

BIS/14/1228

# The Reports on Payments to Government Regulations 2014

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## Industry Guidance (Draft)

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THE INTERNATIONAL ASSOCIATION OF OIL AND GAS PRODUCERS (OGP)

THE INTERNATIONAL COUNCIL ON MINING AND METALS (ICMM)

[ENDORSED BY:

DEPARTMENT OF BUSINESS INNOVATION AND SKILLS (BIS)

NB: To be discussed with BIS]

This guidance has been developed by industry associations to help companies engaged in extractive and logging of primary forest activities meet the requirements of regulations that require the disclosure of payments that they make to governments in relation to those activities. It does not necessarily reflect the views of all OGP and ICMM members, nor is it intended to set out binding rules for companies that have to report under the UK Regulations. This Guidance has been prepared by industry on the basis that in participating in its preparation the views held by a number of industry members regarding the effects of the UK Regulations and Chapter 10 of Directive 2013/34/EU are nonetheless maintained, as further detailed in the responses of those industry members to the UK government's March 2014 consultation on UK implementation of the EU Accounting Directive (Chapter 10: Extractive industries reporting) which can be found at: <https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>. The guidance in this document applies solely to the UK Regulations and will not determine the positions that OGP and ICMM members will take under other disclosure regimes. This guidance may be revised from time to time in light of usage and practice.

## The Reports on Payments to Government Regulations 2014

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### TABLE OF CONTENTS

Foreword	2
Introduction	3
Section 1 - Reporting Entities	5
1.1 Summary of the UK regulations	5
1.2 Relevant Definitions	7
1.3 Industry Guidance	9
Section 2 - Reported Entities	12
2.1 Summary of the UK Regulations	12
2.2 Industry Guidance	12
Section 3 - Relevant Activities	14
3.1 Summary of the UK Regulations	14
3.2 Industry Guidance	14
Section 4 - Relevant Payments	17
4.1 Summary of the UK Regulations	17
4.2 Industry Guidance	17
Section 5 - Relevant Governments	23
5.1 Summary of the UK Regulations	23
5.2 Industry Guidance	23
Section 6 - Attribution of Payments	25
6.1 Summary of the UK Regulations	25
6.2 Industry Guidance	26
Section 7 - Procedural Aspects	27
Annex	31

## The Reports on Payments to Government Regulations 2014

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### FOREWORD

In order to provide for enhanced transparency of payments made to governments, these regulations require certain entities which are active in the extractive industry or logging of primary forests to disclose material payments made to governments in the countries in which they operate in a separate report, on an annual basis. A primary goal of these regulations is to help empower citizens of those resource-rich countries to hold their governments accountable for the wealth generated by those resources.

This guidance has been developed by the following industry associations to help companies engaged in oil and gas, mining and logging of primary forest activities meet the requirements of the UK Regulations. The guidance is not intended to provide binding rules for such companies.

#### *The International Association of Oil and Gas Producers (OGP)*

OGP has over 80 member companies who together account for more than half of the world's oil production and about one third of global gas production. OGP strongly supports international efforts towards facilitating revenue transparency in the extractive sector and to this end has focused on working with policy-makers in the UK and Europe to provide the industry's perspective and input on the key issues.

#### *The International Council on Mining and Metals (ICMM)*

ICMM was founded in 2001 to improve sustainable development performance in the mining and metals industry. Today, it brings together 22 mining and metals companies as well as 32 national and regional mining associations and global commodity associations to address core sustainable development challenges. Collectively, its members are responsible for a significant percentage of global minerals and metals production including for example copper (52%), platinum group metals (44%) or iron ore (42.5%).

ICMM requires member companies to make a public commitment to improve their sustainability performance and report against their progress on an annual basis. In addition, to augment these efforts, ICMM engages with a broad range of stakeholders (governments, international organizations, communities and indigenous peoples, civil society and academia) to build strategic partnerships. ICMM member companies have been supporting the Extractive Industries Transparency Initiative (EITI) since it began in 2002 and in 2009, members made a formal commitment to the ICMM Position Statement on Transparency of Mineral Revenues.

[This guidance document has been subject to stakeholder engagement and has been reviewed by the Department of Business, Innovation and Skills. Stakeholder comments have received due consideration and, where accepted, are included in this guidance.]

## The Reports on Payments to Government Regulations 2014

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### INTRODUCTION

The Reports on Payments to Governments Regulations 2014 (the “UK Regulations”) apply to companies involved in extractive and logging activities. These regulations are based on the terms of Chapter 10, Directive 2013/34/EU (the “Accounting Directive”) enacted on 26 June 2013.

This industry guidance has been developed by a working group representing members of the International Association of Oil and Gas Producers (OGP) and the International Council on Mining and Metals (ICMM). The aims of this document are to provide guidance to entities that have to meet the reporting requirements and promote consistency in the reporting of payment information.

Specific facts and circumstance, including contractual terms and local regulations, may result in some companies reaching different conclusions on particular matters than would be suggested by this guidance. Nonetheless, this guidance should provide users of the reports with help in understanding the interpretations that may have been applied to certain aspects of the UK Regulations.

The guidance will seek to answer the following key questions:

- Which entities are under an obligation to prepare and deliver a report?
- Does every entity have to prepare a report or can a consolidated report be prepared for a group?
- Are any entities exempted from preparing reports under the UK Regulations?
- What are the reporting requirements for entities that are subject to equivalent disclosure regimes?
- Do the reports only cover payments made by the entities that have to prepare reports or do the reports cover payments made by other group entities?
- Which business activities are within the scope of the UK Regulations?
- Which types of payment have to be included in the report?
- Who has the obligation to include payment information in a report in situations where a payment is made on behalf of multiple parties?
- Which government entities that receive payments have to be covered in the reports?
- How should payments be attributed to projects?
- When and how should reports be delivered?

Whilst companies should endeavour to interpret the UK Regulations in a manner that is consistent with the legislative intent, their primary responsibility is to comply with the UK Regulations that have been enacted. It should generally be assumed that the legislative intent is reflected in the wording of the UK Regulations.

In developing this guidance on the UK Regulations the industry working group, where appropriate, took account of the recitals contained in Chapter 10 of the Accounting Directive

## The Reports on Payments to Government Regulations 2014

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and also considered relevant accounting principles, relevant sections of the EITI Standard and guidance that has been published relating to equivalent regimes, specifically the vacated US Securities and Exchange Commission (SEC) rules relating to the US Dodd Frank regime. Reporting entities may also find those sources to be useful when interpreting the UK Regulations. Nonetheless, for the UK Regulations, companies will have to make their own determination on which payments are to be included in the reports.

The following approaches may be adopted by reporting entities:

- In cases of doubt, or for practical reasons, individual companies may choose to include information in the report that might arguably be out of scope (e.g. where there is doubt over the classification of a type of tax). However companies are encouraged to avoid over-reporting, e.g. by including sales taxes that are explicitly stated to be out of scope. Other company reporting mechanisms, for example sustainability reports, can be used, if desired, to present a fuller picture of the reporting entity's economic contribution
- Companies are encouraged to avoid duplicative reporting of the same payment data by different companies - for example, in joint ventures payments made by the operator on behalf of the whole venture being reported only by the operator, as the operator is the entity that actually makes the payment to the government
- Companies are encouraged to consider using the notes sections contained in the reporting form to provide explanatory notes to help users understand their reports

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## The Reports on Payments to Government Regulations 2014

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### 1. REPORTING ENTITIES

#### 1.1 Summary of the UK Regulations

- (i) An *entity* is required to prepare and deliver a report under the UK Regulations if it is a UK registered limited or unlimited company, partnership or limited liability partnership and meets the test to be either a **large undertaking** or a **public-interest entity** and provided it engages in the relevant activities of the exploration, prospection, discovery, development and extraction in the mining, oil and gas and mining sectors, and logging in the primary forests sector. See Section 3 for guidance on the **relevant activities**.
- (ii) A *subsidiary entity* will be exempted from the requirement to prepare and deliver a report for a particular period if its parent:
- prepares and submits a report under the UK Regulations and payments made by the subsidiary are included in that report, or
  - is subject to the laws of another member state and the payments made by the subsidiary are included in the report prepared by that parent under those laws
  - prepares and submits a report that complies with the disclosure requirements of an equivalent regime
- (iii) A *parent entity* will be required to prepare and deliver a consolidated report if:
- (a) it is a **large undertaking** or a **public-interest entity**,
  - (b) it or any of its subsidiaries engages in the relevant activities of exploration, prospection, discovery, development and extraction activities in the mining, oil and gas sectors, or logging in the primary forests sectors, and
  - (c) it is obliged to prepare consolidated group accounts
- (iv) A transitional arrangement has been included in the UK Regulations to allow UK registered subsidiaries whose parent is required to prepare consolidated group accounts in another EU member state an exemption from reporting in the UK for one year i.e. the requirement to prepare and deliver a report for financial years beginning on or after 1 January 2015 does not apply. Subject to the probable eligibility for an exemption as described below, the UK Regulations will apply in relation to financial periods beginning on or after 1st January 2016 if the UK registered subsidiary is a member of a group for which consolidated group accounts are prepared in a member State other than the UK.
- When the terms of the Accounting Directive have been adopted into the laws of the relevant EU member state the UK subsidiary would be expected to benefit from the exemption from the UK Regulations outlined in (ii) above.
- (v) A *parent entity* is exempted from the requirements to prepare and deliver a consolidated report where it is a parent of **small or medium-sized groups** except where any entity in the **group** is a **public-interest entity**. In these cases, UK

## The Reports on Payments to Government Regulations 2014

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registered subsidiaries that are members of the small or medium sized group only need to prepare and deliver a report if they are **large undertakings** and conduct the **relevant activities**.

- (vi) An entity is exempt from preparing a report if it is subject to equivalent reporting requirements and the payments to governments made by the entity are included in a report prepared in accordance with equivalent reporting requirements.

If the entity is a subsidiary or a parent, it is exempt from preparing a report if the parent is subject to equivalent reporting requirements and the payments to governments made by the undertaking are included in a consolidated report drawn up to the same date, or to an earlier date in the same financial year, by that parent prepared in accordance with equivalent reporting requirements.

- (vii) Payments made by a subsidiary may be excluded from the consolidated report where:
- severe long-term restrictions substantially hinder the exercise of the rights of the parent over the assets or management of that subsidiary;
  - the information necessary for the preparation of the consolidated report cannot be obtained without disproportionate expense or undue delay; or
  - the shares of that subsidiary are held exclusively with a view to subsequent resale.

The parent may only exclude payments by a subsidiary where the exemptions are also used to exclude the subsidiary from the consolidated group accounts.

- (viii) Where an entity has been a **large undertaking** for the purposes of the UK Regulations, but it subsequently ceases to be a **large undertaking** because it no longer meets at least two of the criteria in this definition, it does not cease to be a **large undertaking** for the purposes of the UK Regulations unless it fails to meet the criteria in question in two consecutive financial years.
- (ix) Groups of companies might have assumed that either the ultimate parent or an intermediate parent company will be required to file a consolidated report covering its own payments and the payments of its subsidiaries. This will be the case if the relevant company is UK listed. However the requirement to prepare and deliver a consolidated report will not apply to companies that are not UK listed if:
- they fail to satisfy two out of the three tests to be considered to be a large undertaking (turnover, balance sheet, employees). This situation could arise as holding companies often have no employees and they might not generate the required turnover; or
  - they don't prepare consolidated group accounts (note - intermediate parent companies may be exempt from preparing consolidated group accounts if their



## The Reports on Payments to Government Regulations 2014

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ultimate parent (e.g. an entity registered in, say, the US) prepares consolidated group accounts).

In these circumstances, the lack of a requirement to prepare and deliver a consolidated report will mean that UK subsidiaries that are themselves large undertakings will not be exempted from the obligation to prepare and deliver their own reports individually. Another consequence is that subsidiaries that would otherwise have been expected to be included in a parent company's report (e.g. non-UK registered subsidiaries and UK subsidiaries that are not large undertakings) will not need to be covered in a report under the UK Regulations.

UK parent companies that are obliged to prepare consolidated group accounts but which benefit from an exemption not to do so (e.g. because the company's results are included in the accounts of a larger group) may consider preparing and delivering a consolidated report as an alternative to the approach of preparing individual reports for each relevant subsidiary.

### 1.2 Relevant Definitions

Simplified versions of the definitions contained in the UK Regulations are shown below. Users should refer to the actual definitions in the UK Regulations to verify their understanding of the defined term.

The UK Regulations have been introduced through the exercise of the powers conferred by section 468 of the Companies Act 2006, sections 15 and 17 of the Limited Liability Partnerships Act 2000 and section 2(2) of the European Communities Act 1972. A number of relevant definitions from the Companies Act have therefore also been included in this guidance.

**Group** means a parent undertaking and all of its subsidiary undertakings.

**Large Undertaking** means an entity that meets at least two of the three following criteria:

- (a) its balance sheet total on its balance sheet date exceeds £18 million;
- (b) its **net turnover** on its balance sheet date exceeds £36 million;
- (c) its average number of employees during the financial year to which the balance sheet relates exceeds 250.

**Medium-Sized Group** - A group is a medium-sized group if it is not a small group and if it meets at least two of the three following criteria on the balance sheet date of the parent undertaking:

- (a) its balance sheet total does not exceed £18m (or £21.6 million gross);
- (b) its net turnover does not exceed £36m net (or £43.2 million gross);



## The Reports on Payments to Government Regulations 2014

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- (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 250.

**Net and Gross Figures:** In relation to the aggregate figures for turnover and balance sheet totals—

“net” means after any set-offs and other adjustments made to eliminate group transactions—

- (a) in the case of Companies Act accounts, in accordance with regulations under section 404 of the Companies Act 2006;
- (b) in the case of IAS accounts, in accordance with international accounting standards.

“gross” means without those set-offs and other adjustments.

A company may satisfy the criteria in relation to small and medium sized groups using either the net or the gross figure.

**Net Turnover** means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover.

**Parent Undertaking** - An undertaking is a “**parent undertaking**” in relation to another undertaking, a subsidiary undertaking, if—

- (a) it holds a majority of the voting rights in the undertaking, or
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
- (c) it has the right to exercise a dominant influence over the undertaking—
  - (i) by virtue of provisions contained in the undertaking's articles, or
  - (ii) by virtue of a control contract, or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

An undertaking is also a **parent undertaking** in relation to another undertaking, a subsidiary undertaking, if—

- (a) it has the power to exercise, or actually exercises, dominant influence or control over it, or
- (b) it and the subsidiary undertaking are managed on a unified basis.

A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

## The Reports on Payments to Government Regulations 2014

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**Public-Interest Entity** - In general, an EU listed entity whose transferable securities are admitted for trading on a regulated market. The term also applies to certain credit and insurance entities. Entities listed on the Alternative Investments Market (AIM) are not public interest entities.

**Relevant Activities** means exploration, prospection, discovery, development and extraction relating to the oil, gas and mining activities listed in the Annex and the logging of primary forests activities also listed in the Annex

**Small-Sized Group** – a group is a small group if it meets at least two of the three following criteria on the balance sheet date of the parent undertaking:

- (a) its balance sheet total does not exceed £5.1 million net (or £6.1m gross);
- (b) its net turnover does not exceed £10.2 million net (or £12.2m gross);
- (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 50.

**Subsidiary** - A company is a subsidiary of another company, its "holding company", if that other company—

- (a) holds a majority of the voting rights in it, or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
- (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,

or if it is a subsidiary of a company that is itself a subsidiary of that other company.

**UK-registered company** - means a company registered under the Companies Act 2006. The expression does not include an overseas company that has registered particulars under that act.

**Undertaking** means—

- (a) a limited company;
- (b) a limited liability partnership;
- (c) a limited partnership, each of whose members is
  - (i) a limited company,
  - (ii) an unlimited company, each of whose members is a limited company,
  - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or

## The Reports on Payments to Government Regulations 2014

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- (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company
- (d) a partnership, each of whose members is;
  - (i) a limited company,
  - (ii) an unlimited company each of whose members is a limited company,
  - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
  - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company
- (e) an unlimited company, each of whose members is;
  - (i) a limited company,
  - (ii) an unlimited company each of whose members is a limited company,
  - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
  - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;

### 1.3 Industry Guidance

- (i) Specific criteria, for example in relation to being characterised as large undertakings or public interest entities, are relevant in determining whether an entity has a reporting obligation. The subsidiaries that make the payments that have to be included in a consolidated report do not need to satisfy those criteria. For example, payments made by subsidiaries that are not large undertakings need to be included in the consolidated report.
- (ii) The UK Regulations only impose a reporting obligation on UK registered entities. The reporting entity must either conduct the relevant extractive activities itself or those activities must be conducted by one or more of its subsidiaries, whether registered in the UK or elsewhere.
- (iii) Under the UK Regulations, a parent can be either the ultimate parent of a group, provided that it is UK registered or a UK registered subsidiary which has subsidiary entities of its own. If the ultimate parent of the group is UK registered and prepares a report for all of its subsidiaries, all other UK registered members of the group are exempted from the requirement to prepare and deliver a report.
- (iv) The approach taken in relation to large undertakings, public-interest entities and small and medium-sized groups is intended to result in reporting requirements applying to

## The Reports on Payments to Government Regulations 2014

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larger companies and limit the regulatory burden on smaller companies. Companies should therefore carefully consider these factors as this may lead to them have a reduced administrative burden.

- (v) A UK registered entity that is neither a parent nor a subsidiary may nevertheless be under an obligation to prepare and deliver a report. For example, Company X has 4 corporate shareholders (A, B, C & D) that each hold a 25% shareholding. Companies A, B, C & D each conduct extractive activities and are required to prepare reports of their own. Company X would not be a subsidiary of any of those companies and would therefore not be included in any of their consolidated reports. If Company X is a UK registered large undertaking or public-interest entity and conducts the **relevant activities** it will need to prepare and deliver its own report.
- (vi) A UK registered company that is a subsidiary of a parent that is not obliged to prepare consolidated group accounts is required to prepare and deliver its own report.
- (vii) By virtue of the definitions of '**Undertaking**' and '**UK registered company**' shown above, a company registered outside of the UK but which has a UK branch is not required to prepare and deliver a report under the UK Regulations.
- (viii) The reporting requirements that currently apply to UK registered entities will be extended to cover UK listed, but non-UK registered, entities when the terms of Directive 2013/50/EU amending the "Transparency Directive" (referred to hereafter as the 'Transparency Directive') are transposed into UK law.
- (ix) Were companies to find themselves in a position where they risk violating the internal laws of host governments and this could place the company, directors, officers, employees and potentially UK citizens in danger of criminal sanctions from the host government, it is recommended that companies take the following actions.

When they believe foreign law could subject any of those persons to any sanctions under foreign laws if the company were to provide the required disclosure, the company should seek legal advice from legal counsel in the relevant jurisdiction. The legal review should cover all relevant local laws.

The legal advice should consider the following questions:

- a. is publication of the relevant information legally prohibited?
- b. is there sufficient legal uncertainty as to whether the publication of the relevant information would amount to a criminal offence?

The company should also seek permission from the relevant host government or state owned enterprise to publish the information required under the UK Regulations.

## The Reports on Payments to Government Regulations 2014

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If the company does not receive permission to publish the relevant information from the host government or state owned enterprise, it should report its inability to obtain permission to the Department of Business, Innovation and Skills and provide all of the relevant evidence, including copies of relevant legal opinions. This will enable the UK government to determine whether it would be able to provide assistance to secure the necessary permission or, if appropriate, an alternative remedy, by the time that a company is required to deliver its report.

DRAFT

## The Reports on Payments to Government Regulations 2014

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### 2. REPORTED ENTITIES

#### 2.1 Summary of the UK Regulations

- (i) *Introduction* - the preceding section covered the factors that need to be considered in determining whether an entity is required to prepare and deliver a report on payments to governments. This section considers the issue of how to identify the entities that conduct the **relevant activities** and make the relevant payments that need to be included in the report prepared by the reporting entity.
- (ii) *Consolidated Reporting* - parent entities that are required to prepare and deliver a consolidated report have to disclose information on:
- their own payments,
  - payments made by any subsidiaries included in the consolidated group accounts of the parent
- (iii) *Subsidiaries* - a UK registered subsidiary that concludes that it has a duty to prepare and deliver a report because its payments will not be reported in a consolidated report, and which does not have any subsidiaries of its own that conduct relevant extractive activities, will only need to include in the report its own payments of the types described in Section 4 below.

#### 2.2 Industry Guidance

- (i) The criteria for determining whether an entity is a **large undertaking** or a **public interest entity** are only relevant for the purpose of establishing whether an entity has an obligation to publish a report. They are not relevant in determining which entities should be included in the report. Entities are in scope for this purpose irrespective of their size if they conduct the **relevant activities** and make payments of the type described in Section 4.
- (ii) Consolidated reports prepared by a parent should cover payments made by subsidiaries for the whole of the financial year or, if shorter, for the period during the year when the entity making the payment met the UK Companies Act requirements to be classified as a subsidiary. This will cover situations in which a subsidiary enters or leaves a group as a consequence of an acquisition or divestment.
- (iii) Parents should not include in their reports payment information for entities that are not subsidiaries. As noted in the preceding section, some entities that do not qualify as subsidiaries may have an obligation to prepare and deliver a report under the UK Regulations, the regulations of other EU member states or under equivalent disclosure regimes in other countries.

## The Reports on Payments to Government Regulations 2014

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- (iv) A parent may have subsidiaries that conduct **relevant activities**, other subsidiaries that exclusively conduct non-extractive activities and subsidiaries that conduct both extractive and non-extractive activities. A UK registered parent, even if its own role is limited to holding investments, has a duty to prepare and deliver a consolidated report if any of its subsidiaries conduct relevant extractive activities during the financial year, provided it satisfies the requirement of being either a large undertaking or public interest entity and is obliged to prepare consolidated group accounts.

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## The Reports on Payments to Government Regulations 2014

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### 3. RELEVANT ACTIVITIES

#### 3.1 Summary of the UK Regulations

- (i) The reports of the entities that have a duty to prepare and deliver a report as outlined in section 1 must relate to either:
- the exploration, prospection, discovery, development or extraction of minerals, oil, natural gas deposits or other materials within the economic activities listed in the Annex, or
  - the logging of primary forests as described in the Annex
- (ii) Lists of the economic activities and hyperlinks to the explanatory notes contained in the International Standard Industrial Classification (ISIC) Revision 4 published by the United Nations Statistics Division are provided in the Annex.

#### 3.2 Industry Guidance

- (i) It is important for a company to have a clear understanding of the scope of its relevant activities because only payments that relate to those activities need to be included in the report. Certain payments to government may relate to both these activities and other activities of the reporting entity or its subsidiaries. This is dealt with in Section 6 below.

Whether an entity is involved in any of the relevant activities will depend on the specific facts and circumstances.

- (ii) The UK Regulations do not include definitions for any of the stages of the relevant activities that relate to the extractive sector.

The term 'exploration, prospection, discovery, development or extraction' is generally understood to encapsulate the key stages of extractive activity. This begins with the search for natural resources and includes the evaluation of resource bearing geological features, the construction of facilities to enable the extraction of natural resources and the production of the natural resource. This ends with the removal of the resource from the place of extraction to the first marketable location, which would generally be a specific metering point, export terminal or entry point to a refinery or smelter.

- (iii) *Processing activities* can be broadly grouped into 2 categories.
- Initial processing includes oil field or mine processing activities, such as the processing of gas to extract liquid hydrocarbons, the removal of impurities from natural gas after extraction and prior to its transport through a pipeline and the crushing and processing of raw ore prior to the smelting phase.
  - Processing of the natural resource into marketable products, including the refining of crude oil into petroleum products, the conversion of gas to liquids and the smelting of certain minerals.

## The Reports on Payments to Government Regulations 2014

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The UK Regulations make no reference to the inclusion of payments relating to processing and hence there is no need to report on these activities. However, as a practical matter, initial processing activities are often integral to the extractive activity resulting in payment liabilities being determined on a basis that includes both the extraction and initial processing of the minerals, oil, gas or other materials. As a practical matter, initial processing activities may be inseparable from the relevant activities for the purposes of reporting.

On the other hand, refining and smelting can also be conducted as separate businesses from the extractive activities. The UK Regulations therefore do not require the disclosure of payments relating to refining, smelting or similar processing activities.

- (iv) *Export and Transportation* - the UK Regulations do not extend to the export or transportation of oil, natural gas, or minerals or timber from the logging of primary forests. Companies that are engaged in exporting or transporting oil, natural gas, minerals or timber but not involved in the **relevant activities** are not required to prepare a report. Those activities are also out of scope for reporting purposes for companies that also conduct the **relevant activities**.

The transportation of oil, gas and minerals up to the first marketable location may as a practical matter be considered to be integral to the extractive activities, in a similar manner to that described above for initial processing. However, export, transit pipeline or other forms of transportation are outside the scope of the UK Regulations.

- (v) *Ancillary or preparatory activities* - the reports should generally capture only payments that are directly related to the extractive or logging activities. They are not intended to capture activities that are ancillary or preparatory. Accordingly, the manufacturer of a product used in the **relevant activities** would not be considered to be engaged in the commercial development of the resource. The manufacture of drill bits or other machinery used in the extraction of oil would therefore not be regarded as a relevant activity.

- (vi) *Service Companies* - The reporting requirement applies to entities that are active in the extractive industry. A broad interpretation could lead to the conclusion that these requirements apply not only to companies engaged in **relevant activities** on their own behalf but also to companies that provide services in relation to those activities.

After considering the wording of the Accounting Directive and the vacated US rules (which apply to entities that are engaged in the 'commercial development of oil, natural gas or minerals'), there is no reason to believe that the UK Regulations should have a broader scope by covering companies that provide services to those oil, gas, mining and logging companies.

This conclusion is further supported by the International Standard Industrial Classification (ISIC) definitions for support activities for petroleum, natural gas extraction, mining and quarrying which are included in the Annex. These support activities are not included in the list of economic activities listed in the UK Regulations.

## The Reports on Payments to Government Regulations 2014

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The reporting requirement should therefore in general be limited apply only to entities that seek or obtain rights to explore for or exploit oil, gas, mineral and/or primary forest resources under rights granted by a government. This might include service companies if they engage in the **relevant activities** under rights granted directly by the government. However service companies that operate under a contract with oil, gas, mining or logging companies that are granted those rights by the government are not required to prepare and deliver a report.

DRAFT

## The Reports on Payments to Government Regulations 2014

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### 4. RELEVANT PAYMENTS

#### 4.1 Summary of the UK Regulations

Reporting entities are required to disclose the total amount paid annually to a government, whether in money or in kind, for relevant activities where the payment is of any of the following types:

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends, other than dividends paid to a government as an ordinary shareholder unless they are paid in lieu of a production entitlement or royalty;
- (e) signature, discovery and production bonuses;
- (f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; or
- (g) payments for infrastructure improvements.

#### 4.1 Industry Guidance

(i) Reporting entities are required to include in the report only those payments that fall within the specified list of payment types in the UK Regulations as listed above. Payments that fall outside of these categories do not need to be included.

(ii) In arriving at the classification of payments, reporting entities will consider the manner in which the payment liability is determined and will also take account of the approach taken to the classification of that payment in the reporting entity's financial statements.

#### (iii) Production entitlement

*Production Sharing* – Subject to the terms of the contractual arrangements and depending upon the facts and circumstances, payments calculated on the basis of the government (department, agency or state owned enterprise) share of production under production sharing agreements should, where applicable, be characterised as a payment for the purposes of this report. As this is an 'in kind' amount, it should be included as both a value and volume in line with the guidance shown below.

Reporting entities may wish to consider one of the following methods in determining the amounts to be included in the report for a particular period:

- Entitlement Basis - report the value and volume based on the government's entitlement to production for the relevant period;

## The Reports on Payments to Government Regulations 2014

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- **Liftings Basis** - report the value and volume of the production that the government takes possession of during the relevant period.

Unless there are specific facts and circumstances that lead to a different conclusion for a particular contract, it is recommended that reporting entities apply the same method to all production entitlements included in their report for the relevant period.

*Government as Equity Investor* - The government, generally through a state owned enterprise, may also have a separate equity interest as an investor in a venture that is incremental to its rights under the production sharing agreement. Payments calculated on the basis of this production entitlement should also be included in the report.

*State Owned Enterprises operating internationally* - State owned enterprises increasingly participate in extractive activities outside of their home jurisdictions. Payments calculated on the basis of production entitlements that arise in relation to those 'international activities' should not be included in the report. For further information on this matter see the comments in Section 5 under the heading '*State Owned Enterprises operating internationally*'.

*Reporting Obligation* - In general, extractive operations that give rise to production entitlements for the government are managed by a single company in the capacity as 'the operator'. The operator generally maintains the records that determine the sharing of production between the various parties.

In the process of determining and communicating the production entitlement due to each party, and making the arrangements for the parties to physically receive their entitlements, the operator is, for the purposes of the UK Regulations, effectively making the payment to the government. The whole of the payments calculated on the basis of the government entitlement should therefore be included in the report that covers payments made by that operator. In general, the non-operating parties to the venture should not include any part of the payment calculated on the basis of the government's production entitlement in their reports.

### *(iv) Taxes*

Each tax type has to be considered on its merits to determine its characteristics for the purposes of potential inclusion in a report.

Taxes should be included in reports where they relate to the **relevant activities**.

## The Reports on Payments to Government Regulations 2014

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The following guidance is indicative only.

<b>Potentially In-Scope</b>			<b>Out of Scope</b>
<b>Taxes on Income</b>	<b>Taxes on Profit</b>	<b>Taxes on Production</b>	<b>Taxes on Consumption</b>
Withholding tax on dividends	Corporate Income Taxes	Resource Rent Taxes	Value Added Tax
Withholding tax on interest	Federal Income Taxes	Severance Taxes	Sales and Use Taxes
Withholding tax on royalties	State Income Taxes	Petroleum Revenue Taxes	Customs Duties
Withholding tax on service income			Contractor Withholding Taxes
			Employee Taxes
			Social Security Contributions
			Environmental taxes levied on consumers
			Stamp Duties

Other issues:

*Tax Refunds* – an over-payment of reportable taxes can be settled in different ways, sometimes by offset against another payment liability and sometimes in the form of a tax refund. For the sake of consistency, both scenarios should be reflected in a company's report. If the overpayment is offset against another reportable payment, the entity should report the net amount. If the overpayment results in a refund, the entity should include the refund in the report for the period in which the refund is received. If the refund is received in a period when the entity also makes payments of the same type of tax, the report should show the net amount paid in the year.

*Interest and Penalties on Late Tax Payments or on Underpaid Tax* – these payments occasionally arise where taxes are paid late or if additional tax is due following a difference of view on the amount of tax payable. Interest and penalties are not within any of the payment types listed in the UK Regulations and should therefore not be included in reports.

(v) *Royalties*

No issues arise in relation to cash royalties paid to governments. Royalties paid in-kind should be treated in the manner described above for production entitlements in relation to the determination and reporting of the value and volume.

(vi) *Dividends*

Reports need not include dividends paid to a government as a common or ordinary shareholder as long as the dividend is paid to the government on the same terms as to other shareholders. The reporting entity will however be required to include any dividends paid to a government in lieu of production entitlements or royalties.

## The Reports on Payments to Government Regulations 2014

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There may be no explicit agreement that the government shareholding in the entity making the dividend payment has been granted as an alternative to a production entitlement or royalty arrangement. A company may report such a dividend where, based on a consideration of the facts and circumstances, it is reasonable to conclude that such a production entitlement or royalty arrangement would have existed if the government did not have the right to receive dividends.

Government participation in the ownership of the entity that pays the dividend without the payment of any consideration for its interest in that entity is indicative of the dividend being in lieu of a production entitlement or royalty.

### *(vii) Bonuses*

The report should include signature, discovery, and production bonuses, in each case to the extent paid in relation to the **relevant activities**.

No issues arise in relation to cash bonuses paid to governments. Bonuses paid in-kind should be treated in the manner described above for production entitlements in relation to the determination and reporting of the value and volume. This approach should be adopted for payments that are characterised as bonuses in the relevant contract or law that have to be satisfied in a form other than cash, for example in the form of a social contribution.

Disclosure is not required for social contributions that are not characterised as bonuses in agreements between the company and the government or which are voluntary.

### *(viii) Fees*

The report should include fees, whatever they are called, that are paid in consideration for access to the area where the extractive or logging activities will be performed. The report does not need to include fees paid in return for services provided by governments if not paid in consideration for the licence or concession.

### *(ix) Infrastructure improvements*

The report should include payments in kind made by companies to governments in the form of infrastructure expenditure, whether under contractual obligations or otherwise. For example, if the company is obliged to build a road, other than in circumstances where the road is expected to be primarily dedicated to operational activities throughout its useful life, the company may be required to disclose the cost of building the road as a payment to the government. The facts and circumstances should be considered in order to determine whether such expenditure represents an in-kind payment to a government.

The UK Regulations do not require a reporting entity to report social or community payments, such as payments to build a hospital or school. However the reporting entity also has to consider the substance of the arrangements. The facts and circumstances may indicate that such a contribution represents an in-kind payment in lieu of one of the payments types that need to be included in the report.



## The Reports on Payments to Government Regulations 2014

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The reporting entity will also need to determine, based on the relevant facts and circumstances, whether the expenditure on the infrastructure improvement should be included in the report for the period (a) in which that expenditure was incurred or (b) when the infrastructure is handed over to the government or (c) when the infrastructure is brought into use.

### *(x) Other Issues Relating to Payments*

#### *Timing of Payments*

Reports should include the actual payments made in cash during the reporting period and not either the amount of the liability due for that period or the relevant accounting accrual. The amounts included in the report for a particular period will therefore often relate to **relevant activities** of another reporting period.

#### *In-Kind Payments*

If a reporting entity makes an in-kind payment of any of the types of payments required to be disclosed, it must disclose the payment. When reporting an in-kind payment, a reporting entity must determine the monetary value of the in-kind payment and, where applicable, its volume.

Supplementary notes must be provided to explain how the value of the payment has been determined.

For the purposes of the disclosure, the reporting entity should consider reporting such payments at cost or fair market value, and should provide a brief description of how the monetary value was calculated.

In some cases, the reporting entity may already use a valuation methodology for other purposes. For example, in a production sharing arrangement, the contract may specify a valuation methodology to determine the amount of production to which entities are entitled as 'cost oil' for a particular period. It may be appropriate for that same methodology to be used for the purposes of determining the value of the government's production entitlement.

#### *Reporting Currency*

If any payments have been made in currencies other than the reporting currency of the reporting entity, it is recommended that the entity determine the currency conversion between the currency in which the payment was made and the reporting entity's reporting currency in one of three ways:

- (a) by translating the payment amount at the exchange rate existing at the time the payment is made;
- (b) using a weighted average of the exchange rates during the reporting period; or
- (c) based on the exchange rate as of the reporting entity's fiscal year end.

Reporting entities should disclose the primary method used for currency conversions.

## The Reports on Payments to Government Regulations 2014

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### *Penalties, fines and interest*

These payments are not within any of the specified payment types and therefore do not need to be included in the report.

### *Disclosure Threshold*

Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below £86,000 within a financial year. This means that, in the case of any arrangement providing for periodic payments or instalments (e.g. rental fees), the reporting entity must consider the aggregate amount of the related periodic payments or instalments of the related payments in determining whether the threshold has been met for that series of payments, and, accordingly, whether disclosure is required.

For example a single payment of £75,000 for a licence in a year would not be required to be reported, whereas a series of four quarterly payments of £25,000 for a single licence each would need to be reported in aggregate. Similarly a single tax payment of £75,000 would not be required to be reported, whereas if an additional payment for the same taxation obligations of £15,000 was paid in the same year then the total amount would have to be reported in aggregate.

DRAFT

## The Reports on Payments to Government Regulations 2014

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### 5. RELEVANT GOVERNMENTS

#### 5.1 Summary of the UK Regulations

Payments need to be included in a report where they are made to a national, regional or local authority of a country. The term 'government' includes a department, agency or entity that is controlled by the government authority.

#### 5.2 Industry Guidance

- (i) This requirement will result in the inclusion of payments made at the national, federal, regional, state, province, county, district, municipal, or equivalent levels of government, and payments made to state owned enterprises.
- (ii) *State Owned Enterprises* - an entity will be treated as controlled by a government authority if it would be considered to be a subsidiary of that authority due to the government authority being in control of the entity by virtue of voting rights, the appointment of officers to the entity's supervisory body or having the right to exercise a dominant influence over the entity.
- (iii) *State Owned Enterprises operating internationally* - as explained in the Foreword to this guidance, a primary goal of government payment regulations is to help empower citizens of those resource-rich countries to hold their governments accountable for the wealth generated by those resources.

Consistent with the approach described in Section 4 relating to production entitlements, payments to state owned entities operating outside of their home countries should not be included in the report as they do not relate to the natural resources of the state owned enterprise's home country.

- (iv) *State Owned Enterprises acting as field operator* - in the oil and gas sector, a state owned enterprise (e.g. the National Oil Company) may act as operator of an oil or gas field as part of a joint venture with one or more reporting entities. The operator may require the re-imbursment of the relevant proportion of the capital or operating costs from joint venture partners through cash calls. Payments made to the National Oil Company that represent the reimbursement of ordinary capital and operating costs do not need to be disclosed. Disclosure is only required if the National Oil Company is paid one of the types of payment listed in Section 4 above and if the amount of the reportable payment is distinguishable from other costs.
- (v) *Name of Payee* - as the reporting entity is required to report the amounts paid to each government, and as a department, agency or entity is considered to be a government for this purpose, the reports should, where practicable, show the actual name of the department, agency or entity that received the payment.
- (vi) *Payments Made through Agents* - if an entity makes a payment of the type listed in Section 4 to a third party that will be paid on to the government on its behalf, that

## The Reports on Payments to Government Regulations 2014

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payment should be included in the report, with the ultimate beneficiary being identified in the report as the recipient.

Similarly, where an entity makes such a payment to a government acting as a paying agent pursuant to a contractual obligation between the entity making the payment, the government and the final recipient(s) of the payment, the reporting entity should include these payments in the report. This may arise where the government collects payments on behalf of indigenous organisations. The government entity should be identified as the payee in the report.

- (vii) *Indigenous Organisations* - the status of indigenous organisations as potential government entities should be assessed on a case by case basis taking account of factors such as local legislation and regulations. An indigenous organisation might be regarded as a government for this purpose.
- (viii) *Sovereign Entities* - the status of a sovereign entity as a potential government entity should be assessed on a case by case basis. A sovereign entity might be regarded as a government for this purpose.

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## The Reports on Payments to Government Regulations 2014

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### 6. ATTRIBUTION OF PAYMENTS

#### 6.1 Summary of the UK Regulations

- (i) The requirements in relation to the content of the report oblige the reporting entity to either attribute every payment to a project or disclose the payment at an entity level.
- (ii) The UK Regulations define the term project as follows:

*“Project” means the operational activities which are governed by a single contract, licence, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government.*

*If agreements of the kind referred to in the definition of “project” are substantially interconnected, those agreements are treated for the purposes of these Regulations as a single project.*

*“Substantially interconnected” means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities.*

*Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.*

- (iii) Where payments have been attributed to a specific project, the report should show the total amount per type of payment made for each such project and the total amount of payments for each such project.
- (iv) Reporting entities are not required to split or disaggregate payments that are not attributable to a specific project.

For instance, if a company has more than one project in a host country, and that country's government levies corporate income taxes on the company with respect to the company's income in the country as a whole, and not with respect to a particular project or operation within the country, the reporting entity is permitted to disclose the resulting income tax payment or payments without specifying a particular project associated with the payment.

- (v) Projects may not be artificially split or aggregated to avoid the application of the UK Regulations.

## The Reports on Payments to Government Regulations 2014

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### 6.2 Industry Guidance

(i) *Attribution options* - every payment that is included in a report has to be either attributed to a project or disclosed at the entity level. The manner of attribution or disclosure should be determined on one of the following bases:

1. *Project based on single agreement: 'Operational Activities and Single Agreement' Basis*

Where payments have been attributed to specific operational activities that form the basis for payment liabilities with a government and are governed by a single contract, license, lease, concession or single agreement of a similar type (the 'project'), the report should show the total amount per type of payment made for each such 'project' and the total amount of payments for each such 'project'.

2. *Project based on multiple agreements: 'Operationally and Geographically Integrated Agreements' Basis*

Where payments have been attributed to agreements of the kind listed in Option 1 that form a set of operationally and geographically integrated contracts, licenses, leases or concessions that are signed with a government and give rise to payment liabilities (the 'project'), the report should show the total amount per type of payment made for each such 'project' and the total amount of payments for each such 'project'

3. *Project based on multiple agreements: 'Related Agreements with Substantially Similar Terms' Basis*

Where payments have been attributed to a set of agreements of the kind listed in Option 1 (which can be governed by a single contract, joint venture, production sharing agreement or other overarching legal agreement) that have substantially similar terms, are signed with a government and give rise to payment liabilities (the 'project'), the report should show the total amount per type of payment made for each such 'project' and the total amount of payments for each such 'project'

4. *'Entity Level' Basis*

Where payments are made in respect of obligations imposed on an undertaking that are not attributable to a specific project, those payments may be disclosed in the report without splitting or disaggregating the payments to specific projects.

(ii) *Entity Level Payments* - the actual amount paid by the entity should be disclosed, even if that payment partially relates to other business activities. However, where the income from the relevant activities is segregated from the income earned from other business activities, the report should only include the payments that relate to the relevant activities.

## The Reports on Payments to Government Regulations 2014

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### 7. PROCEDURAL ASPECTS

- (i) *Equivalence* - if the European Commission has assessed the reporting requirements under the regime of another country to be equivalent to the requirements of the Accounting Directive, reporting entities are exempt from the requirement to prepare a report or a consolidated report based on the requirements of the Accounting Directive. Instead the reporting entity is required to submit the report prepared and made public under the equivalent regime to Companies House in accordance with the requirements described in the section titled '*Reporting Methodology*' below.
- (ii) *Reporting Obligations – Joint Ventures* - Joint Ventures occasionally involve payments, including certain payments to government, being made by one of the parties to the venture (e.g. the operator) on behalf of the whole venture. In these circumstances the operator will recover proportionate shares of the amount paid from the other parties to the venture (i.e. the non-operating parties).

The duty to include a government payment in a report, and the determination of the amount to be included, should be based on the payment arrangement that exists between the payer and the government, not by the cost sharing arrangement that exists between the parties to the joint venture.

In these circumstances, the operator that makes the payment to the government should, provided it is within the scope of the UK Regulations, include the full amount of that payment in its report. The operator will know the precise amount paid and the date of payment.

The non-operating parties that economically contributed to the payment through the relevant cost sharing arrangement should generally not include the payment that they made to the operator in their reports. In many cases, this payment will be an element of a composite contribution to meet a variety of costs borne by the operator. In practice, the non-operating parties might not, without making additional enquiries of the operator, have information on the date of payment to the government or on the precise amount of individual payments.

This recommended approach will reduce the risk of double counting or creating uncertainty on the proportion of the payment amount that will be included in each reporting entity's report and also reduce the risk of inconsistent approaches being taken between different joint ventures.

The non-operating parties are required to disclose payments that they make directly to the government, for example their corporate income taxes.

- (iii) *Reporting Periods* - the first reporting period under the UK Regulations will be the reporting entity's accounting period that begins on or after 1 January 2015.
- (iv) *Reporting Deadlines* - the Accounting Directive and the Transparency Directive were both enacted during 2013. It is the intention of the UK government that the



## The Reports on Payments to Government Regulations 2014

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requirements of the government payments aspect of the Accounting Directive and the Transparency Directive also come into effect at the same time. This has implications for the reporting deadlines for UK listed companies.

Subject to the terms of the Transparency Directive, reporting entities that are required to prepare and deliver reports or consolidated reports under the UK Regulations must deliver those reports in accordance with the requirements specified by Companies House within 11 months of the end of their financial year.

For a reporting entity that is a partnership or a limited partnership, the “financial year” is deemed to be the 12 calendar months ending on 5 April.

Companies that are subject to the Transparency Directive (UK listed companies, whether registered in the UK or elsewhere), will be required to submit their government payment reports within 6 months after the end of the accounting period in accordance with the requirements that will be set by the Financial Conduct Authority. Those companies will continue to be subject to the requirement to deliver the report to Companies House by its deadline.

[Additional guidance will be included to address the requirement on companies that are impacted by the Transparency Directive to publish their government payments report using the Financial Conduct Authority’s reporting system and the requirements to make that report available on the company’s website for a period of 10 years. This matter will be the subject of upcoming discussions with the FCA, BIS, Companies House and civil society organisations.]

Reporting entities that are exempt from the requirement to prepare a report under the UK Regulations as a result of the equivalence mechanism are required to deliver to Companies House the information contained in the report prepared in accordance with the requirements of the equivalent regime within 28 days after such report is made publicly available under those requirements.

Reports, consolidated reports or information provided under the above requirements must be delivered to Companies House by electronic means.

(v) *Filing of Reports - [To be developed further following discussions with Companies House]*

### *Content of the Report*

The report shall disclose the following information in respect of the relevant financial year:

#### Governments

- the total amount per type of payment made to each government
- the total amount of payments made to each government

#### Projects

Where payments have been attributed to a specific project:

## The Reports on Payments to Government Regulations 2014

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- the total amount per type of payment made for each such project
- the total amount of payments for each such project.

Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

Payments, activities and projects may not be artificially split or aggregated to avoid the application of the UK Regulations.

Reporting entities that prepare and make public a report complying with third-country reporting requirements assessed as equivalent to the requirements of the Accounting Directive are exempt from the requirement to prepare a report under the UK Regulations. Those companies are required to send the report prepared under the equivalent regime to Companies House. Equivalent reports prepared in a language other than English must be accompanied by an English translation.

### *Publication*

The reports on payments to governments shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

UK registered reporting entities will be required to publish (file) their extractive reports with Companies House. Companies House will determine rules for the delivery of extractive reports with companies required to publish them in accordance with the UK regulations. Reports will be submitted electronically to facilitate the efficient handling of data and ease of access for the users of the reports.

Reporting entities must deliver to Companies House either (a) a report (in the case of subsidiaries), (b) a consolidated report (in the case of parents) or (c) a report or consolidated report prepared in accordance with equivalent reporting requirements.

### *Reporting Methodology*

The Accounting Directive does not specify a format for the extractive report but, in developing an approach, it will be important that reports have regard to the Open Government principles as set out in the UK's Open Government Partnership National Action Plan.

The UK Regulations require the delivery of reports by electronic means.

Companies House is considering the use of the Extensible Markup Language (XML) interactive data format. This would involve providing reporting entities with the ability to download an XML file (known as an XML Schema) which will have been configured to be consistent with the requirements for the content of the report shown

## The Reports on Payments to Government Regulations 2014

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above. Reporting entities will be required to export data from their source files (e.g. Microsoft Excel) using the XML Schema.

The XML Schema will include a number of notes sections to enable reporting entities to provide narrative explanations required by the UK Regulations and additional information to help users, for example on currency conversion and valuation methodologies for 'in kind' payments.

Reporting entities that will be required to deliver a report prepared under the rules of an equivalent regime will need to send the report prepared under the electronic reporting requirement used for that other regime. A report may be drawn up and delivered to Companies House in a language other than English, but must, when delivered, be accompanied by a certified translation into English. If the other regime accepts reports that are not prepared by electronic means, the reporting entity should use the standard XML Schema to deliver its report to Companies House.

[Further detail on the use of XML will be provided after Companies House releases the next version of its Schema. Companies House intends to make this available to a wider group of companies and civil society organisations soon.]

### *Footnote on Companies House Fees*

As a Trading Fund, Companies House operates on the basis of cost recovery, with fees linked to the forecast cost of providing each specific service and the way in which customers access them. Therefore, there will be a fee attached to this new report for filing at Companies House. The calculation of the fee level for a new filing with Companies House is based on recovering the cost of developing the new service, over an appropriate period, and on recovering any ongoing cost. A specific fee will be determined once the detail of the filing requirement is defined and the supporting systems specification has been determined.

## The Reports on Payments to Government Regulations 2014

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### ANNEX

The following activities represent the **relevant activities**. For this purpose, the UK Regulations have adopted the International Standard Industrial Classification (ISIC) developed by the UN Statistics Division. Hyperlinks are provided below to guidance for each of these activities.

The full list of ISIC codes can be accessed from the following link. [Click Here](#)

*Agriculture, forestry and fishing*

[Logging](#)

*Mining, Quarry and Logging Activities*

[Mining of coal and lignite](#)

[Mining of hard coal](#)

[Mining of lignite](#)

[Extraction of crude petroleum and natural gas](#)

[Extraction of crude petroleum](#)

[Extraction of natural gas](#)

[Mining of metal ores](#)

[Mining of iron ores](#)

[Mining of non-ferrous metal ores](#)

[Mining of uranium and thorium ores](#)

[Mining of other non-ferrous metal ores](#)

[Other mining and quarrying](#)

[Quarrying of stone, sand and clay](#)

[Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate](#)

[Operation of gravel and sand pits; mining of clays and kaolin](#)

[Mining and quarrying not elsewhere classified](#)

[Mining of chemical and fertiliser minerals](#)

[Extraction of peat](#)

[Extraction of salt](#)

## The Reports on Payments to Government Regulations 2014

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### [Other mining and quarrying not elsewhere classified](#)

#### *Support Service Activities*

The following activities are not included within the definition of relevant activities. Hyperlinks are provided to the ISIC guidance for each of these activities.

[Support activities for petroleum and natural gas extraction](#)

[Support activities for other mining and quarrying](#)

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