



**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



THE CANADIAN
BAR ASSOCIATION



Global Affairs
Canada Affaires mondiales
Canada



LAW SOCIETY OF KENYA



Tanganyika
Law Society



UGANDA LAW SOCIETY

ESTMA: Overview

- Requires all companies listed in Canada, or with business or assets in Canada prepare and publish an annual report
- Report certain payments made to governments relating to “commercial development of oil, gas or minerals”
 - Does not include support services (construction) or post-extraction (e.g. smelting)
- Fine of up to \$250,000 per day for company and directors and officers



ESTMA: Who must report

Applies to entities

- Listed on a stock exchange in Canada (70% of global mining equity); or
- Doing business or assets in Canada

AND

- Size test (2 of 3)
 - \$20M in assets
 - \$40M in revenue
 - 250+ employees



ESTMA: Who receives payment

- Goal is to disclose payments to governments
- Act has a broad definition including:
 - Any government in Canada or in a foreign state.
 - A body that is established by two or more governments.
 - Any trust, board, commission, corporation or body or other authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of a government for a government referred to above.
- Includes First Nations in Canada and abroad



ESTMA: Sample payments

- Must report all payments over \$100,000 including:
 - taxes, other than consumption taxes and personal income taxes;
 - royalties;
 - fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;
 - production entitlements;
 - bonuses, including signature, discovery and production bonuses;
 - dividends, other than dividends paid as ordinary shareholders; and
 - infrastructure improvement payments.
- Social payments, including capacity-building payments, accommodation payments, infrastructure improvement payments, and other payments or in-kind support need to be reported.



ESTMA: Report

- Government maintains a registry of links, not reports
- Must remain for at least 5 years
- Reports are published on-line
 - Review B2Gold Report



Group Exercise

1. Sample ESTMA report - B2Gold – 5 minutes as small groups

Review and discuss any items of interest.

Does this give more info?

Useful info?

What additional questions does it raise?

Where would you seek additional information?



ESTMA: Issues

- New legislation, not without its challenges
- High entity thresholds: captures majors but not ventures.
- What type of payments need to be reported? Lots of discretion left to entity, but fined if wrong
- Legislation requires reporting of the amount despite any confidentiality clause. Other details still confidential.
- Concern about impact on negotiations with local communities/First Nations
 - Will other funds be decreased because of payments from mining company



ESTMA: Follow up

- Disclosure registries may be nominal increase to transparency
- Follow up due diligence is required



Three years of ESTMA

- Reports are not easy to find
- High variance in reporting standards
- Positive step is an increase of more in-depth reports, but difficult of comparing between reports

