



# Mining

in 35 jurisdictions worldwide

# 2011

Contributing editors: Michael Bourassa and John Turner



Published by  
*Getting the Deal Through*  
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### Mining 2011

Published by  
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87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
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2011

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ISSN 1748-3085

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Although the information provided is  
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Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112

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<b>Albania</b> <i>Alketa Uruçi and Bers Hado</i> Boga & Associates	<b>3</b>
<b>Angola</b> <i>Agostinho Pereira de Miranda and João Afonso Fialho</i> Miranda Correia Amendoeira & Associados	<b>9</b>
<b>Argentina</b> <i>Ignacio Hernán Celorrio, Hugo Quevedo and Hernán Celorrio</i> Quevedo Abogados	<b>14</b>
<b>Australia</b> <i>Kym Livesley</i> Gadens Lawyers	<b>21</b>
<b>Azerbaijan</b> <i>Aykhán Asadov and Mahmud Yusifli</i> Baker & McKenzie – CIS, Limited	<b>27</b>
<b>Bolivia</b> <i>Andrés Moreno Gutiérrez and Daniel Arredondo Zelada</i> Moreno Baldvieso Estudio de Abogados	<b>32</b>
<b>Brazil</b> <i>Pedro Aguiar de Freitas, Pedro Garcia, Alexandre Calmon and Bruno Chedid</i> Veirano Advogados	<b>37</b>
<b>Canada</b> <i>Michael Bourassa and John Turner</i> Fasken Martineau	<b>44</b>
<b>Chile</b> <i>Rafael Vergara and Juan Francisco Mackenna</i> Carey y Cía Ltda	<b>51</b>
<b>Democratic Republic of the Congo</b> <i>Hubert André-Dumont</i> McGuireWoods LLP	<b>57</b>
<b>Finland</b> <i>Jukka Kallio, Tarja Pirinen and Pekka Holopainen</i> Kalliolaw Asianajotoimisto Oy – Attorneys at Law	<b>64</b>
<b>Ghana</b> <i>Michael Edem Akafia and Kimathi Kuenyehia Sr</i> Kimathi & Kimathi, Corporate Attorneys	<b>71</b>
<b>Greenland</b> <i>Peter Schriver</i> Nuna Law Firm	<b>77</b>
<b>Indonesia</b> <i>Dezi Kirana and Robert Reid</i> Soemadipradja & Taher	<b>82</b>
<b>Ireland</b> <i>Patrick McGovern and Peter Curran</i> Arthur Cox	<b>90</b>
<b>Kazakhstan</b> <i>Simon Bellas and Indira Iminova</i> Baker & McKenzie – CIS, Limited	<b>97</b>
<b>Kyrgyzstan</b> <i>Niyaz Aldashev, Samara Dumanaeva and Svetlana Lebedeva</i> Lorenz International Law Firm	<b>105</b>
<b>Malawi</b> <i>Krishna Savjani OBE SC and Duncan Singano</i> Savjani & Co	<b>110</b>
<b>Mexico</b> <i>Abdón H Hernández</i> Martínez Carrera & Hernández	<b>115</b>
<b>Mongolia</b> <i>John Connors Baker &amp; McKenzie G Bahdal and D Khand Tsets</i>	<b>119</b>
<b>Mozambique</b> <i>Agostinho Pereira de Miranda and Nuno Cabeçadas</i> Miranda Correia Amendoeira & Associados	<b>125</b>
<b>Namibia</b> <i>Peter Frank Koep and Hugo Meyer van den Berg</i> Koep & Partners	<b>132</b>
<b>Nigeria</b> <i>'Gbite Adeniji, Olajumoke Fajemirokun, Olapeju Bakare and Kikelomo Akinyoso</i> ÆLEX	<b>136</b>
<b>Panama</b> <i>Rolando Candanedo Deneken</i> Bufete Candanedo	<b>141</b>
<b>Papua New Guinea</b> <i>Geoff Applegate</i> Gadens Lawyers	<b>147</b>
<b>Peru</b> <i>Luis Felipe Huertas del Pino and Alfonso Rebaza</i> Osterling Abogados	<b>151</b>
<b>Philippines</b> <i>Hector M de Leon Jr SyCip</i> Salazar Hernandez & Gatmaitan	<b>157</b>
<b>Russia</b> <i>Alexey Frolov and Alexander Gomonov</i> Baker & McKenzie – CIS, Limited	<b>163</b>
<b>South Africa</b> <i>Claire Tucker and Sandra Gore</i> Bowman Gilfillan Inc	<b>168</b>
<b>Tanzania</b> <i>Alex Thomas Nguluma and Tabitha Maro</i> Rex Attorneys	<b>176</b>
<b>Thailand</b> <i>Albert T Chandler, Nuanporn Wechsuwanarux and Stefan Chapman</i> Chandler & Thong-ek Law Offices Ltd	<b>181</b>
<b>Uganda</b> <i>Denis Kusaasira and Henry A Kaliisa</i> Kusaasira & Co Advocates	<b>189</b>
<b>Ukraine</b> <i>Svitlana Romanova and Taras Aleshko</i> Baker & McKenzie – CIS, Limited	<b>195</b>
<b>United States</b> <i>Robert A Bassett and Andrew A Irvine</i> Holland & Hart LLP	<b>201</b>
<b>Zambia</b> <i>Charles Mkokweza</i> Corpus Legal Practitioners	<b>206</b>

# Australia

**Kym Livesley**

Gadens Lawyers

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## Mining industry

- 1** What is the nature and importance of the mining industry in your country?

The mining industry is one of Australia's most important export sectors and makes a significant economic and social contribution to the Australian economy. Mining and minerals activity currently comprises 8 per cent of the Australian economy and 40 per cent of exports. The mineral and minerals processing sector contributes A\$138 billion directly to Australia's wealth each year, supporting more than 750,000 Australians.

Australia currently has one of the largest mineral sectors by value of production in the world. The Australian mining industry has benefitted from a global boom in demand for minerals in recent years, and is expanding, as a result of a high demand for raw materials from China, India and other parts of Asia. Australia is also a world leader in developing and exporting mining equipment, services and technologies.

- 2** What are the target minerals?

Australia is the world's leading producer of iron ore and bauxite, the second largest producer of alumina, lead and manganese, the third largest producer of brown coal, gold, nickel, zinc and uranium and the fifth largest producer of tin.

- 3** Which regions are most active?

Mining activity occurs in all Australian states and territories. The regions of Pilbara, Goldfields in Western Australia, the Hunter Valley and Broken Hill regions of New South Wales, the Bowen Basin, Mount Isa and Mount Morgan in Queensland, the Latrobe Valley in Victoria and the mid-north of South Australia are active mining regions.

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## Legal and regulatory structure

- 4** Is the legal system civil or common law-based?

The Australian system is common law-based. Its laws are based on a combination of legislation made by parliament and decisions made by an independent judicial system that adheres to the rule of law and due process.

Laws are made and regulated by three tiers of government – federal, state and territory, and local government. The federal government (the Commonwealth) represents a federation of the six Australian states (New South Wales, South Australia, Queensland, Tasmania, Victoria and Western Australia) and the Commonwealth's territories (including the Northern Territory and Australian Capital Territory). The Commonwealth has the power to make laws under the Australian Constitution. The Commonwealth has power to legislate in areas such as corporations, taxation, native title, overseas

trade, trade practices, foreign investment and foreign affairs. However, using such power, the Commonwealth also legislates on broader issues including environmental issues and native title.

The state and territory governments are given broad legislative power under their respective constitutions. Areas such as mining, roads and traffic, environment, health and criminal law are regulated primarily by laws at this level.

Local governments are established by state or territory legislation. Local governments typically make and enforce regulations in relation to building and development, town planning, local amenities, environment and land use within their local government areas.

- 5** How is the mining industry regulated?

Minerals and the mining industry are regulated at the state and territory level. Each state or territory has its own legislation relating to minerals found onshore and offshore within coastal waters.

Nevertheless, some Commonwealth laws may affect the mining industry because the Commonwealth legislates over areas such as corporations, competition and trade practices, interstate and overseas trade, taxation, and defence and foreign affairs.

Mining companies listed on the Australian Securities Exchange (ASX) must also comply with the ASX Listing Rules.

- 6** What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

Each state and the Northern Territory has a Mining Act and Mining Regulations (or equivalent) that regulates the ownership of minerals and operation of mining activities in that state. The states have other laws dealing with areas such as mine operation, mine inspection, occupational health and safety, environment, and planning. The government department administering mining law in each state administers and sets out guidelines and policy statements relating to state mining legislation.

- 7** What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Australian mining industry uses the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code) for public reporting (eg, annual reports and analyst reports). The JORC Code is published by the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia.

The JORC Code is applicable to all solid minerals, including diamonds, other gemstones, industrial minerals and coal. The JORC Code requires reporting on the company's mineral resources under quantities known as 'mineral resources' or 'ore reserves'. The classification of the mineral resource depends upon the quantity, distribution and quality of data available and the level of confidence that

attaches to such data.

A 'mineral resource' is an occurrence of a mineral material of intrinsic economic interest that has reasonable prospects for eventual economic extraction. The location, quantity, grade, geological characteristics and continuity of a mineral resource must be known, estimated or interpreted from specific geological evidence and knowledge. Mineral resources are subdivided, in order of increasing geological confidence, into inferred, indicated and measured mineral resources.

An 'ore reserve' is the economically mineable part of a measured or indicated mineral resource and is subdivided, in order of geological confidence, into a 'probable ore reserve' or a 'proved ore reserve'.

Although the JORC Code applies to the reporting of mineral resources and ore reserves by all public companies, the ASX Listing Rules also expressly require any report by an ASX-listed company on its exploration results, mineral resources or mineral reserves to comply with the JORC Code.

### Mining rights and title

**8** To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

Unlike many other common law jurisdictions, in Australia ownership of minerals are generally reserved to the Crown and vested in the government of the state or territory in which they occur. Accordingly, ownership of minerals does not pass with the grant of freehold title to the land. For historical reasons, in New South Wales and Tasmania there remain very small and isolated pockets of land in which the owner of the surface rights has retained ownership of the minerals occurring on their land. However, in New South Wales, all prospecting and mining for minerals, whether privately or publicly owned, requires authorisation under the NSW Mining Act.

Each state and territory operates under its own legislation, which permits third parties to explore for and produce minerals. Generally speaking, ownership in the resource passes to the third party at the point of extraction (in accordance with relevant state or territory Mining Act).

**9** What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

A wide range of information is made available by the respective state and territory government departments responsible for the administration of mineral exploration and production titles (State Government Departments). Such information is commonly contained in an online, searchable format. Available information often includes open file company data, company drillcore results and current and historic exploration tenement information as well as geophysical and geochemical data. There is also closed file data provided to the government departments, which remain confidential for a period of time.

Holders of exploration and mining titles are required to file various reports in digital format, including annual reports (which include a summary of activities conducted) and geophysical survey reports. National, uniform guidelines apply to the structure of technical reports and the submission of reports in digital format. The respective State Government Departments assume the responsibility for acquiring, storing and distributing this information.

State and territory governments are committed to promoting exploration in previously under explored areas. Accordingly, the states and the Northern Territory conduct geological surveys with programmes, which can include the acquisition of deep seismic, tel-seismic, gravity and airborne magnetic and radiometric data.

**10** What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder to a preferential right to acquire a mining licence?

A miner may obtain rights to conduct mining activities on unreserved Crown land or on private land where the permission of the landowner has been granted. The specific mining rights that miners may acquire differ slightly in each state or territory, but the rights are based upon the three basic stages of development of a mine: initial exploration, further detailed exploration and assessment, and production.

Holders of mining rights may also have ancillary rights that relate to those mining activities, such as public road access, access to water and setting up crushing, sizing and grading facilities on the land surface.

Mining rights may be acquired from the applicable state department generally through an application process on a first-come, first-served basis, or in some instances, a tender-based process. Mining rights may also be acquired by entering into a contractual arrangement with the holder of the mining right. Rights to access the surface are regulated both by legislation and by private contract with landowners.

Mining rightholders will generally have obligations such as payment of rent and royalties, compliance with work programmes, mine rehabilitation and reporting requirements (for example, exploration activities and mining expenditure).

Holders of an exploration or retention licence generally, depending on the state or territory legislation, will have a priority right to acquire a mining licence.

**11** Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

No. However, a major acquisition of assets by a foreign company may require the approval of the Australian treasurer, through the Foreign Investment Review Board. The Foreign Investment Review Board has the power to block proposals that are required to be notified to it and which are determined to be 'contrary to the national interest'.

A proposed acquisition by a foreign company of an asset or company valued at over A\$231 million (a higher threshold of A\$1004 million applies to acquisitions by US companies) must be notified to the Foreign Investment Review Board.

There are also notification requirements below this threshold if investment is in a prescribed sensitive sector; the extraction of (or the holding of rights to extract) uranium or plutonium is one such sector.

**12** How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

The legislation of each state prohibits prospecting or mining minerals otherwise than in accordance with the terms of a valid mining tenement. As a general rule, mining rights may not be granted to third parties over land that is subject to an existing mining tenement, unless the holder of the existing mining right gives consent. These and other mining rights can be protected or enforced through an independent judicial system. A mining court or tribunal has been set

up in each state or territory, and is given the jurisdiction to determine all suits concerning mining tenements and may exercise any other jurisdiction vested by the particular state and territory regulation.

Mining rights obtained through contractual arrangements are also protected under contract law.

Australia has implemented the New York Convention on the Enforcement and Recognition of Foreign Arbitral Awards through the International Arbitration Act 1974 (Cth).

**13** What surface rights may private parties acquire? How are these rights acquired?

A holder of mineral rights is generally given rights on the land surface to carry out mining purposes. These rights may depend upon the stage of the mining operation, and may include rights to access water and public roads; construct, maintain and use buildings, plants, roads and railways; and conduct primary treatment operations and other acts ancillary to mining.

Where the holder is seeking to engage in these ancillary activities on private land, rights must be obtained from the private landowners by means of purchases, leases, easements, etc. The general laws of contract apply between private parties. Mining legislation may also set out requirements for certain terms relating to access and compensation arrangements with landholders.

**14** Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

Generally speaking, mining is restricted within national parks, wilderness protection areas and areas reserved for preservation of tourism or heritage interests.

Areas subject to native title or aboriginal cultural heritage (discussed below) are also specially regulated.

### Duties, royalties and taxes

**15** What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these duties, royalties and taxes revenue-based or profit-based?

First, royalties are payable to the Crown on extraction of the minerals. The amount and calculation of such royalties vary from state to state and may include, for example, flat-rate royalties (eg, on a 'cost per tonne' basis), ad valorem royalties (based on a percentage of the total value of minerals recovered, ranging from 2.5 to 8.2 per cent) and profit-based royalties (applied in some states to all minerals, such as Tasmania and the Northern Territory, and applied in some states to only certain minerals, such as diamonds). The level and nature of royalties also varies depending on the type of commodity and its location within Australia. A number of state governments (including Queensland and New South Wales) charge mining companies higher freight rates to carry minerals compared with other commodities. In these cases, mining freight subsidises the operation of government railways.

Second, private royalties may be payable, for example, in circumstances where the mining rights have been transferred between private parties subject to the payment of an ongoing private royalty.

Third, general duties and taxes are payable in the same manner as any other business within Australia, such as local government rates and fees, stamp duty, goods and services tax, capital gains tax or income tax. There is no general Australian government mining legislation or specific taxation of mining products, although the general duties and taxes include certain special provisions and concessions for mining activities. However, please refer to the comments in 'update and trends' regarding the federal government's recent announcements of plans to introduce a tax on the profits of iron ore and coal in addition to a carbon tax.

**16** What tax advantages and incentives are available to private parties carrying on mining activities?

A broad-based goods and services tax (GST) applied at the rate of 10 per cent has been in operation since 1 July 2000.

The GST regime benefits industry, as GST-registered enterprises are typically able to recover the GST paid on their business inputs. Mining enterprises are not required to charge GST on goods they export to overseas customers (which account for the bulk of industry sales). However, careful consideration is required where the enterprise supplies or receives certain financial supplies, including, among others, forward contracts, options to buy or sell foreign currency, commodity derivatives and security lending arrangements as these transactions can give rise to restrictions on recovery of GST on associated business inputs. There are also special GST rules for domestic sales of precious metals.

Fuel tax credits commenced on 1 July 2006 as part of the government's major programme of reform to modernise and simplify the fuel taxation system. The previous system of fuel grants, rebates and remissions has been substantially replaced with a single fuel tax credit, claimable via a business activity statement.

The Enhanced Project By-Law Scheme (EPBS) provides tariff duty concessions on eligible goods for major products in the mining and resource processing industries. Only eligible goods integral to the project may be eligible for a tariff duty concession.

The major form of government assistance provided to the mining industry is in the form of research and development via the CSIRO Institute of Minerals, Energy and Construction. In addition, the Australian Geographical Survey Organisation (part of the Department of Resources, Energy & Tourism) is undertaking national geoscientific mapping aimed at encouraging the sustainable management and development of Australia's natural resources.

Direct assistance in the form of export assistance and subsidies is minimal.

**17** Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

Although there is no obvious distinction between specific mining taxes such as duties and royalties paid by domestic parties compared to those paid by foreign parties, parties must consider more general taxation matters such as withholding taxes, thin capitalisation rules, double tax agreements and foreign tax credits.

### Business structures

**18** What are the principal business structures used by private parties carrying on mining activities?

Mining activities can be conducted by corporations, partnerships or by way of joint venture; however, mining projects are most commonly structured as joint ventures. The joint venture can either be incorporated or unincorporated. An incorporated joint venture uses a company as the project vehicle, and as such, is governed by its constituent documents. The typical unincorporated joint venture is governed by a joint venture agreement.

**19** Is there a requirement that a local entity be a party to the transaction?

Although this requirement is common in some Asian and African sovereign states, there is no requirement that a local entity be a party to a transaction in Australia. However, acquisitions of interests by foreign parties in some exploration titles and most production titles (or an acquisition of shares in the company that holds these titles) will require the approval of the Federal Treasurer, through the Foreign Investment Review Board.

Further, currently, foreign investment approval will be required where a foreign party acquires an interest in an operational mine val-

ued at over \$50 million or more (\$1005 million for US investors).

Additionally, direct investments by foreign governments and their related entities (such as sovereign wealth funds) will require foreign investment approval, regardless of the value of the transaction.

- 20** Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Australia is a party to a wide range of bilateral investment treaties and tax treaties. However, in practice these treaties have not influenced the way in which foreign entities structure their operations in Australia.

### Financing

- 21** What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Financing is one of the principal barriers to entry in mining, which is a highly capital-intensive enterprise. Large sums of money are required to construct mines and production facilities, and to sustain the exploration and development needed to replenish reserves.

Project finance is extensively used in Australia for mining- and exploration-related projects.

The domestic public securities market, by way of the ASX, lists many publicly listed mining companies. Such listed companies seek to raise the capital required to fund various mining activities through their shareholders by undertaking capital raisings.

### Restrictions

- 22** What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

An import permit is required to import used agricultural, earth-moving and mining machinery and can be assessed by the regional offices of the Australian Quarantine and Inspection Service. Also, all machinery imported into Australia requires a cleanliness declaration, which states that the machinery is clean and free of all soil, plant and animal debris.

There are occupational health and safety laws in each state and territory of relevance to the use of plant and equipment.

- 23** What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Other than export controls that exist for the sale of uranium, related nuclear materials (including tantalum and mineral sands containing monazite) and rough diamonds, there are no general restrictions or limitations imposed on the processing, exporting or selling of metallic minerals.

Export controls, which apply to uranium and related nuclear materials, are in place to ensure compliance with Australia's non-proliferation policy. Export permits in respect of such material can be obtained from the government.

Rough diamonds are only permitted to be exported to countries participating in the Kimberley Process Certification Scheme (an international effort to eliminate trade in conflict diamonds).

- 24** What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Generally, foreign and Australian currency can be transferred in and

out of Australia without restriction. Virtually all exchange controls in Australia have been removed.

To detect tax evasion and other criminal activities, the Financial Transaction Reports Act 1988 (Cth) requires cash dealers to report significant cash transactions to the Australian Transaction Reports and Analysis Centre (AUSTRAC).

There are no general restrictions or limitations in relation to the use of the proceeds from the export or sale of metallic minerals.

### Environment

- 25** What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Each state and territory has a detailed legislative and regulatory regime relating to environmental conservation, assessment, planning and land use. The environmental aspects of the mining industry are generally administered by the relevant state and territory environmental protection agency, the resources department and local government. Most mining tenements will only be granted after the relevant state department assesses the environmental impacts of any proposed or potential mining activity. Commonwealth laws will also apply to mining activities that will impact on Commonwealth lands or national matters (for example, national heritage-listed land or the Environment Protection and Biodiversity Conservation Act 1999, which provides a planning regime for obtaining consent for a project if it affects certain Commonwealth land or threatened species).

Many Australian mining companies also adhere to international standards such as ISO 14001 for Environmental Management Systems. The Commonwealth Department of Resources, Energy and Tourism has also published a set of guidelines on Best Practice on Environmental Management in Mining. This is in the process of being updated with the Leading Practice Sustainable Development Programme for the Mining Industry.

- 26** What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The mining company will prepare a proposal for mining operations, along with the potential environmental impacts and how they will be managed. The relevant government departments will then decide whether the project is environmentally significant and the extent of environmental assessment necessary (if at all) before giving approval for the proposal. Assessment may involve public environmental reports, environmental impact statements, community consultation and public inquiries. The time it takes to obtain the necessary permits will depend on whether the project is complex or controversial. Mining tenements are ordinarily granted within six months. If public consultation is needed then the time taken will increase, with some projects taking several years for the necessary permits to be obtained.

- 27** What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Mine operators must submit to the relevant department a detailed remediation plan associated with its mining operations. In many cases such plans must be submitted within one to two years of commencing operations, and in some cases prior to commencing operations. Obligations under these plans upon closure of a mining plant are incorporated into the terms and conditions of the mining tenement.

The mine operator will generally be required to lodge a security deposit with the department to guarantee the fulfilment of their remediation obligations. The size of this deposit is determined by the

department and will depend on the size of the proposed operation and the likely costs of remediation.

### Health & safety, and labour issues

**28** What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal health and safety laws applicable to the mining industry are the occupational health and safety laws of each state that apply to all industries. In addition, states may have supplementary legislation dealing specifically with mining; for example, mine inspection procedures and emergency management systems. These laws are administered by the state department for occupational health and safety together with the resources department.

Various state mine-safety advisory councils provide recommendations to the government to promote issues surrounding occupational health and safety in mines.

Presently, the Commonwealth, state and territory governments are working towards the harmonisation of their work health and safety laws. Each jurisdiction will be required to enact the new mirror legislation in the coming months. It is anticipated that the new harmonised laws will commence on 1 January 2012.

Relevantly, some Australian state and territory jurisdictions impose personal liability on directors of companies for breach of work health and safety obligations.

**29** What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

There are no general restrictions or limitations as to the use of domestic employees. Foreign employees, however, must comply with the visa restrictions imposed by the federal government.

As many mines are located in regional and low-population areas, employers can be provided with special assistance so as to be able to attract employees with an adequate set of skills.

### Social and community issues

**30** What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The states and territories are responsible for minerals located within their respective jurisdictions; thus the states and territories determine how mining activities may be undertaken within their respective jurisdictions, including laws mandating community engagement.

Except for Victoria, where the relevant mining legislation imposes a duty to consult with the community on exploration and mining licence holders during all phases of a project (ie, exploration, production and rehabilitation) and to prepare community engagement plans, community consultation is required in connection with securing environmental or planning approvals.

The community consultation requirements (except for Victoria) are usually only triggered if a mining development requires the submission of an environmental impact statement (EIS). As part of the EIS procedure, a proponent must usually consult with the community. This would include not only local landholders and councils, but also local community groups. Then, if considered important, terms mandating community consultation will be included in the environmental permit granted to operate the mine.

It is worth noting that in NSW, all operational mines are required to establish a community consultative committee, whose purpose is to provide a forum for open discussion between representatives of the miner, the council and other stakeholders and to provide input on the land use at mine closure.

Regarding CSR laws, there are no CSR-specific laws applicable

to the mining industry.

However, the Corporations Act 2001 (Cth) contains sections that deal with company reporting that relates to CSR. For example, section 299(1)(f) requires companies to include in their annual directors' report details of the company's performance in relation to environmental regulation. In addition, section 299A requires listed companies to provide an operating and financial review to be included in an annual report and requires the disclosure of information that shareholders would reasonably require to make an informed assessment of the operations of the company, its financial position and the business strategies and prospects for future financial years. While section 299A does not specifically refer to social or environmental issues, the explanatory parliamentary material to section 299A refers to the G100's Guide to Review of Operations and Financial Conditions which states the relevance of non-financial issues in assessing corporate performance.

The Australian Securities Exchange (ASX) provides guidance for publicly listed company in their corporate governance practices through its Corporate Governance Principles and Recommendations. While the recommendations are not prescriptive and companies are not obliged to adopt them, companies are required to explain to ASX and investors if and why they have departed from the recommendations. Of relevance to CSR include recommendations to promote ethical and responsible decision-making and to recognise and manage risk.

Beyond corporate law, there are laws imposing additional obligations on companies and their directors that cover CSR-related topics such as employment, occupational health and safety, the environment, equal opportunity and non-discrimination.

**31** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

The decision of the High Court of Australia in *Mabo and Others v The State of Queensland* (No. 2) in 1992 recognised that the concept of Aboriginal native title (Native Title) to land had survived the Crown's acquisition of sovereignty. Native Title is the term given to the collection of rights held by certain Aboriginal peoples to use lands according to their traditional customs, laws and beliefs. Following this decision, the Native Title Act 1993 (Cth) and complementary state and territory Native Title legislation (together, the NTA) was implemented.

Mineral tenements granted after 23 December 1996 are permissible 'future acts' under the terms of the NTA and are subject to the future act regime. Under this regime, relevant parties must be provided with appropriate notification and the 'right to negotiate' process must be complied with before a proposed future act, which has the potential to affect Native Title, can proceed.

If an 'act' is done that 'affects' Native Title rights, such as the grant of a mineral tenement, it may be invalid unless the provisions of the NTA have been complied with.

The NTA requires that in a 'right to negotiate' process, the applicant applying for the grant and the state (or territory) must negotiate in good faith with the registered applicants for Native Title in an attempt to resolve whether or not the relevant permit or licence may be granted, and if so, on what conditions.

Additionally, the Commonwealth, states and Northern Territory have implemented Aboriginal heritage protection legislation. The Commonwealth, state and Northern Territory regimes aim to protect any places, objects and folklore that are of particular significance to Aboriginals, in accordance with Aboriginal traditions.

It is unlawful to prospect or mine on lands in Australia on which Aboriginal objects or Aboriginal places are situated, unless authorised by legislation, authority, permit, lease, licence, or otherwise approved by the applicable State Government Department or Commonwealth government.

### Update and trends

Higher commodity prices, complemented by strong demand from China, India and other parts of Asia, will ensure the Australian mining industry continues to experience strong growth and robust investment. Floods on the eastern coast of Australia earlier this year have slightly depressed growth in the sector in the short term however; a return to full capacity is expected in the next 12 months.

Brownfield exploration has continued to outpace greenfield exploration, with brownfield exploration accounting for around 60 per cent of mineral exploration expenditure over the past eight years. According to the Australian Bureau of Agricultural and Resource Economics two key factors have driven the continued focus on brownfield exploration; firstly higher world commodity prices have encouraged companies to reassess reserves previously considered uneconomic and secondly, brownfield mining is seen as attractive for companies as infrastructure may already be in place, reducing capital costs and speeding up time to production.

Despite recent devastating events in Japan, an increase in uranium exploration and expenditure is expected, particularly in Western Australia. It is anticipated that uranium mining will begin on a small scale, but with a rapid growth trajectory in the short to

medium term. Exploration expenditure on coal is also expected to increase in response to rising levels of global demand, as will an increase in investment into 'clean coal' technologies. Gold continues to be a major target commodity, viewed by many as a safe haven for investment following the global financial crisis and with prices being further inflated by fears of a Greek debt crisis. Additionally, in response to government policies implemented in China, Australia may experience a fresh focus on strategic mineral exploration (light and rare earth minerals) used in a range of technological applications, despite Australia's comparatively modest reserve levels.

A new tax regime applicable to the mining of iron ore and coal in Australia is due to commence on 1 July 2012. This tax is essentially a tax on the profits from the production of iron ore and coal. Miners with assessable profits of A\$50 million or less per annum will be entitled to receive an offset equal to the full amount of their liability. On the same date a new carbon tax is set to be implemented, however the details surrounding this proposed tax are yet to be finalised. Views are mixed regarding the impact these taxes will have on investment in and growth of the mining industry in Australia.

**32** What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

There are many international guidelines, codes, standards and initiatives which promote CSR, including:

- the OECD's Guidelines for Multinational Enterprises;
- the UN Global Compact;
- the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises;
- the UN Principles for Responsible Investment;
- the ILO Tripartite Declaration;
- the Global Sullivan Principles; and
- the Global Reporting Initiative.

However, commitment to the above initiatives is voluntary. The practices supported by such initiatives are not mandatory domestically without enacting legislation.

### International treaties

**33** What international treaties apply to the mining industry or an investment in the mining industry?

Australia has established free-trade agreements with New Zealand, Singapore, Thailand, United States, the Association of South-East Asian Nations (ASEAN) and Chile that have relevance to the mining industry, and is negotiating similar agreements with China, Japan, Malaysia, Korea, Indonesia, the Gulf Cooperation Council, Pacific countries ((PACER) Plus), and India. Australia also has double tax treaties with over 40 countries.



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