

Preserving Economic Benefits under the Extractive Sector Transparency Measures Act

While the new Extractive Sector Transparency Measures Act (ESTMA) contains measures to ensure sustainable resource development in foreign countries in which Canadian companies operate, there remain significant concerns that it could complicate development within Canada and potentially harm industry relations with Aboriginal communities.

Having received royal assent in December 2014, the ESTMA was originally developed in response to reports that some foreign governments were improperly spending mining revenues generated by Canadian companies. To address the issue, Canadian extractive industry partners worked with the federal government to develop regulations requiring public disclosure of payments made to governments and government entities, resulting in the ESTMA.

The foreign disclosure measures outlined in the ESTMA will apply to large mining, oil and gas companies making payments over \$100,000, and to junior firms making payments over \$10,000; these will take effect in the summer of 2015, and have been thoroughly supported by industry as a means of increasing transparency and sustainability for regions in which Canadian companies operate.

However, throughout the consultation process, industry was clear that their support was never intended to be viewed as an approval for the ESTMA to be applied domestically;¹² nevertheless, the federal government inserted such measures into the final version of the legislation, requiring the mining, oil and gas industries to disclose payments made to Aboriginal groups and communities within Canada as of June 2017.

While industry groups continue to embrace the concept of increased transparency, the mandatory inclusion of Canada's Aboriginal groups within this legislation creates many complex questions which have yet to be fully addressed by the federal government. This includes concerns around the lack of meaningful consultation with Aboriginal groups leading up to the passage of ESTMA, which industry groups have argued to be necessary to ensure that any designated reporting requirements are appropriate, and that Aboriginal interests are adequately considered³. Without full and comprehensive consultation, the possibility remains that ongoing disapproval of these measures could place existing and future relationships between extractive companies and Aboriginal communities at risk.

This risk of harm to these relationships is heightened by the lingering fear among industry partners and Aboriginal groups alike that the federal government will reduce funding for Aboriginal communities who have received payments as disclosed under the ESTMA. From the Mining Association of Canada and the Prospectors and Developers Association of Canada to the Assembly of First Nations and the Canadian Aboriginal Minerals Association, many have expressed concern around the lack of any provisions in the Act that would prevent this from occurring.

Any such clawback would effectively harm Aboriginal communities' ability to benefit from resource development. Related agreements also often allow for much-needed enhancements to infrastructure and social programs that are otherwise not covered by federal payments: for example, in 2011 and 2012, oil sands companies provided more than \$20 million to Aboriginal communities in Wood Buffalo and Lac La Biche in northeastern Alberta, which funded school and youth programs, celebrations, cultural events, literacy projects, and more⁴. Similarly, De Beers Canada's Victor Mine project in northeastern Ontario provides roughly \$2 million in annual royalties to the nearby Attawapiskat First Nation, and has funded housing, training options, and other opportunities.

These improvements also benefit the resource development industry, not only in the form of the community support required to move new projects forward, but also by establishing the training facilities, local capacity, and general infrastructure necessary for the effective operation of their future projects. As such, it is crucial that the federal

¹ PDAC-MAC Submission to the Government of Canada Consultation on Mandatory Reporting, 2014

² Resource Revenue Transparency Working Group Submission to the Government of Canada – Consultation on Mandatory Reporting, 2014

³ Mining sector supports new disclosure rules, Vancouver Sun, March 27 2015

⁴ Oil Sands Community Alliance, 2013

government protect these investments from being effectively nullified, and provide legislative guarantees against related clawbacks prior to the implementation of the domestic ESTMA provisions in June 2017.

Recommendations

That the federal government:

1. Undertake consultations with Aboriginal groups and communities in order to ensure that Extractive Sector Transparency Measures Act (ESTMA) reporting requirements are appropriate and that Aboriginal interests are properly considered.
2. Undertake consultations with extractive industries to ensure that the process for reporting payments to Aboriginal communities under the ESTMA is not duplicative or unduly cumbersome, and that it does not contravene existing non-disclosure agreements.
3. Guarantee that federal funding for Aboriginal communities will not be reduced in response to financial disclosures made under the ESTMA, ensuring that those communities will be funded appropriately as per their needs and prior federal obligations and commitments, regardless of any investments made by third parties engaged in resource extraction.