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The Model Mineral Development Agreement

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Mining, People and the Environment, PDAC, Toronto

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About the IBA

- The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies
- The IBA has a membership of more than 40,000 individual lawyers and 197 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community
- Grouped into two divisions – the **Legal Practice Division** and **Public and Professional Interest Division** – the IBA covers all practice areas and professional interests. Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practices and professional responsibilities relating to the practice of business law around the globe
- Additionally, the IBA's high-quality publications and world-class conferences provide unrivalled professional development and network-building opportunities for international legal practitioners and professional associates



Section on Energy, Environment, Natural Resources and Infrastructural Law (“SEERIL”)

- SEERIL has a membership of 2,400 lawyers in private practice, oil and mining companies, international organizations, government and academia
- The section coordinates the activities of six committees which aim to advance the development and understanding of the law affecting oil and gas, mining, power, water, international construction projects and environment, health and safety law



Mining Law Committee

- The objective of the Mining Law Committee is to promote an interchange of information, ideas and views, and knowledge among individual members of the committee as well as international practitioners, as to the laws, practices and procedures affecting mineral and mining in the global legal community



Model Mining Development Agreement (MMDA) Project

- In July 2009, The Mining Law Committee (“**mining committee**”) began working on a major project to develop a model mineral development agreement, based on international best practice, for use in the developing world
- The mining committee’s goal is to present a draft outline at SEERIL’s biennial meeting on 25 - 28 April 2010 in Toronto



The need for the MMDA

- The impacts, both negative and positive, which mines have on surrounding communities are significant
- Recently, there has been a strong interest by governments, communities and mining companies in the sustained development of mine-impacted communities
- It is now common for communities to resist new and ongoing mining projects unless they are satisfied that they will sufficiently benefit from such projects



The need for the MMDA

(II)

- Mining companies are increasingly concerned about the need for a “**social licence to operate**” including local community support
- Legislative requirements for Community Development agreements (“**CDAs**”) are still rare but increasingly governments are considering such legislation that would define when such an agreement is required and what subject matter such an agreement should address
- Some mining companies have interacted with communities on a voluntary basis, which has led to inconsistency



The need for the MMDA

(III)

- The World Bank Group has a role to play in mining-led development at both the national and community level
- The WBG and the International Council for Mining and Minerals (“**ICMM**”) have recognised the importance of this issue, publishing the “**Community Development Toolkit**” in 2005, as well as continuing detailed work on the issue



Aim of the MMDA project

- To provide a draft model to be used by mining companies and host governments in mining projects where a mature mining code is not in place or to be used where a mining code must be supplemented by private agreement
- It is not intended that every nation adopt this model, rather the model is simply another tool that governments may consider
- The MMDA will be in a form that can easily be amended for inclusion in a mining law, or be used as guidelines
- It is possible that the model may prove useful for regional harmonization efforts



Sample Contract Jurisdictions

Australia
China
Dominican Republic
India
Indonesia
Kyrgyz Republic
Liberia
Mali
Mongolia
Papua New Guinea
Philippines
Sierra Leone
Zambia



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Five Analysis Categories

- Tenure
- Financial
- Rights and Obligations
- Community
- Contract Terms



Tenure

- Exploration
- Development
- Surrender and Termination
- Other



Financing

- Royalties and Duties
- Financing Project
- Records, Statements, Currencies, Audits
- Other



Rights and Obligations

- Government Assurances
- Goods and Services
- Employment and Training
- Environment
- Fair and Economical Project Operation
- Other



Community

- Training and Education
- Local Business Development
- Indigenous or Community Relations
- Hire Local and Buy Local
- Infrastructure Development
- Implementation and Dispute Resolution



Contract Provisions

- Applicable Law and Jurisdiction
- Co-operation and Arbitration
- Confidentiality
- Assignment
- Indemnity and Insurance
- Periodic Review



Model Mine development agreement: A work in progress

**Monday, March 8
9:00 am – 12:00 noon
Room 206 AD, North Building**

- **To familiarize participants with the MMDA project**
- **To seek feed-back from knowledgeable and experienced individuals working in government ministries, international mining companies and funding agencies**
- **To conduct round table discussions on various types of provisions to include in the MMDA**



Thanks



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