



Chapter 1.5 Revenue and Payments Transparency

BACKGROUND

Revenues derived from the extraction of a country's mineral resources can make a major contribution to funding public services and other valuable government activities. However, where citizens have limited knowledge of revenues paid by natural resource companies the chances of theft or inappropriate usage of revenues from extractives companies grows. Increased transparency of material payments to and revenues received by the host country government is an essential step toward addressing this matter.

The Extractive Industries Transparency Initiative (EITI) is a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources, allowing citizens to see for themselves how much their government is receiving from their country's natural resources. The EITI is complemented and extended by mandatory transparency regimes enacted into law in the European Union and other jurisdictions. The IRMA Standard is intended to support, without duplicating, the work of the EITI and mandatory transparency regimes.

TERMS USED IN THIS CHAPTER

Beneficial Owner ■ Confidential Business Information ■ Contractors ■ Corporate Owner(s) ■ Grievance ■ Grievance Mechanism ■ Host Country Law ■ Indigenous Peoples ■ In Kind Payments ■ International Accounting Standards ■ Material Payments ■ Mining Project ■ Operating Company ■ Stakeholder ■ Worker ■ Workers' Representatives ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

OBJECTIVES/INTENT OF THIS CHAPTER

To increase transparency of mining related payments and provide communities and the general public with the information they need to understand and assess the fairness of financial arrangements related to mining operations.

SCOPE OF APPLICATION

RELEVANCE: This chapter is applicable to all mines applying for IRMA certification.

The requirements apply to compliance at the time of assessment, and on an ongoing basis thereafter. The information provided does not have to be backdated to cover activity prior to the application, with the exception of requirement 1.5.3.1. In relation to this requirement the terms for mineral exploration, development and production for the project must be made freely and publicly accessible for the whole period of project development up to the time of application and thereafter.

Revenue and Payments Transparency Requirements

1.5.1. Disclosure of Country-Level Payments

1.5.1.1. The operating company shall comply with 1.5.1.2 and 1.5.1.3, and/or demonstrate how it complies with equivalent reporting and disclosure requirements of the European Union Accounting Directive (2013/34/EU) and the European Union Transparency Directive (2013/50/EU), or an equivalent mandatory transparency regime.³⁰

1.5.1.2. On a yearly basis, the operating company shall publish a report that discloses all material payments made by itself and its corporate owner to the government of the country in which the mining project is located. The report shall be made public within 12 months after the end of each financial year.³¹

1.5.1.3. The types of payment disclosed shall include as a minimum, as applicable:

- a. The host government's production entitlement;
- b. National state-owned enterprise production entitlement;
- c. Profits taxes;
- d. Royalties;
- e. Dividends;
- f. Bonuses, such as signature, discovery and production bonuses;
- g. Licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
- h. Payments for infrastructure improvements; and
- i. Any other significant payments and material benefits to government, including in kind payments.³²

1.5.1.4. At minimum, this information shall be broken down by recipient government body (where applicable), by project (where applicable), and by payment type.

1.5.2. Disclosure of Project-Level Payments

1.5.2.1. The operating company shall demonstrate its compliance with the reporting requirements specified in Chapter 10 of the European Union Directive 2013/34/EU or an equivalent mandatory transparency regime,³³ and/or shall comply with the requirements listed under 1.5.3.2 below.

1.5.2.2. The operating company shall ensure that the following information at the mining project level is reported on an annual basis and is readily accessible to the public:

- a. Mine production, disaggregated by product type and volume;

³⁰ The European Union Accounting Directive 2013/34/EU is available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0034&qid=1524171176636> and the European Union Transparency Directive 2013/50/EU is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1415872329209&uri=CELEX:32013L0050>.

Equivalent transparency regimes include, for example: Government of Canada. 2015. Extractive Sector Transparency Measures Act. <http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html>; Ministry of Finance. 2013. Regulations on country-by-country reporting. Available at: <http://www.publishwhatyoupay.no/en/node/16414>; and UK Government. 2014. The Reports on Payments to Governments Regulations 2014. http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksi_20143209_en.pdf

³¹ The information may be made publicly available on the company and/or appropriate government website(s).

³² An example of "other significant payments" is transportation revenue. According to EITI Standard, Section 4.4, transportation revenue may include revenue from taxes, tariffs or other relevant payments related to transport of mined commodities). Social expenditures made by companies may be an example of material payments and/or benefits to governments (see EITI requirement 6.1).

³³ See footnote 30.

- b. Revenues from sales, disaggregated by product type;
- c. Material payments and other material benefits to government as listed in paragraph 1.5.1.3, disaggregated according to the receiving government entity (e.g. national, regional, local entity; name of government department);
- d. Social expenditures, including the names and functions of beneficiaries;³⁴
- e. Taxes, tariffs or other relevant payments related to transportation of minerals;
- f. Payments to politicians' campaigns, political parties or related organizations; and
- g. Fines or other similar penalties that have been issued in relation to the project.

1.5.2.3. The operating company shall publish annual accounts, following international accounting standards.

1.5.3. Support for the Extractive Industries Transparency Initiative (EITI)

1.5.3.1. If the mining project is located in a country without a mandated transparency regime, the operating company shall demonstrate support for the EITI by publishing a clear public statement endorsing the EITI Principles on its external website.

1.5.3.2. If the mining project is located in a country without a mandated transparency regime and the EITI is active in that country, the operating company shall:

- a. Commit to engage constructively with and support implementation of the EITI consistent with the multi-stakeholder process adopted in its country of operation; and
- b. Provide links on its external website to completed and up-to-date Company Forms for its operation, if the EITI implementing country has completed at least one validation.

1.5.4. Operating Company Transparency

1.5.4.1. The material terms for mineral exploration, development and production agreed between the operating company and government entities shall be freely and publicly accessible, with the exception of confidential business information,³⁵ in the national language(s) of the country in which the mining project is located.

- a. Where these terms are negotiated, rather than governed by law, the company shall make the relevant agreements, licences or contracts freely and publicly accessible.
- b. Where these terms are governed by law, free, public access to the relevant statutory documentation is deemed sufficient to meet the IRMA requirement.

1.5.4.2. The beneficial ownership of the operating company shall be publicly accessible.

³⁴ Social expenditures include in-kind expenditures. Reporting of social expenditures does not include expenditures agreed upon with affected indigenous peoples' governing bodies, e.g., "impact and benefit" or similar agreements reached through the process of Free, Prior and Informed Consent (see Chapter 2.2). Those expenditures may be reported if agreed by the indigenous peoples.

³⁵ Confidential business information that is not material to the terms for mineral exploration, development and production may be excluded or redacted from the publicly accessible documentation as necessary.

1.5.5. Anti-Corruption Measures

1.5.5.1. The operating company shall develop, document and implement policies and procedures that prohibit bribery and other forms of corruption by employees and contractors.

1.5.5.2. Procedures shall include:

- a. A requirement to internally report and record any undue pecuniary or other advantage given to, or received from, public officials or the employees of business partners, directly or through third parties; and
- b. Disciplinary actions to be taken if cases of bribery or corruption are discovered.

1.5.5.3. Relevant employees and contractors shall be trained in the application of the operating company's policy and procedures.

NOTES

The Extractive Industries Transparency Initiative (EITI) maintains the EITI Standard. The EITI scheme applies specifically to countries. Countries implement the EITI Standard to ensure full disclosure of taxes and other payments made by producing oil, gas and mining companies. These payments are disclosed in an annual EITI Report (to see all EITI Reports, go to: eiti.org/countries/reports). This report allows citizens to see for themselves the revenues that their government is receiving from their country's natural resources.

This chapter of the IRMA Standard is based on EITI requirements, but is designed for application to operating companies reporting on the mine site that is up for certification. Requirement 1.5.1.2 of the IRMA chapter aims to complement EITI's scheme by requiring operating companies to report corporate-level information about payments made by the operating company or its corporate owner in the country where the mining project is located, allowing country and corporate reporting to be compared. As an alternative, to avoid duplication, it allows operating companies to show how their compliance with specific national or regional regulatory regimes provides an equivalent level of transparency.

Since IRMA certifies mine sites, most of the criteria apply specifically at the mining project level, and the chapter includes requirements related to project-level reporting of payments, accounts, mine development agreements, and anti-corruption measures.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.1—Legal Compliance	<p>As per Chapter 1.1, if a <u>host country law</u> pertains to mandatory transparency of payments or other information, the company is required to abide by that law. If the mandatory transparency scheme is essentially equivalent to IRMA’s requirements (e.g., EU, Norway, Canada) then the company will only need to meet <u>host country law</u>. If IRMA requirements are more stringent than a host country’s mandatory transparency regime (e.g., the host country does not require reporting on a project level), the company is required to also meet the IRMA requirements, as long as such compliance would not require the <u>operating company</u> to violate <u>host country law</u>.</p> <p>If <u>host country law</u> prohibits certain actions, such as publishing contracts (1.5.3.1), companies are not expected to break the law.</p>
1.4—Complaints and Grievance Mechanism and Access to Remedy	<p>Chapter 1.4 has a provision (1.4.2.1) that <u>stakeholders</u> be involved in designing a <u>grievance mechanism</u>. If it is important to <u>stakeholders</u>, the mechanism could allow for the anonymous filing of complaints, for example, in relation to financial matters, bribery, corruption, etc. Even if it does not, the company may receive complaints related to financial matter, corruption or bribery through this mechanism.</p>
2.2—Free, Prior and Informed Consent	<p>Reporting of social expenditures in 1.5.2.2.d does not include expenditures agreed upon with affected <u>indigenous peoples’</u> governing bodies (e.g., “impact and benefit” or similar agreements reached through the process of <u>Free, Prior and Informed Consent</u> - See Chapter 2.2). Those expenditures may be reported if agreed by the indigenous peoples.</p>
3.1—Fair Labor and Terms of Work	<p>Chapter 3.1 has a provision for a <u>grievance mechanism</u> (3.1.5), which enables <u>workers</u> to file complaints anonymously, for example, in relation to financial matters, bribery, corruption, etc. without facing retribution from the company.</p>
3.4—Mining in Conflict-Affected or High-Risk Areas	<p>Information gathered to fulfill requirements in Chapter 3.4 (e.g., 3.4.2.2.b, 3.4.3.1) may feed into the reporting requirements in Chapter 1.5. (e.g., requirements 1.5.1.3. and 1.5.3.2.) regarding payments to governments.</p>
3.5—Security Arrangements	<p>The security risk assessment in Chapter 3.5 may reveal information related to payments made to public security forces at the mine site or along transportation routes that will need to be disclosed as country or project-level payments to governments.</p>