

10 November 2014

*Practice Group:*

*Energy, Infrastructure  
and Resources*

## 'Publish What You Pay' Push For Australian Mining Companies

*Australia Energy, Infrastructure and Resources Alert*

*By Robert Milbourne, Partner at K&L Gates*

**BRR** Today I'm joined by Robert Milbourne, who's a Partner in the Energy Infrastructure and Resources team at K&L Gates; Robert thanks for joining us.

**RM** Thank you.

**BRR** Now Robert mining companies could be forced to report payments to Governments under a new Bill introduced last week, could you give us some of the details?

**RM** Yeah look this is part of a process that has been underway for over a decade, broadly under the publish what you pay movement that evolved into an initiative called the Extractive Industries Transparency Initiative, EITI is now based in Scandinavia it's got 50 countries around the world that are members to it and of those 31 are fully compliant and there are 17 countries are candidates. Australia has passed a pilot initiative over the last year and in connection with the broader movement towards EITI the Greens Leader, Christine Milne has introduced an amendment to the Corporations Act which is called the Corporations Amendment Publish What You Pay Bill 2014 in the Senate. The legislation itself is intending to provide that Australian based resources and extraction companies are now obligated to file to ASIC the payment that they make to host government in the countries in which they operate. So the intent here is that behind this whole EITI process countries and companies will become more transparent and accountable with respect to the payment involved in natural resource revenues. The idea is to help quash any opportunity towards corruption and enable civil society and other participants to be more clear in the contribution of resources to host government in the development of their projects around the world.

**BRR** Robert how would the reporting actually work?

**RM** Well at the moment this is obviously legislation that hasn't been passed, so we will need to see whether there are going to be any amendments but the intent is that there would be a filing to ASIC on an annual basis for any payments that are over \$100,000, these payments are actually quite broad so it includes non cash payments as along with tax and royalty payments. So social security services, the social payments, military, schools, other infrastructure improvements that might occur will have to be accounted for, that would then go into a report, the report has to be

## 'Publish What You Pay' Push For Australian Mining Companies

machine readable and it would go to ASIC who would then have an obligation to disclose that report within 30 days.

**BRR** **And are there any issues that an introduction of these laws might raise for companies?**

**RM** Look I think so, the biggest challenge that I see is with respect to confidentiality, countries may enter into agreements with host – with private sector resource companies to develop and undertake certain activities that either the host country or the private participants would not want disclosed. This mandate by the proposed amendment would require disclosure of information that potentially is confidential. In the outset it's hard to see what would not be discloseable or should not be discloseable but if there is research, technology or strategic investment that are occurring that a company would not disclosed to the market initially and would rather disclose over time they will have a challenge with this. There is a provision within the proposed law that would allow for ASIC to grant certain exemptions, it's not clear how ASIC would chose to grant those exemptions but if the information is very difficult to obtain or if there are other strategic information concerns that exist with respect to the disclosing entity they can seek an exemption from ASIC in the first instance.

**BRR** **And just finally Robert assuming that the laws are passed do we know when they're due to come into effect?**

**RM** At this point it's not clear whether the Government is fully behind the proposed amendments and the timing for it to come into effect, so it would be speculation at this point, but I would imagine that there will be pressure for this type of Bill to pass soon, there was a similar legislation passed last week in Canada, the UK, the United States, other major jurisdictions around the world have been passing similar legislation so it would not put Australia as an outlier in this legislation so I suspect it will be pressure on the government to pass something along these lines within the next six months or year.

**BRR** **I guess we'll have to wait and see but Robert thank you so much for talking us through these proposed laws today.**

**RM** Thank you.

**BRR** **That was Robert Milbourne, a Partner in the Energy, Infrastructure and Resources Group at K&L Gates. Now listeners if you have any questions you can send them through either using the panel on your screen or otherwise via email to [law@brrmedia](mailto:law@brrmedia).**

## 'Publish What You Pay' Push For Australian Mining Companies

**Author:**

**Robert Milbourne**

robert.milbourne@klgates.com

+61.7.3233.1203

## K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Moscow Newark New York Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle Seoul Shanghai Singapore Spokane Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises more than 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit [www.klgates.com](http://www.klgates.com).

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

© 2014 K&L Gates LLP. All Rights Reserved.