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EXPLORE

Insights from the DLA Piper Mining Sector

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I was recently at the Diggers & Dealers conference in Kalgoorlie, a mining event with a longstanding tradition. The mood on the ground was still subdued, and the hunt for investors was as intense as ever, but I saw the first signs of a genuine and growing confidence among the juniors and explorers. Highly sensitive to the capital environment and investor confidence, they are the frogs of the mining ecosystem – the clarion call warning of trouble approaching. Their cautious optimism is a positive and welcome indicator that the sector is getting back on track and back to business as usual.

Speaking of business as usual, at the Africa Down Under conference the message was loud and clear: this is the new normal, so get used to it! But what is this 'normal' and how 'new' is it exactly? Not so new at all according to Mark Tyler, Head of Mining Finance at Nedbank. At the DLA Piper breakfast panel discussion during the conference, Mark stated, "With age you realise that you've seen it before. Fifteen years ago we would have been very happy with current market conditions. Going to PDAC [the Canadian mining investment conference] in the 1990s was like going to a funeral." To find out more about Mark and the other panellists' take on current market conditions, read the summary at pages 10 and 11.

One thing that is not likely to continue for much longer is the disconnect between increasing share prices and the lack of M&A activity. Driven by lower than expected Chinese data and the spectre of some overpriced or unwise acquisitions over the past few years, companies are opting for cash preservation, optimisation and dividend payouts rather than expansion.

We have seen a number of acquisitions over the past few months, especially in the mid-market where consolidation to achieve economies of scale makes sense. According to KPMG's Australian mining publication *Here comes the M&A Boom*[1], transactional activity in the mining sector will pick up over the next few years. KPMG highlights three drivers behind this development:

1. Funds will become available again – large pools of cash have accumulated and must be put to work – historically low cost of debt, investors' appetite for riskier investments will pick up again.
2. There is a disconnect between increasing share prices and lack of MA activity that is not sustainable.
3. Inbound investors are seeking safe havens among traditional mining centres such as Australia.

What are the implications for the mining industry? At a time when the rulers are being drawn ever more firmly over mining projects, project sponsors must take a firm approach to project delivery and cost management, or face the consequences. Liam Prescott and James Kahika caution that investing in comprehensive and thorough bespoke agreements during the drafting process avoids the usually greater cost of litigating a solution when the agreement breaks down.

Adding cost – and potentially headaches – to project sponsors in Indonesia, Aston Goad provides updates us on the minerals export ban post-election, while Tim Evans offers practical suggestions that could lead to significant savings for those importing minerals into the European Union.

It is inevitable however that not all mining projects will succeed, and that not all mining operations will prosper. Amelia Kelly & James Hewer consider how recent changes to the Australian voluntary administration regime is helping to preserve the value in the company and making it easier for operations to continue.

Robert Edel
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[1] Here comes the M&A boom: transaction activity in Australia's mining industry, KPMG Corporate Finance, September 2014

INTRODUCING THE DLA PIPER MINING SECTOR

DLA Piper's mining-focused lawyers offer practical and relevant advice that is grounded in commercial reality. They advise on many of the world's most significant mining and logistics projects, involving the acquisition, operation and development of mines, road and rail systems, ports and new mineral provinces. DLA Piper has a network of experienced people across both traditional and emerging mining centres and the ability to support your business needs, wherever you do business in the world.

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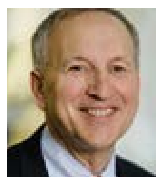

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MIRABELA NICKEL RESTRUCTURING
AN AUSTRALIAN FIRST

The recent restructuring of Mirabela Nickel Limited is the first time under Australian law that voluntary administrators have completed a debt for equity restructuring of a listed company, using legislative provisions which allow them to sell existing shares in a company without the consent of the shareholders. The outcome should be of significant interest to all stakeholders and investors in the Asia Pacific market.

BACKGROUND

Mirabela is an Australian Stock Exchange-listed nickel mining company, with all of its mining operations based in Brazil. Prior to restructuring, it had US$500 million of indebtedness – mainly debts due to US-based noteholders. Among the issues facing the board and the lenders were material decreases in the price of nickel, negative operating cash flows, a highly leveraged debt structure, unfunded critical capital works and debt being traded at a steep discount. For Mirabela to be able to continue operating at normal levels, a restructuring was considered to be essential.

THE VOLUNTARY ADMINISTRATION REGIME

The voluntary administration regime in Australia provides a means by which companies in distress can be given breathing space to develop and implement a restructuring plan with their creditors. The regime involves the company appointing a voluntary administrator to take control of the company's affairs, with a view to developing a deed of company arrangement (DOCA). A DOCA is a binding agreement that regulates the arrangements between the company and its creditors. There are generally very few restrictions on the types of DOCAs that can be executed, and DOCA proposals can be adapted to meet the particular circumstances of the company and its creditors.

During the period of administration prior to the execution of a DOCA, the company benefits from a moratorium on any action being taken against it by its creditors (save for certain of its secured creditors that act within a certain timescale). Once a DOCA is executed, the voluntary administration ends and a deed administrator is appointed to oversee the operation of the DOCA.

Section 444GA of the Corporations Act permits a deed administrator to sell existing shares in a company without the consent of the shareholders (that is, by compulsory sale), so long as leave of the court is obtained. Until Mirabela, section 444GA has only been used in relation to relatively simple DOCAs involving private companies.

THE APPROACH IN MIRABELA

In Mirabela, the restructuring plan included:

- Certain noteholders entering into an agreement to do everything necessary to achieve the restructure;
- The appointment of voluntary administrators to Mirabela;

In Mirabela, the court in granting leave noted in particular that:

- It was difficult to see how the members suffer any prejudice as a result of a proposed compulsory sale under section 444GA, in circumstances where the value breaks in the debt, the existing shares have little to no residual value to the shareholders, the shareholders would be unlikely to receive any distribution in a liquidation and liquidation is the only realistic alternative to the proposal; and
- The proposed plan preserved Mirabela's business (which would otherwise have inevitably failed), allowed employees to be retained and their entitlements preserved, and allowed payments to be made to trade creditors in full. All of these considerations fell within the objects and intentions of the voluntary administration regime itself.
- The issuance of US$115 million of convertible notes to fund ongoing operations after the restructure.

The court may only give leave under section 444GA if it is satisfied that "the transfer would not unfairly prejudice the interests of the members of the company". Among the factors considered by the court in an application for leave are:

- Whether the economic value in the company breaks in the debt or the equity;
- The likely outcome were the company to go into liquidation instead; and
- The effect of the proposed restructuring on the company and its creditors generally.

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As well as the approval of the court, the restructuring also required regulatory oversight and approval from the Australian Securities and Investment Commission, the Australian Stock Exchange, and the Foreign Investment Review Board.

IMPACT ON RESTRUCTURING IN AUSTRALIA

The Australian Restructuring Insolvency & Turnaround Association has noted that *Mirabela* has "the potential to change the dynamic of the restructuring sector, overcoming the insolvency stigma of a company going into voluntary a company going into voluntary administration."

The case also demonstrates the flexibility and versatility of the voluntary administration regime in Australia and the range of options available to private and listed companies that find themselves in distress. This is likely to be of significant interest to all stakeholders and investors in the Asia-Pacific market, particularly those that trade in the Australian secondary debt market.

ABOUT THE AUTHORS

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EU IMPORT DUTIES AND **THE MINING SUPPLY CHAIN**

As the cost of input products rises, companies across the globe are looking to reduce their costs by sourcing from competitive suppliers, wherever those suppliers may be found. Equally, companies are looking to the global markets to sell their products as widely as possible. This article looks briefly at some of the steps companies involved in the minerals industry within the European Union can take to reduce the costs and minimise the risks associated with importing goods into the EU.

As a general rule, the customs framework within the EU is set at a European level. However, interpretation of customs rules (and in particular enforcement) may differ at a Member State level and so it is important to take local advice. As an example, the United Kingdom permits voluntary disclosure of customs issues to HM Revenue & Customs, and will waive penalties (although any duty shortfall will still be payable) if a submission is made voluntarily. This policy is not practiced uniformly by all Member States throughout the EU.

The starting point for the customs treatment of any product is tariff classification. A tariff number allows customs authorities to easily identify what that product is for customs purposes. Natural, unprocessed products tend to be classified under lower headings, and tend to attract lower duty rates. Section V of the tariff deals with mineral products. So, as a simple example, natural graphite is found under heading 2504. Natural graphite in powder or flakes would fall under the ten digit classification 2504100000, and would attract a headline duty rate of 0%.

The ten digit classifications give the headline duty rates; if you get the tariff classification wrong, you could be either under or over paying customs duties (and in any event will be committing a technical violation which may lead to penalties).

You may well consider that, in circumstances where the duty rate is 0%, inaccurate classifications are not a big issue. However, duty rates fluctuate across the minerals

sphere. For example, Portland cement clinkers fall under the heading 2523100000. They attract a headline duty rate of 1.7%. In circumstances where large amounts of product are being imported, these duty rates can have a significant impact on the profit margin.

Another important factor to consider is where your products originate from for customs purposes. Certain countries (such as Mexico and South Korea) have preferential trade agreements with the EU and many developing countries benefit from general arrangements such as the Generalised System of Preferences, under which the import of certain products will benefit from reduced or zero duty rates. However, to take advantage of these benefits, importers will need to show (through an origin certificate or a supplier's declaration) that the goods in question qualify for preferential treatment. Minerals importers should assess their supply chain to see whether it is possible to take advantage of preferential trade agreements and, if so, whether suppliers are contractually obliged to provide the relevant documentation on import.

The origin of goods also matters because the EU often imposes additional import duties, known as anti-dumping duties, on certain products from certain jurisdictions (in particular non-market economies such as China). Depending upon the "dumping" margin identified, these duties can be very significant and may drastically increase the import price of input products. In a very well-known case[1] also touching on issues of origin and processing, an importer of Chinese silicon was found to be liable for anti-dumping duties of 49% of the value of the product – a backdated bill of €99,974.74 (plus possible penalties).

Clearly, therefore, assessing your supply chain to ensure that you are not and will not be liable for anti-dumping duties (and amending the sourcing of products if you are) can very significantly reduce the cost of importing into the EU and could free up additional working capital for your business.

Conversely, in certain circumstances, the EU will suspend or withdraw customs duties from certain products in certain circumstances. Typically, tariff suspensions or quotas will be put in place where the product in question is not available (either at all or in sufficient quantities) in the EU. This has significant implications for the minerals industry, where certain minerals or mining products are only available in particular jurisdictions. If your input products are not available in the EU, or are not available in the quantities you require, it is worth assessing whether an application for a tariff suspension is worthwhile to reduce your customs duty burdens.

[1] Hoesch Metals, Case C-373/08

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Tim advises clients on a wide range of customs matters, including tariff classification, valuation, origin, duty relief regimes and dealings with third parties including regulator authorities such as HMRC.

AN UPDATE ON THE ORE AND MINERALS BAN

The inauguration of Joko Widodo ('Jokowi') as president of Indonesia on 20 October brought high hopes to the people of Indonesia. Meanwhile, mine owners and exporters are anxious to see if Jokowi will be inclined to ease the ore and mineral ban. Early signs indicate that this is unlikely to be the case.

In January 2014, Indonesia effected a ban on the export of unprocessed ore and minerals. The aim of the government is to boost downstream processing. A number of exceptions apply, such as for copper concentrate. However, such exports will be subject to high taxes, which over time will be increased to 60% by the end of 2016.

Jokowi has stated that he will "uphold the law and the Constitution, which mandates that all natural resources should be used for the [benefit of Indonesian] citizens' well-being. However, I welcome them should they want to talk about technicalities." Other sources also do not expect an ease on the ban. It remains to be seen if Jokowi will qualify the burdensome tax rate as a 'technicality' that he would be willing to discuss.

At the same time, Jokowi sent a significant signal to foreign investors. One of his first acts after his inauguration was an unannounced visit to the offices of the foreign investment coordination board BKPM. During the visit, he announced that he wants to ease the investment process and streamline it. To achieve this, BKPM should truly become a one stop service and foreign investors would not be required to obtain licenses from different ministries. This should alleviate the bureaucratic burden currently involved in applications. On the spot, he required the commitment from the deputy chairman of BKPM and announced that the changes should be implemented within a 3 to 6 month period. This could be seen as a sign that while no material changes would be expected, Jokowi does take foreign investment seriously and wants to accommodate it within the existing rules by making the process easier and faster.

International pressure from companies as well as states is increasing, with threats of involving the World Trade Organization being made. Meanwhile, some companies do not want to let the political process take its course and are taking matters into their own hands.

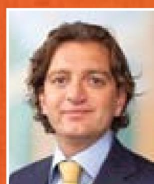
Freeport has obtained permission to resume its copper exports, which were halted since January this year. In return, Freeport has committed to build a copper smelter. The deal does come at a price: the smelter has an expected investment of USD 2.3 billion. Freeport has already deposited surety bonds for an amount of USD 115 million. The arrangement does allow Freeport to benefit from lower export taxes. Already, it has to pay 'only' 7.5% export tax instead of the regular 20% and as the project progresses, it will decrease to 5% and finally 0%.

It is worthy to note that the processing plants do not necessarily have to be finished. The government has already indicated that if there is 'a strong commitment' to build a smelter, exports would be allowed temporarily. Also, the rules are not entire clear if the facility must be fully owned by the mining company. There seems to be room to enter into a cooperation agreement with the owners of smelters and refineries. However, it is likely that this will be evaluated on a case by case basis. Meanwhile, there are around 65 processing facilities proposed to be built over the coming years.

Another hot topic are the contracts of work. Vale and the then outgoing government re-negotiated Vale's contract of work for their nickel mining activities. Vale agreed to divest 20% of its stake to Indonesian parties. Whether or not this will be done by a public offering (as Vale has done earlier) is unclear. Vale also agreed to raise the royalties it is paying to 2%, two to three times more than is currently paid. Lastly, Vale will decrease its mining area by more than 72,000 hectares, a decrease of almost 38%. The move was applauded by government officials who expressed the hope that more companies would follow this example.

All in all, a blanket solution applying to all miners is not available and a change in regulations seems highly unlikely. One on one negotiations and tailor made solutions do seem to have effect.

ABOUT THE AUTHOR



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Aston has been a Dutch qualified lawyer since 2002 and has worked for the Amsterdam office of DLA Piper. He has been involved in national as well as international transactions and has been extensively involved in cross border transactions. In 2008, Aston spent six months in the US offices of DLA Piper in Palo Alto (Silicon Valley), where he was actively involved in US venture capital deals and mergers & acquisitions. Currently based in Jakarta, Aston is a full time employee of IAB&F where he combines his international deal making background and DLA Piper heritage in cooperation with the other lawyers of IAB&F.

IAB&F is the associate firm of DLA Piper in Indonesia.

RESOURCES ROUNDTABLE

In this series we ask resources specialists from all sides of the table for their take on an issue impacting the mining sector. Our first Resources Roundtable asks "What does it take to successfully deliver a resources project in Africa?" It summarises the panel discussion hosted by DLA Piper at the recent Africa Down Under mining investment conference in Perth.

Panellists: Wayne Bramwell, Managing Director, **Kasbah Resources**; Andre Peers, Executive Vice President Mining & Metals Finance, **Standard Bank**; Alan Rule, Chief Financial Officer, **Sundance Resources**; Mark Tyler, Head of Resource Finance, **Nedbank**; Scott Horton, **DLA Piper** New York & Robert Edel, **DLA Piper** Perth.

1. What's changed in the last 12 months in terms of market conditions impacting your projects?

MARK TYLER: Nothing much has changed, except that people are starting to recognise that this is the new normal. It was like this before the boom – the younger guys haven't been around long enough to recognise it. With age you realise that you've seen it before. 15 years ago we would have been very happy with current market conditions. Going to PDAC in the 1990s was like going to a funeral.

SCOTT HORTON: It may be a bit of a stretch to call this a "market condition," but certainly the big development has been the spread of the Ebola virus through one of the key mining zones of West Africa. This has created an enormous challenge for maintaining operations. It has also been a huge distraction for resource-challenged governments who have to focus the totality of their effort on dire public health concerns. This has been very bad news for a region that was one year back poised to harvest a real dividend from good governance reforms.

2. When looking to invest in a project in Africa, how does one mitigate against resource nationalisation (through capital controls or increased taxes, duties or royalties imposed on the mining sector?

ROB EDEL: Leading African counties use agreements that contain tax and revenue stabilisation clauses. This is the effect of:

- Fixing tax rates at a particular rate for a particular period;
- Providing exemptions from payment of certain taxes;
- Accounting procedures, etc.

Breach of this agreement leads to arbitration with the possibility of obtaining a judgment against the State and being made whole for the change in royalty/taxes.

Litigation against the State is usually undesirable, but this prospect could be very useful in ensuring that the company is quarantined from significant changes in royalties, taxes etc.

MARK TYLER: Stabilisation agreements are probably the best approach – at least from our perspective. There was a previous view that having a strong international organisation involved in the project offered some protection from nationalisation or other impositions, but since the International Finance Corporation lost in the DRC you can't take it for granted. So it is the quality of the government that is paramount. Then again, if they are not going to respect an international organisation it is unlikely that they will respect a stabilisation agreement either.

3. What do you look for when considering an investment in an African project?

MARK TYLER: In an Australian gold project for example we would be focusing on the grade firstly. For an African project probably the quality of management – can they get the job done and cope with the inevitable problems they will face. Then we would look at the stability of the jurisdiction, but this can sometimes be deceptive. Mali for example, was the darling of the mining industry until the recent Islamic uprisings. Likewise, my experience in Liberia has been that post-conflict countries can be fantastic to work in. I found that people were keen to put the troubles behind them and focus on rebuilding the nation. So then it comes down to what risk mitigation has been put in place.

ROB EDEL: Clarity of legal rights is very important: Tenure; Environmental obligations; Tax and fiscal obligations; Community obligations. On the last point, we are seeing in Africa, and elsewhere round the world, significant interruption to projects where the local community does not feel that it is getting an appropriate share of the benefits of mining projects; where it feels its rights are not be protected.

4. What is your view of the capital and financial markets and their support and understanding of African projects?

ROB EDEL: In my view, the degree of understanding and acceptance of risk in African project differs from financial market to financial market. The markets in Europe and the UK tend to have a greater understanding of risk in Africa and a greater appetite for risk in that part of the world.

SCOTT HORTON: From a New York perspective, Africa was a marketplace for the intrepid, for hedge funds looking for high returns on projects that others judged too risky, for vulture funds. I think that assessment is clearly changing. Now we are moving to a different phase of natural resource extraction, the next-to-end-phase in which most land-based major reserves are established and there will be a steadily diminishing number of large new finds. In this period, the role of Africa is steadily growing. Major mature financial institutions are paying much more attention to Africa, and the level of expertise and risk assessment concerning Africa is steadily growing in its sophistication. And this portends steadily increading levels of capital investment.

MARK TYLER: My observation is that while there are more Australian mining companies active in Africa most of them are raising their capital through Europe – chiefly French and UK banks. It's probably a hangover from the colonial days, but the European banks know Africa better. I've noticed that North American financiers and investors tend to follow people rather than countries. Rox was funded out of North America but that is probably an exception.

5. Is Islamic finance something that you have had experience with or that you have considered?

SCOTT HORTON: Let me predict that the role of Islamic finance in Subsaharan Africa will grow steadily. In this regard, keep in mind the position of the sovereign wealth funds, particularly in the Gulf, which dispose of immense uninvested wealth, and are right now closely studying large-scale investments in Africa. They will make a number of them. Press reports speculating about many of the African megaprojects regularly talk about the usual suspects among industry players. This shows a lack of imagination. The SWFs will soon be in the picture in a big way, and the African mining sector may lead the way for them. And Islamic finance techniques will drive much of this investment.

MINING FOR TAX BREAKS?
THE EXPLORATION DEVELOPMENT INCENTIVE EXPLAINED

The Australian Government has released an exposure draft of the Exploration Development Incentive ("EDI") legislation. These rules intend to encourage investment in small minerals exploration companies by allowing the benefits of losses from eligible "greenfields" exploration expenditure to flow to shareholders, who share the risk of exploration, in the form of tax offsets (**"exploration credits"**). The EDI will commence operations from 1 July 2014 and operate over the 2014-15, 2015-16 and 2016-17 income years.

Our previous update (April 2014) considered the key points raised in a Discussion Paper on the proposed implementation of the EDI regime. On 10 October 2014, the Treasury released the exposure draft legislation and Explanatory Material (**"EM"**) in relation to the proposed EDI scheme. The release of these documents provides further clarification regarding some of the main issues discussed previously.

The EM acknowledges that the exploration for minerals often involves significant expenditure and risks. Larger, established mining companies are able to fund their exploratory activities from their own profits, however, smaller companies focused solely on exploration need to attract investment in order to undertake such activities. Given the importance of a strong junior mining sector to the next generation of Australia's mineral deposits, the EDI is aimed at making it easier for small exploration companies to attract investment.

JUNIOR MINERALS EXPLORERS TARGETED

In line with the purpose of the incentive, the exposure draft legislation of the EDI sets strict eligibility criteria on the companies who wish to take advantage of this scheme.

Participation in the EDI is voluntary. For a company to be eligible to participate in the scheme, it must be considered to be a "greenfields minerals explorer" for the relevant income year.

The exposure draft legislation confirms that a company that has greenfields mineral expenditure for the year will only be eligible if:

- **It is a disclosing entity for the purposes of the *Corporations Act 2001*.**
  - Generally, a disclosing entity is an entity that prepares and lodges annual and half yearly reports. This requirement is intended to achieve two purposes. Firstly, it targets entities that are seeking to raise capital from the general public and secondly, it removes any need to establish a new reporting regime for EDI purposes;
- It is a constitutional corporation
  - This is defined in section 995-1 as a corporation under section 51 (xx) of the Constitution; or
  - A body corporate incorporated in a Territory.

- It, nor any connected entity or affiliate has carried on any mining operations in an income year.
  - The EDI uses the already existing tax law definition of "connected with" and affiliate (as contained in the Small Business Entity CGT Exemption). An entity is "connected with" another if either entity controls the other, or both entities are controlled by the same third entity. An individual or company is an affiliate of another entity if that individual or company acts in accordance with the entity's directions or wishes in relation to their business affairs.
  - This requirement is aimed to prevent any company with established mining operations from accessing the EDI. By excluding the connected entity and affiliates of a company from carrying on mining operations, it precludes companies that are part of a larger group of mining companies from accessing the scheme.

These requirements, provide much needed clarification as to who will be eligible for the scheme and dispels previous uncertainty including that the EDI would only be available to listed companies and "widely held entities".

WHICH SHAREHOLDERS IN A COMPANY CAN RECEIVE EXPLORATION CREDITS?

Confirmation about those eligible to receive exploration credits is perhaps the most significant clarification given by the exposure draft legislation and the EM. As the principal purpose of the EDI is to provide an incentive for investment, it was previously thought that this scheme may only apply to new capital issued after the incentive has been announced. This would result in significant compliance costs for companies wishing to take part in the EDI as it would mean that they would effectively have to issue a separate class of shares (via keeping track of the timing of ownership).

Under the proposed rules, companies that participate in the EDI are able to make a choice whether to provide exploration credits to all shareholders or only to those who have purchased shares after 30 June 2014. Once this choice is made it is irrevocable. This approach significant reduces the complexity that the previous alternatives could have given rise to (and may encourage participation by eligible companies).

GREENFIELDS MINERALS EXPENDITURE

The EDI will apply to eligible "greenfields" exploration expenditure incurred in Australia from 1 July 2014. The EM provides confirmation of the activities that will fall under the EDI.

The EDI is aimed at directly combatting the greenfields investment slump. In line with such a purpose, expenditure will only be eligible if it is incurred on activities for the purpose of determining the existence, location, extent or quality of a new mineral resource in Australia.

The exposure draft legislation provides that an entity's "greenfields minerals expenditure" for an income year is the sum of:

- the amounts of any deductions to which the entity is entitled in relation to declines in value in relation to a depreciating asset held for exploration or prospecting; and
- exploration activities including "geological mapping, geophysical surveys, systematic search for areas containing minerals, except petroleum or quarry materials, and search for minerals by drilling or other means for such minerals within those areas" (as per the definition contained in 40-730 of the *Income Tax Assessment Act 1997*).

The exposure draft legislation provides a number of exclusions as to what is to be considered "greenfields exploration" these include any expenditure in relation to:

- the exploration or prospecting for quarry materials, petroleum or oil shale;
- activities to determine the economic viability of an already identified resource;
- an area that has been assessed to have at least an inferred mineral resource under the Joint Ore Reserves Committee Code; and
  - This exclusion is to ensure that the EDI only applies to unexplored areas, as where an area has been identified to contain at least an inferred resource, the expenditure no longer relates to finding the resource.
- areas outside of Australia or in Australia's marine territory;
  - The purpose of this exception is that the EDI is intended to only boost mineral exploration in Australia.

The information provided by the exposure draft legislation and the EM in relation to what will constitute eligible greenfields exploration expenditure is not new, however, it does confirm that the EDI will only relate to actual exploration expenditure and will not include expenditure that is connected, but not directly related to exploration. This means that administrative costs and overheads and compliance costs will not be included for the purposes of the scheme.

HOW THE EDI SCHEME IS PROPOSED TO WORK

The EM clarifies many of the outstanding issues in relation to how exploration credits will be issued by a company and who is eligible to take advantage of exploration credits and the tax benefits provided.

Issuing exploration credits

Where an entity chooses to create exploration credits in an income year, their tax loss for the previous year is reduced by the amount of exploration credits it creates. The credits can then be issued to certain shareholders. The amount of exploration credits that can be issued by an entity is restricted to the corporate tax rate multiplied by the modulation factor declared by the Commissioner (discussed in further depth below) multiplied by the smallest of the following:

- Reported estimated tax loss for the prior income year;
- Reported estimated greenfields minerals expenditure for the prior income year;
- Actual tax loss for the prior income year; and
- Actual greenfields minerals expenditure for the prior year.

This ensures that companies do not receive a greater and unintended benefit not related to greenfields exploration.

The amount of exploration credits issued by a company to its investors must be in proportion to the number of equity interests held (usually shares, but may also be other equity interests under the debt and equity provisions contained in Division 974 of the *Income Tax Assessment Act 1997*). As exploration credits are not linked to distribution of profits, unlike access to franking credits, the rules outlined in the *Corporations Act 2001* in relation to the distribution of profits will not apply.

Who can benefit from exploration credits

- **Individuals:** Australian resident taxpayers, that are not corporate entities, will receive a tax offset under the EDI for the amount of exploration credits issued to them. This is consistent with the rules for the tax offset for franking credits. Additionally, the tax offset under the EDI is refundable to those who are ordinarily entitled to a refund of a tax offset under the franking credit rules.
- **Trusts and partnerships:** As expected, exploration credits will flow through trusts and partnerships. Where a trust or partnership is issued with exploration credits, they may provide a member of that trust or partnership a statement entitling that member to a share of the exploration credits it has received. The member is then entitled to claim the EDI as if they had received it themselves.

To ensure no double tax benefit, the offset is not available to the trust or partnership to the extent it has been claimed by a member. A trust or partnership that has passed on the benefit of exploration credits must report this to the Commissioner in an approved form.

In instances where a trust does not distribute its exploration credits to a member, the trust may itself receive the EDI tax offset as a refundable tax offset.

- **Corporate tax entities:** Corporate tax entities are able to receive exploration credits, however, they will not generally be entitled to the EDI tax offset. Where a corporate tax entity receives exploration credits, instead of being entitled to a tax offset, they will receive the same amount as a franking credit in their franking account. This will enable the benefit of the EDI to be readily passed on to their shareholders (as franking credits) without an increased compliance burden.

Additionally, the anti-avoidance rules contained in Part IVA of the *Income Tax Assessment Act 1936* have been amended to ensure that taxpayers who enter into a tax avoidance scheme for the predominant purpose of accessing the EDI cannot benefit from the incentive.

EXPLORATION CAPS AND MODULATION

The EDI scheme will be capped at $100 million for the three years in which it will exist. Exploration credits will be limited to $25 million in 2014 – 15, $35 million for 2015 – 16 and $40 million for 2016 – 17. Should the cost of the incentive be less than the cap for any given year, the caps applying to subsequent years will not be adjusted.

As the modulation factor ensures that the cap in any given year is not breached, no entity is able to create exploration credits before the modulation for that year has been declared. Waiting for companies to submit their actual tax returns (and report losses) and greenfields minerals expenditure for the income year will create a significant lag in issuing exploration credits. As a result, the EDI cap is based on entities' estimates of those figures for the relevant income year. The estimates must be reported to the Commissioner by 30 September in the following income year. For example, for 30 June 2015, estimates must be given by 30 September 2015.

Given that the amount of exploration credits available is dependent on the modulation factor, companies must make a choice before 30 June of the relevant income year whether or not to create exploration credits. This choice is final and irrevocable. Additionally, greenfields minerals expenditure that is not used to created exploration credits cannot be carried forward and used to create exploration credits in subsequent years. In calculating the modulation factor, the ATO will not make an allowance for the exploration credits that go to ineligible entities.

CONCLUSION

Whilst the EM and exposure draft legislation do not make wholesale changes to what was already proposed, they have provided clarification of a number of issues. Significantly it confirmed to whom the scheme will apply, the expenditure that is eligible and how the scheme and modulation factor works.

Most importantly, however, it clarified the timing issue as to which shareholders of an eligible company will be able to obtain benefits under the scheme. The confirmation that companies have the option to choose whether it will apply to all shareholders or only to those who have been issued securities after the commencement date will likely be welcomed by potential EDI participants. This enables companies to make the choice that best suits their needs and will dispel concerns held by companies wishing to participate in the scheme without significant additional compliance costs.

The confirmation provided by both the EM and the exposure draft legislation gives companies wishing to participate in the EDI a greater level of certainty as to requirements and decisions they must make to do so. This will allow companies to start making arrangements for the implementation of the EDI and enable them to plan how to best utilise the scheme to obtain further capital. They also provide certainty for potential investors, which is also a good outcome.

ABOUT THE AUTHOR

James Newnham
Partner
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James Newnham is a tax professional with over 16 years' experience consulting to leading Australian companies and foreign owned corporations operating in Australia.

His areas of focus include drafting the tax aspects of legal documents, tax consolidation, capital gains tax, the debt/equity rules, debt forgiveness rules, international tax, employee share schemes, company and trust loss rules, and trusts.

James assists clients by managing interactions with the ATO, including by seeking private and public rulings, making voluntary disclosures and settling disputes.

AVOIDING UNCOMFORTABLE QUESTIONS AFTER THE EVENT

'DOES MY DISPUTE RESOLUTION CLAUSE WORK?' AND 'WITH THE BENEFIT OF HINDSIGHT, SHOULD I HAVE SPENT MORE TIME DRAFTING IT?'

In July 2014, a long running Western Australian mining dispute between Cape Lambert Resources and China's MCC settled, with MCC agreeing to pay Cape Lambert approximately A$51.6M[1]. The dispute related to the sale of Cape Lambert's magnetite iron ore project to MCC in 2008 for A$390M, and the settlement payment constituted the third and final tranche of the sale price. The dispute commenced in September 2010 and involved litigation for two and a half years, before both the Supreme Court and Court of Appeal of Western Australia[2], as well as concurrent conferral and mediation processes which then gave rise to international arbitration in Singapore. Complex legal issues relating to the disputes and dispute resolution clauses under the respective Asset Sale Agreement and Guarantee Agreement were the focus of the litigation before the Courts.

This case, and its staggered history, provide a recent example of disputes that proceed under agreed dispute resolution clauses but, in doing so, also give rise to unforeseen, hard-fought and often lengthy and costly satellite litigation. Cases of this kind call for an examination of dispute resolution clauses involving arbitration and a consideration of how they might be drafted to avoid unintended consequences.

The use of dispute resolution clauses involving arbitration in mining related agreements (e.g. for joint-ventures, off-takes, farm-ins and farm-outs, operating agreements, royalty agreements, tenement leases or sales, and guarantees) is commonplace in Australia.

The confidentiality of arbitration and the enforcement advantages of international arbitration under the *New York Convention* commend its use over domestic litigation in most Australian mining projects involving foreign parties and investment.

A potentially costly mistake can however be made by contracting parties who blindly use standard form arbitration clauses in their project agreements without tailoring those clauses to the specific circumstances of the parties, the agreements and the disputes that might arise.

This article examines the types of questions that should be asked when drafting an arbitration clause in order to prevent or limit the parties commencing litigation, in the face of the arbitration clause, as an alternative process and/or to challenge the validity of the arbitration clause.

As recent cases such as the above demonstrate, the intended speed, efficiency and savings of arbitration can quickly evaporate if the arbitration clause and the arbitration are subjected to costly, complex and disruptive satellite litigation.

Invest in the drafting not in future litigation

While it can be counter-intuitive for parties during the drafting process to try to forecast the types and scope of disputes that might arise, and while using standard form arbitration clauses as boilerplates is often convenient and understandable when there is collective goodwill in negotiating an agreement, real thought should be given to

[1] Cape Lambert Resources Ltd ASX Announcement dated 14 July 2014

[2] *Cape Lambert Resources Ltd v MCC Ausrtalia Sinjin Mining Pty Ltd* [2013] WASCA 66

how the arbitration clause will withstand forensic scrutiny if and when, in the future, a dispute arises and the parties and their lawyers are looking to achieve any available strategic advantage.

When a dispute has escalated to the point of one or both parties wanting to commence an action, it is naïve to think that all parties will be content to proceed under an arbitration clause without question, or that they will not take the opportunity to challenge an arbitration clause if it might improve their legal or commercial position and/or prejudice the position of their counterparty. This is particularly so when the amounts at stake are high.

With that perspective in mind, parties should take preventative steps by crafting their arbitration clause to the specific agreement (or suite of documents). Even where the final agreed clause is not materially different to the standard clause first contemplated, the value in those circumstances will be in the parties' consideration of the relevant issues and their agreement to commit to arbitration according to the express terms of that clause. Example issues to consider

1. Assume arbitration clauses will be interpreted broadly

There is now a considerable body of Australian caselaw in which the Courts have looked to interpret arbitration clauses more broadly than other contractual clauses. The policy behind this approach has been to enforce the parties' contractual agreement to resolve disputes in accordance with an expressly stated procedure and to discourage parties from acting outside of the agreed process, for example, by resorting to litigation.

In *Francis Travel Marketing Pty Ltd v Virgin Atlantic Airways Ltd*[3] the NSW Court of Appeal stated that '*When the parties to a commercial contract agree, at the time of making the contract, and before any disputes have yet arisen, to refer to arbitration any dispute or difference arising out of the agreement, their agreement should not be construed narrowly*'.

In *Comandate Marine Corp v Pan Australia Shipping Pty Ltd*[4] the Full Federal Court said that the Court should construe an arbitration clause '*giving meaning to the words chosen by the parties and giving liberal width and flexibility to elastic and general words of the contractual submission to arbitration*'. It held that '*This approach conforms with a common-sense approach to commercial agreements, in particular when the parties are operating in a truly international market and come from different countries and legal systems and it provides appropriate respect for party autonomy*'.

In *Pipeline Services WA P/L v ATCO Gas Australia P/L*[5] the WA Supreme Court said that '*effect may be given to an arbitration clause despite some ambiguity or vagueness, provided that judicial assistance is not required to rewrite the contract between the parties*'.

2. Ask whether arbitration should apply to disputes arising outside the contract

Arbitration is the product of the parties' written agreement which means that typically one would expect it to apply only to disputes arising under the specific contract. It is common, however, to see arbitration clauses that apply to '*any dispute arising out of or in connection with this agreement*'.

The use of phrases such as '*arising out of*' and '*in connection with*' have been held to mean that the parties agree to arbitrate disputes that arise outside the agreement provided there is a connection with its *subject matter*.

In *Amcor Packaging (Australia) Pty Ltd v Baulderstone Pty Ltd & Ors*[6] the Federal Court followed a line of authorities to hold that such phrases "*should exclude only claims entirely unrelated to the commercial transaction covered by the contract*".

This raises the drafting question of whether the arbitration clause is intended to be that broad or whether, for example, arbitration is only to apply to disputes arising strictly within the four walls of the agreement. If a narrow construction of the arbitration agreement is intended then the use of phrases such as '*arising out of*' and '*in connection with*' should be avoided and replaced with specific terms such as "*directly relating to*". Given the Courts' approach, a narrow construction of the arbitration agreement will require express terms to that effect.

3. Will there be multiple parties to multiple agreements?

a. What will that mean when a dispute arises?

As the Singapore High Court recently confirmed in *The Titan Unity (No.2)*[7], arbitration clauses only apply to the parties to the agreement and not to genuine third parties. Those third parties cannot be joined to an arbitration without the consent of all participating parties.

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[3] (1996) 39 NSWLR 160

[4] *(2006) 157 FCR 45*

[5] *[2014] WASC 10*

[6] *[2013] FCA 253*

[7] [2014] SGHCR 4

It is often the case that mining projects necessarily involve multiple parties to multiple agreements, all of an interrelated but contractually separate nature. Given the liberal approach taken by Courts when interpreting arbitration clauses, this can create issues where, for example, an event gives rise to a series of disputes across those agreements.

This should be clearly addressed when drafting the agreements because if it is not then it can lead to a multiplicity of proceedings with the risk of different factual findings and arbitral awards. In some instances, particularly those involving international parties, one solution has been to draft an overarching ('umbrella') arbitration agreement that provides a streamlined procedure for all disputes arising from any one or more of the agreements. While this can give rise to a complex arbitration procedure, the complexity can prove commercially advantageous by encouraging negotiations and settlement prior to having to arbitrate.

b. Do the related agreements uniformly adopt arbitration?

The recent Victorian Court of Appeal decision of *Flint Ink NZ Ltd v Huhtamaki Aust Pty Ltd L & Anor*[8] provides a good illustration of the difficulties that can occur when related entities become caught up in separate litigation and arbitration involving the same subject matter. In that case a New Zealand company (**H NZ**) entered into an ink supply agreement with another New Zealand company (**F**) and that agreement included an arbitration clause. The ink was then used by an Australian company (**H Aus**), which was related to H NZ, in the supply of packaging to Lion Dairy in Australia. Lion Diary sued H Aus in the Supreme Court of Victoria for defective packaging. H Aus sought to join F as a third party on the basis that if H Aus was liable then it was due to the ink supplied by F. The joinder application was opposed by F which sought a stay of the third party proceedings pending an arbitration under its agreement with H NZ. F argued that the relationship between H NZ and H Aus meant that H Aus was bound by H NZ's agreement to arbitrate. Despite losing at first instance, F succeeded in the Victorian Court of Appeal and a stay of the third party proceedings was granted against H Aus. This created the unusual circumstance whereby H Aus was both party to existing litigation and subject to pending arbitration involving the same factual circumstances. Justice Mandie recognised this issue and proposed that:

" two conditions should be imposed (subject to any submissions by the parties). The first condition should, in my view, provide that the arbitration is not to commence unless and until this Court has determined the questions of liability and damages as between Lion-Dairy and [H Aus]*. Otherwise, any arbitration would be premature – indeed the matter referred is entirely hypothetical unless and until it is determined whether, and if so, upon what basis,* [H Aus] *is liable in damages to Lion-Dairy. Without such a condition being satisfied, there can be no viable matter for referral to arbitration. The second condition should, in my view, provide that* [F] *is entitled to participate in and is bound by the result of the proceeding in this Court involving the determination of liability and damages as between Lion-Dairy and* [H Aus]*. Without such a condition, inconsistent findings would be possible and a fundamental object of third party proceedings might be frustrated."*

Bearing in mind the outcome in this cases, it is suggested that if arbitration is to be adopted by parties to related agreements then it should be adopted throughout on consistent terms including, for example, using the same procedural rules.

4. Can the clause be drafted without using terms such as 'good faith' or 'best endeavours'?

Arbitration clauses, and dispute resolution clauses more generally, often oblige the parties to act '*in good faith*' and/or use their '*best endeavours*'.

While these terms are well meaning and appear to be innocuous, and while it may not be possible to frame the arbitration clause without them, by the time the parties are engaged in a dispute and every available point (technical or otherwise) is being taken, these terms can sometimes be used by a party to create a satellite dispute as to whether the other party has or has not met such an obligation. The difficulty with such terms is that they are good at indicating the broad intention of the parties but are nebulous in nature. Additionally, whether they have been satisfied involves consideration of the party's general conduct in the dispute process, being separate from the conduct involved in the underlying dispute. This effectively creates a dispute within a dispute.

[8] [2014] VSCA 166

[9] [2013] QSC 75

This was one of several issues considered by the Queensland Supreme Court in *Parsons Brinkerhoff Australia Pty Ltd & Anor v Theiss Pty Ltd and Anor*[9]. In that case a significant part of Justice Boddice's reasons addressed whether the respondents had failed to use their 'best endeavours' to settle the dispute. While His Honour held that the respondents had not failed in that obligation, the case provides another example of satellite litigation arising out of the terms of a dispute resolution (arbitration) clause.

CONCLUSION

Disputes are not an attractive feature of the commercial world however as part of the negotiating and drafting process, parties to mining related agreements should expect that disputes will arise, particularly when there may be a lot at stake for one or both parties. Adopting that frame of mind, the parties should draw on their collective experience and carefully consider the types of disputes likely to arise, between which parties, and under which agreements. The issues and cases considered above provide examples of the types of challenges that have been made, via Court proceedings, to arbitration clauses and arbitrations and, in turn, provide food for thought for those drafting any arbitration clause (or wider dispute resolution clause). Even though it may not be possible to avoid an unknown future circumstance, it is suggested that had some of these parties known they might end up in expensive and distracting Court proceedings fighting over the arbitration or the arbitration clause then they may have drafted the clause in different and potentially more specific terms. Equally, the investment in the expertise of a dispute resolution practitioner during the drafting process may be money well spent in avoiding the need for their services in the future.

ABOUT THE AUTHORS

Liam Prescott
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Liam Prescott focuses on commercial litigation and dispute resolution, offering his broad range of experience and practical, direct advice to clients involved in the Energy, Mining, Banking and Financial Services sectors.

Liam acts for clients with their commercial interests top of mind and values the use of alternative dispute resolution when suitable to their varying circumstances.

Liam also works with clients in the front-end drafting of complex project dispute resolution clauses.

James Kahika
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James is a solicitor in the Corporate practice group of DLA Piper's Brisbane office. He has experience in a diverse range of areas encompassing general commercial litigation, restructuring and insolvency, corporate and commercial transactions. James is currently assisting on a number of matters involving public and private mergers and acquisitions, infrastructure investment, joint ventures, corporate restructuring, fundraising and corporate advisory.

SHORT CUTS

TEAM NEWS

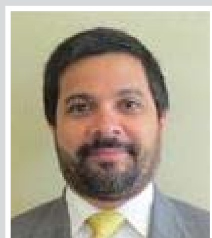
Adding strength to our global mining offering

A number of new hires have joined the firm, bringing valuable experience advising mining companies across a broad range of jurisdictions.

Mark Roppel
Partner
New York

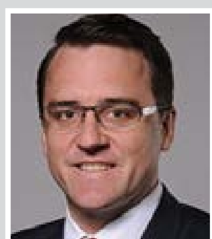
Cross border mining transactions in Canada, Southeast Asia, Africa and South America.

Mark Roppel has more than 25 years' experience with complex cross-border transactions in Asia, Europe and the Americans – in particular China, where he practiced for six years. Mining clients include Jinchuan…. Roppel joins DLA Piper from Allen & Overy, where he was a corporate partner in New York. Previously he was managing partner at Cadwalader, Wickersham & Taft in Beijing and, prior to that, a partner in the M&A group at Shearman & Sterling in New York. He received his LL.B. /B.C.L. from McGill University Faculty of Law and his LL.M. from Columbia Law School. "In addition to his extensive US public company M&A experience, Mark has an extraordinary background in and familiarity with the Asian market," said Roger Meltzer, co-chairman of the Americas and global chair of DLA Piper's Corporate and Finance Practice. "He is a leader and extremely talented lawyer whose skills and experience with intricate cross-border issues will help enhance our global transactional practice."



Carlos Arata
New York

One of the top mining firms in Peru is Estudio Grau. Carlos Arata, who just joined us in New York, used to work there and can provide a good contact. Attorney with over 10 years of local and international experience giving legal advice in financing, project finance, capital markets, mergers and acquisitions, investment funds, private equity and general corporate advice.



Liam Prescott
Partner
Brisbane

Liam Prescott has joined the Brisbane office. He focuses on commercial litigation and dispute resolution, offering his broad range of experience and practical, direct advice to clients involved in the Energy, Mining, Banking and Financial Services sectors. Joined us from……. Worked in Mining clients include Rio Tinto.

Prescott joins the firm from HopgoodGanim, having previously worked at both Linklaters in London and at Allens Arthur Robinson in Brisbane.

He has experience across all aspects of complex commercial litigation and dispute resolution, including cross-border proceedings. He has significant experience working in the energy and resources sectors including coal price and power station arbitrations; royalty and project agreement disputes; shareholder oppression claims and related corporate disputes; and judicial reviews of government decisions relating to energy projects and related infrastructure.

OUT & ABOUT

DLA Piper was a high profile contributor at the annual Africa Down Under mining investment conference in Perth (September 2014), and delivered two successful events during the three day session.

On 5 September the firm hosted a breakfast panel titled 'Overcoming the Challenges: Successfully delivering African Resources Projects' at the annual Africa Down Under Conference in Perth. Scott Horton (New York) and Robert Edel (Perth) joined Alan Rule, CFO Sundance Resources, Wayne Bramwell, CEO Kasbah Resources, Mark Tyler, Head of Resources Nedbank and Andre Peers, Executive V.P. Mining & Metals Finance Standard Bank to discuss the strategies and challenges associated with successfully delivering African resources projects.

Africa Down Under is one of the foremost international mining industry events focused on Africa and attracts thousands of delegates from the global mining, investment and mining services sectors.

The panel discussed a number of issues and challenges companies are facing. Financing remains the most significant issue for miners across the continent and miners were looking towards innovative funding structures to fill the gap left by traditional debt financing. The remoteness of some of the assets and the lack of developed infrastructure means companies are not only looking to develop the actual mine or the project as such, but they have to develop the infrastructure around it to realise the value from projects. They also discussed integrity and good practice in mine safety and environmental responsibility, and developing the skills of local workforces.

Australian companies have an estimated $20 billion worth of current and prospective investments in Africa and are active in nearly 30 countries across the continent.

On 4 September, the Perth office also hosted an intimate dinner with His Excellency Kerfalla Yansané, Minister of Mines & Geology of the Republic of Guinea. The dinner took place as a high profile relationship-building activity to discuss Guinea's vision for the future and the investment opportunities in this resource-rich nation.

The DLA Piper mining sector is currently working with the Government of Guinea to advise on the renegotiation of a number of mining concessions, for the development of gold, iron ore and bauxite projects. We are also advising the Government of Guinea in the development of the current Mining Code and the procedures for its implementation, including the comprehensive Terms of Reference for the process of review and harmonisation of mining contracts and licenses envisioned under the new Mining Code. This project requires us travel to Guinea regularly and to work alongside the Government of Guinea

to deliver the project. Our team is working closely with relevant Ministries on all stages of this project and have coordinated the preparation of implementing decrees, orders and guidelines.

Guinea is a natural resource leader in a number of different sectors. Home to what may be nearly half the total world reserves of bauxite, Guinea is of strategic importance to the world's aluminum industry. It also has the world's largest still undeveloped iron ore deposit, located at Mount Simandou in the country's southeast, and significant deposits of gold, diamonds, uranium and oil. Guinea has considerable potential for growth in agriculture and fishing and its waterways system has strong hydroelectric power generation potential.

Attendees at this event included senior representatives from Alcoa, BHP and Rio Tinto as well as senior mining and finance personnel from a range of companies and institutions.

COMING SOON

Mines and Money London

1-5 December 2014

From the AIM to the debt market, London is an important centre of finance for the global mining sector. Recognising this, and keen to launch our UK mining team, DLA Piper is again sponsoring the Mines & Money London conference. This event brings together over 3,000 investors, financiers, brokers and mining developers, for a week of business matching, knowledge sharing and deal-making.

SPOTLIGHT

MEET OUR TEAM

Jemimah Mills
Senior Associate
DLA Piper, Perth, Australia

Q HOW LONG HAVE YOU BEEN WITH THE FIRM?

I joined the Perth office in May 2010. Before joining DLA, I worked at a boutique firm for 3 1/2 years specialising in native title and mining litigation.

Q DESCRIBE THE TYPE OF WORK THAT YOU TYPICALLY GET INVOLVED IN?

Primarily I assist in procuring the grant of approvals and tenure required for the development of mining projects. It requires involvement at all stages of the project from the exploration stage to when the mine closes. It typically includes the development of large scale infrastructure such as railways and ports to enable export to market, as well as the mine site itself. More recently, and in light of the difficulties some companies are encountering in the current market, there has been more protectionist work, i.e. preservation of existing assets as opposed to the accumulation of new ones.

Q HOW LONG DOES THE PROCESS TYPICALLY TAKE AND HOW DO YOU KEEP THE MOMENTUM GOING?

It is difficult to say how long the process takes on a matter as the stages vary depending on the project and the market at the time.

I try to keep the momentum going by dividing up matters into stages and focussing on how each stage ties in to the ultimate goal. I need to think about the end game for each matter and the best way to get there.

Q WHAT ARE SOME OF THE CHALLENGES OF THIS WORK?

There is always a high volume of work at any given time and there is something always going on. We are very busy working for a large number of clients so it can get difficult to keep on top of all of the on-going matters. It helps to be organised!

Q DO YOU TRAVEL TO REMOTE LOCATIONS – DO YOU HAVE ANY STORIES TO SHARE ABOUT YOUR EXPERIENCES?

There is actually little need for me to travel to remote locations for matters as most of our clients have offices nearby. Technology and the centralisation of the mining courts has also meant that I rarely need to leave the city.

Q WHAT IS THE MINING INDUSTRY LIKE IN YOUR PART OF THE WORLD? WHAT TYPE OF WORK IS MOST COMMON?

Western Australia is large, being approximately 2.5 million square kilometres in size. Some of the projects we have worked on involve more 250km of railway to enable ore to be transported from the minesite to a port where it can exported.

The mining industry is without a doubt the most significant industry in Western Australia. The value of Western Australia's mineral and petroleum industry in 2013-2014 was $121.6 billion. The main sectors are iron ore, petroleum, gold, alumina and nickel.

Q WHAT DO YOU LIKE TO DO IN YOUR SPARE TIME?

I like to cook and catch up with friends and family. My sister recently had a baby so I try and spend as much time being an aunty as possible.

Q YOU HAVE A LOT OF MAPS IN YOUR OFFICE – DO YOU NEED ANY SPECIAL SKILLS LIKE CARTOGRAPHY?

I prepare a lot of maps. I find it much easier to understand matters when I have a visual representation of the location. The Department of Mines & Petroleum has developed a very sophisticated web-based program that identifies and maps the majority of land interests in Western Australia. I use it on a daily basis to prepare maps and identify overlapping interests.

Q WHAT DO YOU LIKE ABOUT YOUR JOB?

I enjoy being involved in the inception and development of large scale projects, which are long term and will have a lasting impact on the State of Western Australia. It's an exciting industry to be a part of.

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

www.dlapiper.com

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