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New UK Law for extractive industries

Date : October 23, 2014

There has been a huge drive in the UK for greater transparency in recent times. The UK parliamentary expenses affair as well as private sector issues such as the banking scandals have led to a public wish for greater transparency in public and private affairs.

One of the sectors which has been an area of increased focus has been the extractive industries. When the Bribery Act 2010 was introduced in the UK the Ministry of Justice's consultation exercise featured examples in mining, forestry and oil. Just as the Bribery Act 2010 has led to new sanctions for companies in this sector new Regulations this year will bring a need for increased transparency. The Reports on Payments to Governments Regulations 2014 will come into force next month. Under this new law companies in this sector will have to make a public report on how much money they pay to foreign governments. The law covers UK registered companies in a number of fields of activity including :

- Oil
- Gas
- Quarrying
- Logging
- Ore mining
- Stone, salt and sand extraction
- Chemicals mining and quarrying

Oil and gas activities include any activities involving exploring, prospecting, discovering or developing oil, minerals, gas deposits or other materials.

Oil companies in particular with a presence in the UK will need to heed this new law. If company directors do not make these reports as required they could end up in jail because the penalties include prison sentences.

UK registered companies will also be subject to the new legislation even if they are foreign owned. There will be more regulation than ever before in this sector. If there is a parent company of a group of companies it will have the responsibility of making a report. The reports will have to be clear about whether the parent company or the subsidiary have made payments. The subsidiary of a company will only be exempt from preparing a report if the parent company is expected to file a report under the law. If the parent company is not expected to file a report then the subsidiary of a company will be expected to file a report. Companies will also have to be clear about who has been receiving the payments.

This UK law follows on from European rules that require companies across the EU to disclose payments they have made to extractive companies all around the world.

Under the new UK law, companies who make payments to governments over the threshold of £86,000 are expected to file a report including the full details of all of the particulars of the payments to Companies House; the company registrar for UK companies.

Companies are expected to make reports on:

- The governments who have received the payments;
- The extent of the payments;
- Whether those payments were attributed to a specific project.

The reports are expected to be very detailed and the law is careful to ensure that all payments including single payments or a series of related payments fall under the law when deciding whether the threshold has been reached.

Reports are expected to be publicly available and will allow citizens from across the globe to track payments that have been made to their governments. This could be a particular issue for some corporations who have faced actions from pressure groups as their worldwide activities are now likely to be subject to easy online scrutiny. Pressure groups and the media will be keen to see how much companies have been paying governments around the world and no doubt they will be keen to make their discoveries known. There will be the potential for huge embarrassment for companies and foreign governments in relation to payments.

There is a very strict procedure in terms of what companies are supposed to do under the new law.   A report must be made for each financial year. If a report is not made then the Companies Registrar will serve a Notice on the company requiring it to either file a report or to explain what the reasons are for failing to file the report. The new law says that if a company fails to comply with a Notice within 28 days then a criminal offence is committed by the company and every person who is a director of the company. Again failure to file is likely to lead to significant reputational damage and could affect assessments of a company as ‘fit and proper’ in terms of operating licenses.

The Government have promised that the law will be very stringently enforced. The new law targets not just companies but also company directors who could find themselves charged, prosecuted and convicted of a criminal offence for failing to comply with the law. In addition reputational damage may follow for any company which commits an offence. Company directors can be tried in the Crown Court before a jury for breaching these Regulations and the maximum penalty is 2 years imprisonment.

It should be remembered that companies subject to the new law will also still be subject to the UK Bribery Act 2010. As we reported in our alert in August there has been significant enforcement activity in the UK of bribery legislation in the last 12 months. Some of those cases involve companies in the extractive industry and it is likely that the Serious Fraud Office will co-ordinate with Companies House to cross-reference the payments made to public officials and their disclosure.

Companies would be well advised to have policies and procedures in force in order that they are able to understand the new legislation, train staff and promptly prepare proper reports and accounts. These policies should match existing policies dealing with the Bribery Act 2010 and since the activities of associated persons (such as agents and in-country representatives) also carry liability for the company under the bribery legislation the training should be extended to relevant third parties in addition. Companies in the oil, gas, stone, salt, sand and other quarrying, mining and logging industries should take careful legal advice about whether they have fully complied with this law and with the Bribery Act 2010. Being properly prepared could mean that companies can protect themselves from investigations, prosecutions and fines.

This is one law that company directors can’t afford to ignore.

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