Extractive Sector Transparency Measures Act, SC 2014, c 39, s 376

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Extractive Sector Transparency Measures Act

S.C. 2014, c. 39, s. 376

Assented to 2014-12-16

An Act to implement Canada's international commitments to participate in the fight against corruption through the imposition of measures applicable to the extractive sector

[Enacted by section 376 of chapter 39 of the Statutes of Canada, 2014, in force June 1, 2015, see SI/2015-43.]

Short Title

Short title

1 This Act may be cited as the *Extractive Sector Transparency Measures Act*.

Interpretation and General Provisions

Definitions

2 The following definitions apply in this Act.

category of payment means a category of payment set out in any one of paragraphs (a) to (h) of the definition payment. (*catégorie de paiement*)

commercial development of oil, gas or minerals means

(a) the exploration or extraction of oil, gas or minerals;

(b) the acquisition or holding of a permit, licence, lease or any other authorization to carry out any of the activities referred to in paragraph (a); or

(c) any other prescribed activities in relation to oil, gas or minerals. (*exploitation commerciale de pétrole, de gaz ou de minéraux*)

entity means a corporation or a trust, partnership or other unincorporated organization

(a) that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or

(b) that controls a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere. (*entité*)

gas means natural gas and includes all substances, other than oil, that are produced in association with natural gas. (*gaz*)

minerals means all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, and all rare and precious minerals and metals. (*minéraux*)

Minister means the member of the Queen's Privy Council for Canada designated under section 5. (*ministre*)

oil means crude petroleum, bitumen and oil shale. (*pétrole*)

payee means

(a) any government in Canada or in a foreign state;

(b) a body that is established by two or more governments;

(c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b); or

(d) any other prescribed payee. (*bénéficiaire*)

payment means a payment — whether monetary or in kind — that is made to a payee in relation to the commercial development of oil, gas or minerals and that falls within any of the following categories of payment:

(a) taxes, other than consumption taxes and personal income taxes;

(b) royalties;

(c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;

(d) production entitlements;

(e) bonuses, including signature, discovery and production bonuses;

(f) dividends other than dividends paid as ordinary shareholders;

(g) infrastructure improvement payments; or

(h) any other prescribed category of payment. (*paiement*)

Rules relating to payments

3 For the purposes of this Act,

(a) a payment that is made to an employee or public office holder of a payee is deemed to have been made to the payee;

(b) a payment that is due to a payee and that is received by a body that is not a payee for the payee is deemed to have been made to the payee;

(c) a payment that is made by an entity, other than an entity referred to in subsection 8(1), that is controlled by another entity is deemed to have been made by the controlling entity;

(d) a payment that is made for an entity is deemed to have been made by the entity; and

(e) the value of a payment in kind is the cost to the entity — or, if the cost cannot be determined, the fair market value — of the goods or services that it provided.

Control

4 **(1)** Subject to the regulations, an entity is controlled by another entity if it is controlled by the other entity, directly or indirectly, in any manner.

Deemed control

(2) An entity that controls another entity is deemed to control any entity that is controlled, or deemed to be controlled, by the other entity.

Designation

Designation of Minister

5 The Governor in Council may, by order, designate a member of the Queen's Privy Council for Canada as the Minister for the purpose of this Act.

Purpose of Act

Purpose

6 The purpose of this Act is to implement Canada's international commitments to participate in the fight against corruption through the implementation of measures applicable to the extractive sector, including measures that enhance transparency and measures that impose reporting obligations with respect to payments made by entities. Those measures are designed to deter and detect corruption including any forms of corruption under any of sections 119 to 121 and 341 of the *Criminal Code* and sections 3 and 4 of the *Corruption of Foreign Public Officials Act*.

Her Majesty

Binding on her Majesty

7 This Act is binding on Her Majesty in right of Canada or a province.

Application

Entities

8 **(1)** Subject to subsection (2), sections 9 to 13 apply to

(a) an entity that is listed on a stock exchange in Canada;

(b) an entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:

(i) it has at least $20 million in assets,

(ii) it has generated at least $40 million in revenue,

(iii) it employs an average of at least 250 employees; and

(c) any other prescribed entity.

Continuation of obligations

(2) An entity that ceases to be an entity referred to in subsection (1) before the end of a period referred to in section 12 or 13, as the case may be, continues to be subject to the obligations of that section until the end of the applicable period.

Obligations

Reporting Payments

Annual report

9 **(1)** Every entity must, not later than 150 days after the end of each of its financial years, provide the Minister with a report that discloses, in accordance with this section, the payments that it has made during that year.

Payments to be disclosed

(2) Subject to any regulations made under paragraph 23(1)(d), an entity must disclose any payments within a category of payment that are made to the same payee, if the total amount of all those payments during the financial year is at least

(a) the amount prescribed by regulation for the category of payment; or

(b) if no amount is prescribed for the category, $100,000.

Deemed payee

(3) For the purpose of subsection (2), a payment that is made to a payee referred to in paragraph (c) of the definition payee is deemed to have been made to the government or body for which it is established to exercise or perform, or that for which it exercises or performs, a power, duty or function of government.

Attestation

(4) The report is to include an attestation made by a director or officer of the entity, or an independent auditor or accountant, that the information in the report is true, accurate and complete.

Form and manner

(5) The Minister may specify, in writing, the way in which payments are to be organized or broken down in the report — including on a project basis — and the form and manner in which a report is to be provided. The Minister is to make those requirements available to the public in the manner that he or she considers appropriate.

Substitution

10 **(1)** If, in the Minister's opinion, and taking into account any additional conditions that he or she may impose, the payment reporting requirements of another jurisdiction achieve the purposes of the reporting requirements under this Act, the Minister may determine that the requirements of the other jurisdiction are an acceptable substitute for those set out in section 9. The determination is to be in writing and made available to the public in the manner that the Minister considers appropriate.

Provision of substitute report

(2) If the Minister has determined that the requirements of a jurisdiction are an acceptable substitute, an entity that is subject to those requirements is deemed to have provided a report in accordance with section 9 if the entity

(a) provides the report required by the jurisdiction to the jurisdiction's competent authority;

(b) provides a copy of that report to the Minister, in the form and manner that he or she specifies, within any period specified in the jurisdiction's reporting requirements for providing the report to the competent authority; and

(c) meets any conditions imposed by the Minister under subsection (1).

Wholly owned subsidiary — consolidated report

11 If an entity and any wholly owned subsidiary of the entity are entities referred to in subsection 8(1), the subsidiary is deemed to have provided a report in accordance with section 9 for a financial year if

(a) the entity provides the Minister with a report with respect to its payments in accordance with section 9 that also contains information with respect to the payments made by the subsidiary during the subsidiary's financial year or any part of that year, which information must meet the reporting requirements of section 9;

(b) not later than 150 days after the end of its financial year, the subsidiary notifies the Minister in writing that the entity is providing the report; and

(c) the subsidiary provides the Minister with a report in accordance with section 9 with respect to payments that it has made during any part of its financial year that is not covered by the report provided by the entity.

Accessibility of report

12 **(1)** An entity must, on providing the Minister with a report in accordance with section 9 — or on being deemed to have done so by the operation of subsection 10(2) or section 11 — make any information required by regulations made under paragraph 23(1)(f) available to the public or, if no such regulation is made, make the report and any information provided to the Minister under paragraph 10(2)(c) available to the public.

Manner and period

(2) The report and information must be made available to the public

(a) in the manner specified by the Minister; and

(b) for the period prescribed by regulation or, if no period is prescribed, for a period of five years.

Record Keeping

Records

13 An entity must keep records of its payments made in a financial year for a prescribed period or, if no period is prescribed, for a seven-year period that begins on the day on which the entity provides the report in accordance with section 9 for the financial year or is deemed to have done so by the operation of subsection 10(2) or section 11.

Administration and Enforcement

Information and Independent Audit

Order — required information

14 **(1)** For the purpose of verifying compliance with this Act, the Minister may, by order, require an entity to provide to him or her, within the period specified in the order, any information or documents, including

(a) a list of projects for the commercial development of oil, gas, or minerals in which the entity has an interest and the nature of that interest;

(b) an explanation of how the entity has treated a payment for the purpose of preparing a report referred to in subsection 9(1) or meeting the requirements set out in paragraphs 10(2)(a) to (c);

(c) a statement of any policies that the entity has implemented for the purpose of meeting its obligations under this Act; and

(d) the results of an audit of its report or of the records of payments for the financial year to which the report relates.

Audit

(2) The audit is to be carried out in accordance with the generally accepted auditing standards specified in the order by an independent auditor who meets the requirements specified in it.

Non-application of *Statutory Instruments Act*

(3) The *Statutory Instruments Act* does not apply to an order referred to in subsection (1).

Designation

Designation

15 The Minister may designate persons or classes of persons for the purposes of the administration and enforcement of this Act.

Designated Person’s Powers

Entry into a place

16 **(1)** A designated person may, for a purpose related to verifying compliance with this Act, enter any place in which the person has reasonable grounds to believe there is anything to which this Act applies or any document relating to the administration of this Act.

Powers on entry

(2) The designated person may, for the purpose referred to in subsection (1),

(a) examine anything in the place including any document;

(b) use any means of communication in the place or cause it to be used;

(c) use any computer system in the place, or cause it to be used, to examine data contained in or available to it, or reproduce the data, or cause it to be reproduced, in the form of a printout or other intelligible output and remove any printout or output for examination or copying;

(d) prepare a document, or cause one to be prepared, based on the data;

(e) use any copying equipment in the place, or cause it to be used;

(f) take photographs or make recordings or sketches of anything in the place;

(g) direct any person to put any equipment in the place into operation or to cease operating it;

(h) prohibit or limit access to all or part of the place or to anything in the place; and

(i) remove anything from the place for the purpose of examination.

Persons accompanying designated person

(3) The designated person may be accompanied by any person that they believe is necessary to help them exercise their powers or perform their duties or functions under this section.

Assistance

(4) The owner or person in charge of the place and every person in the place must give all assistance that is reasonably required to enable the designated person to exercise their powers or perform their duties or functions under this section and is to provide any documents or information, and access to any data, that is reasonably required for that purpose.

Warrant to enter dwelling-house

17 **(1)** If the place referred to in subsection 16(1) is a dwelling-house, the designated person may enter it without the occupant's consent only under the authority of a warrant issued under subsection (2).

Authority to issue warrant

(2) On *ex parte* application, a justice of the peace may issue a warrant authorizing the designated person to enter a dwelling-house, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that

(a) the dwelling-house is a place referred to in subsection 16(1);

(b) entry to the dwelling-house is necessary for a purpose related to verifying compliance with this Act; and

(c) entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused by, or that consent to entry cannot be obtained from, the occupant.

Obstruction

18 A person must not obstruct or hinder a person who is exercising powers or performing duties or functions under this Act.

Order — Corrective Measures

Minister's power

19 **(1)** If, on the basis of information obtained under section 14 or 16, the Minister is of the opinion that an entity is not in compliance with section 9 or 12, the Minister may, by order, require the entity to take measures that he or she considers to be necessary to ensure compliance with those provisions.

Non-application of *Statutory Instruments Act*

(2) The *Statutory Instruments Act* does not apply to an order referred to in subsection (1).

Minister's Powers

Agreement with another jurisdiction

20 The Minister may enter into an agreement or arrangement with the government of another jurisdiction relating to the administration or enforcement of this Act or that jurisdiction's reporting requirements.

Disclosure — powers, duties and functions

21 The Minister may disclose information obtained under this Act for the purpose of exercising powers or performing duties and functions under this Act.

Delegation

22 The Minister may delegate to any person or body any power, duty or function conferred on the Minister under this Act except the power to delegate under this section.

Regulations

Regulations

23 **(1)** The Governor in Council may make regulations, for carrying the purposes and provisions of this Act into effect, including regulations

(a) defining exploration and extraction;

(b) respecting the circumstances in which any of the provisions of this Act do not apply to entities, payments or payees;

(c) prescribing the circumstances in which an entity is controlled by another entity;

(d) for the purposes of subsection 9(2), respecting the payments that are to be disclosed under subsection 9(1);

(e) prescribing the rate of exchange for the conversion of payments into Canadian dollars;

(f) respecting the information that must be made available to the public under section 12;

(g) respecting the records to be kept for the purposes of section 13 and the manner in which they are to be kept;

(h) prescribing anything that may, by this Act, be prescribed; and

(i) prescribing the way in which anything that may be prescribed is to be determined.

Incorporation by reference

(2) Regulations made under this section may, in whole or in part, incorporate by reference, as it is amended from time to time or as it exists on a particular date,

(a) a document produced by a person or body other than the Minister; or

(b) a technical or explanatory document produced by the Minister, including specifications, classifications, illustrations, graphs, test methods, procedures, operational standards and performance standards.

Accessibility

(3) The Minister is to ensure that any document that is incorporated by reference in the regulations is accessible.

Not liable to be found guilty

(4) A person is not liable to be found guilty of an offence for any contravention in respect of which a document that is incorporated by reference in the regulations is relevant unless, at the time of the alleged contravention, the document was accessible as required by subsection (3) or it was otherwise accessible to the person.

Registration or publication not required

(5) For greater certainty, a document that is incorporated by reference in a regulation is not required to be transmitted for registration or published in the *Canada Gazette* under the *Statutory Instruments Act* by reason only that it is incorporated by reference.

Offences and Punishment

Offence

24 **(1)** Every person or entity that fails to comply with section 9, 12 or 13, an order made under section 14, subsection 16(4) or an order made under section 19, or that contravenes section 18 or the regulations, is guilty of an offence punishable on summary conviction and liable to a fine of not more than $250,000.

False or misleading statement or information

(2) Every person or entity that knowingly makes any false or misleading statement or knowingly provides false or misleading information — including with respect to the category of payment in respect of which a payment was made — to the Minister or a person designated under section 15 is guilty of an offence punishable on summary conviction and liable to a fine of not more than $250,000.

Avoidance

(3) Every entity is guilty of an offence punishable on summary conviction and liable to a fine of not more than $250,000 if it structures any payments — or any other financial obligations or gifts, whether monetary or in kind, that relate to its commercial development of oil, gas or minerals — with the intention of avoiding the requirement to report those payments, obligations or gifts in accordance with this Act.

Continuing offence

(4) If an offence under this section is committed or continued on more than one day, it constitutes a separate offence for each day on which the offence is committed or continued.

Liability of officers, directors, etc.

25 If a person or an entity commits an offence under this Act, any officer, director or agent or mandatary of the person or entity who directed, authorized, assented to, acquiesced in or participated in its commission is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the person or entity has been prosecuted or convicted.

Offence by employee or agent or mandatary

26 In a prosecution for an offence under subsection 24(1),

- **(a)** it is sufficient proof of the offence to establish that it was committed by an employee or agent or mandatary of the accused, whether or not the employee or agent or mandatary is identified or has been prosecuted for the offence; and
- **(b)** no person or entity is to be found guilty of the offence if they establish that they exercised due diligence to prevent its commission.

Time limitation

27 Proceedings under this Act may be instituted within, but not after, five years after the time when the subject matter of the proceedings arose.

Admissibility of evidence

28 **(1)** In proceedings for an offence under this Act, a document that is purported to have been signed by the Minister or a designated person is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

Copies and extracts

(2) In proceedings for an offence under this Act, a copy of or an extract from any document that is made by the Minister or a designated person that appears to have been certified under the signature of the Minister or that person as a true copy or extract is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

Presumed date of issue

(3) A document referred to in this section is, in the absence of evidence to the contrary, presumed to have been issued on the date that it bears.

Notice

(4) No document referred to in this section is to be received in evidence unless the party intending to produce it has provided reasonable notice of that intention to the party against whom it is intended to be produced together with a copy of the document.

Transitional Provisions

Aboriginal government in Canada

29 The provisions of this Act do not apply to any payment made by an entity to the following payees during the two-year period that begins on the day on which section 2 comes into force:

(a) an Aboriginal government in Canada;

(b) a body established by two or more Aboriginal governments in Canada; and

(c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b).

Past and current financial years

30 No entity is required to comply with section 9, 12 or 13 with respect to the financial year in progress on the day on which section 9 comes into force and for any previous financial year.