

Mining Projects – Risk Management And Front-End Consulting

By Alex Milne

Risk management in new mining enterprises or joint-ventures is something which needs to be tackled at the front-end of a project. A party is well advised to have front-end legal advice teamed with an understanding of the mining world in order to provide efficiency gains for the life of the project as well as avoiding costly delays, and diversions.

Appropriate legal advice can furnish substantial savings, especially when teamed with an understanding of the potential opportunities and pitfalls common in mining and resources projects.

The issues faced by a mining company are wide ranging, and should be addressed with full regard to the commercial, political and technical components of the venture. A piecemeal approach to risk management is a risk in itself. Analogies can be drawn between a mining project and the design and manufacture of a complicated product.

Companies that manufacture cars, invest heavily in the front end of the development process, to design each part so that it will be reliable and efficient, and can play its role in creating a viable product.

Companies further invest in the front end through road-testing their products prior to release in order to iron out as many potential faults as possible. They are aware that faults and imperfections cost you in the long run. The cost of investing in R & D is dwarfed by the cost of recalling an already existing product due to a latent defect. This is magnified by the future losses due to negative publicity.

Accordingly the most efficient allocation of resources demands that the technical, commercial and political viability of a proposed venture be assessed primarily when looking at the project's viability, and in the preparatory period.

This is recognition that risk management is at its most effective when it is considered from the beginning of a project, and the risk is mitigated by design rather than by operation of triage on an existing arrangement which encounters a stumbling block.

In a particular mining venture, there is no product that can be physically road-tested in advance. However engaging the expert advice of legal consultants to ameliorate the contractual and regulatory pitfalls can act to mitigate risks involved.

There are legal components to all of the aforementioned viability questions,

and it is important to recognise that an overarching view must be taken on these questions. They are best answered not by mere legal advisors, but by consultants who also have an understanding of the commercial, political and technical questions involved.

An advisor with this kind of specialised knowledge can provide commercially advantageous solutions which take into account the legal, political and infrastructure difficulties specific to a proposed project.

A potential joint-venture partner for example, would be well advised to seek the expertise of a legal consultant regarding drafting the contract they will be entering, considering the commercial aspects of the project, including legal questions of infrastructure access, regulation at different levels of government, environmental law issues and employment law issues just to name a few.

Where an international party is involved, there are questions of enforceability of contractual rights, choice of law forum, a different regulatory regime, and potentially other political and economic considerations which will have a bearing on the viability and profitability of the venture.

To borrow from our motor vehicle analogy, it is crucial to recognise that the individual parts do not act in isolation, and their viability is only relevant as part of the whole. Engineers with a specialisation in a specific area of car design still cannot be part of delivering a successful product without an understanding of the overall goals, opportunities and limitations.