not issuers.

The legislation requires companies to report on the type and total amount of payments made on a project basis to both the U.S. and foreign governments. The payments that companies must report include taxes, royalties, fees, production entitlements, bonuses, and other material benefits. Payments do not include de minimis payments.

The legislation is intended to reinforce the Extractive Industries Transparency Initiative, which is a multi-stakeholder initiative consisting of oil, gas, and mining companies; civil society; and governments. Under the Extractive Industries Transparency Initiative, many U.S. companies already report their payments to some, although not all, governments around the world.

Although the legislation is intended to support the Extractive Industries Transparency Initiative, it requires reporting by project, in contrast with the Extractive Industries Transparency Initiative, which typically is less rigorous, calling for reporting either in the aggregate by country or by type of revenue.

The SEC’s rulemaking process will help define more clearly how companies will need to change their accounting practices. For instance, the SEC will presumably define a “de minimis” payment. Therefore, the SEC’s rulemaking process merits close attention.