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The International Bar Association's Annual Conference

**The Model Mining Development Agreement and
community concerns**

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**Vancouver, Canada
4 October 2010**



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Overview of Presentation

- What is the Model Mining Development Agreement (“**MMDA**”) project?
 - origins
 - objectives
- How does the MMDA work and how is it to be used?
 - format
- By what process was it developed?
 - the drafting process
 - the consultation process
- The promotion of transparency in the mining sector
- The way forward
- Conclusion



What is the MMDA? – The origins of the MMDA project

- In April 2009, the IBA's mining law committee resolved to initiate a major project to develop a model mining development agreement based on international best practice principles to serve as a negotiation template for investor-state agreements in the mining sector in developing countries
- The MMDA project was developed in recognition of:
 - the fundamental role that *foreign investment* plays in the mining sector in the growth of many developing economies and, in turn, the improvement of living standards in mine or near mine communities
 - the *negative impact*, for example, environment damage, which mines can have on surrounding *communities*
 - host governments have developed strong views on the role that mining companies should play in the *sustainable development* of mine communities
 - there is a need to address the growing *resistance* of such communities to mining operations that may be of little benefit to them
 - an increased focus by international organisations, non-governmental and civil society organisations on *human rights issues* related to foreign investment
 - anti-corruption legislation has become more pervasive under both the law of many developing countries and under international law. This, in turn, has led to a call by international organisations, non-governmental and civil society organisations for increased *transparency* in international resource extraction agreements
- The recognition of these factors requires a paradigm shift in the approach to investor – state agreements in the mining sector



What is the MMDA? –

The origins of the MMDA project (II)

- Mining companies are increasingly concerned about the need to obtain a “**social license to operate**”, which includes obtaining the support of the local community, when commencing mining operations
- At the same time, mining companies require **certainty** in terms of the legal regime governing their mining operations and **stable investment conditions** under which to operate in order to ensure the long term security of their investments
- It has become imperative that foreign investment in the mining sector fosters **sustainable development** while protecting the interests of the host governments, mine communities and investors in an *equitable* way
- Many developing countries, however, do *not* have developed mining codes which deal with these issues, and the terms of investor – state agreements are determined, for the most part, contractually
- The need for the MMDA project arose from the recognition that there is **little consensus** as to what constitutes best practice in investor – state mining agreements
 - the Democratic Republic of Congo's controversial contract review is a key example of a disagreement between a host state and investors regarding what constitutes best practice in a mining development agreement
- Thus, the MMDA project is primarily aimed at producing a draft model mining development agreement based on international best practice principles in the mining industry



What is the MMDA? – The objectives of the MMDA project

- The MMDA is based on the application of international best practice principles in the mining sector, which should include:
 - **efficient macro-economic management;**
 - **an effective legal and regulatory framework;**
 - **security of tenure and regulatory certainty;**
 - **objective criteria for the grant of exploration and mining licences;**
 - **limited administrative discretion;**
 - **a defined role for government;**
 - **efficient mining sector institutions and administrative capacity;**
 - **infrastructure services;**
 - **competitive fiscal and taxation conditions;**
 - **effective investment protection;**
 - **environmental sustainability;**
 - **social responsibility;** and
 - **transparency**
- The MMDA aims to give effect to these principles



What is the MMDA? – The objectives of the MMDA project (II)

- The MMDA is intended to be used as a non-prescriptive negotiation tool for mining development agreements where:
 - ‘mature’ mining codes are not in place; or
 - a mining code requires supplementation by private contract
- It can also serve as a template for agreements with state-owned mining entities
- The MMDA endeavors to address matters that a potential investor, mining company, government or civil society representative may expect in a basic mine development agreement, such as security of tenure, regulatory certainty, and clarification of the rights and obligations of government and investors



How does the MMDA work and how is it to be used?

The format of the MMDA project

- The MMDA takes the form of a web-based product
- After numerous attempts at the structure of the web design of the MMDA, we settled on the following:
 - the ‘backbone’ is a table of contents of the key provisions dealt with in the MMDA;
 - the table of contents contains links to model clauses; and
 - links to example clauses taken from some 50 existing, ‘tried and tested’ mine development agreements are contained within each model clause
- This design avoids the promotion of a single formula, but rather enables the MMDA to be adaptable and relevant to a broad range of scenarios that mining companies and host governments face in the negotiation of each new mining agreement
- This format also allows for easy amendment so that the MMDA may be included in a mining code, or simply be used as guidelines



How does the MMDA work and how is it to be used?

The format of the MMDA project (II)

- The MMDA covers the mine development, production and reclamation phases of a mining operation, which take place subsequent to the exploration stage. The MMDA is a *mining development* agreement, and *not* an exploration agreement
- The MMDA is a basis for the development of an *investor-state agreement*, and it does not deal with local level issues in detail. It follows that the MMDA is a *mining development* agreement, and *not* a community development agreement
- It is not intended that every country adopt the MMDA. It is simply a *negotiation tool* that governments and investors may consider



By what process was it developed? - the drafting process

- In 2009, the mining law committee established a working group to manage the drafting process
- The working group compiled a confidential database of agreements from different jurisdictions on which to draw during the drafting process, and subsequently deconstructed these agreements to identify provisions that represent viable best practice alternatives for each specific provision
- The working group then undertook the revision of the draft model provisions as legitimate concerns and ideas were raised through the consultation process
- From today, 4 October 2010, draft version 1.0 of the MMDA is publically accessible on the MMDA website



By what process was it developed?

- the consultation process

- In order to develop the MMDA, broaden the *base of participation* as well as ensure the *legitimacy, transparency and openness* of the MMDA project, the working group, together with representatives of *key stakeholders, inter alia*, governments, industry, civil society groups, and universities, have undertaken a detailed consultation process this year
- Three international consultations have taken place in 2010:
 - the World Mines Ministries Forum in Toronto on 6 March 2010, with government and civil society representatives;
 - a civil society forum, which was held in Toronto on 24 and 25 April 2010, which involved civil society representatives and other industry experts; and
 - the Public Finance Transparency Program, which was hosted by the Soros Foundation, Kazakhstan, on contract transparency and model mining development agreements in the extractive sector of Kazakhstan in Astana, Kazakhstan on 24 and 25 August 2010



By what process was it developed? - the consultation process (II)

- From the launch of the MMDA website until 15 September 2010, a process of internal review of the MMDA draft version 1.0 took place. The internal review process was undertaken by an international reference group, which included the members of the working group, invited experts, persons who contributed sample mining development agreements and representatives from our international consultations
- A six week on-line public consultation process is scheduled to take place from 4 October to 15 November 2010
- Further international consultations which are to take place include:
 - a stakeholder review meeting of the United Nation's Economic Commission for Africa's ("**UNECA**") international study group framework report, organised by the African Union ("**AU**"), set to take place in Addis Ababa, Ethiopia, on 20 – 22 October 2010
- The mining law committee has also established links with other governmental and non-governmental organizations who are involved in similar initiatives in order to draw on their experience and resources
- The committee intends to publish the final MMDA version 1.0 by 31 December 2010



The promotion of transparency in the mining sector

- A key objective of the MMDA is the promotion of best practice accountability models and transparency
- For this purpose, the MMDA incorporates the requirements of the Extractive Industries Transparency Initiative (“EITI”), a coalition of governments, companies, civil society groups, investors and international organisations, which aims to strengthen governance through the incremental improvement of transparency and accountability in the mining or extractive sector
- The provisions in the MMDA that incorporate the EITI standards of accountability are:
 - the requirements for the publication of financial statements and accounting records by both the mining company and the government
 - the mutual obligation to prevent corruption
 - the obligation to uphold human rights



The promotion of transparency in the mining sector – the Dodd-Frank Act

- The importance of transparency in natural resource contracts of disclosure is recognised by the United States in the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010 (“**the Dodd-Frank Act**”)
- Section 1504 of the Dodd-Frank Act requires disclosure of certain payments made by resource extraction companies to governments for the commercial development of oil, natural gas or minerals
- This new piece of legislation forms part of a growing consensus on the central importance of transparency and disclosure to the proper functioning of the global mining sector



The way forward

- The MMDA is a 'living' and an interactive process with all stakeholders
- The committee hopes to develop further drafts of the MMDA as a result of this
- As part of this, the committee is considering developing a model exploration agreement



Conclusion

- The MMDA is based on international best practice principles and is intended to be used as a non-prescriptive negotiation tool for mining development agreements
- Draft version 1.0 of the MMDA is available on the MMDA website
- A key objective of the MMDA is the promotion of best practice accountability models and transparency
- The consultation process is ongoing, with a number of consultations scheduled to take place after the IBA's annual meeting
- The committee intends to publish the final MMDA version 1.0 by 31 December 2010
- The committee hopes to develop further drafts of the MMDA and possibly a model exploration agreement in the future



Thanks



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- International Bar Association
- International Council on Mining & Metals
- Prospectors & Developers Association of Canada
- The University of Dundee
- Extractive Industries Technical Advisory Facility
- John Grace - AMPLA Forms Project, Australia



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Timeline

- **October 2008 – IBA Buenos Aires, Special Project**
- **April 2009 – SEERIL/RMMLF Buenos Aires, Kick-off Meeting**

- **May – August 2009 – Collection of Example Agreements**
- **October 2009 – March 2010 - Creative Deconstruction**

- **March 6 and 8, 2010 – World Mines Ministries Forum, PDAC**

- **March – April 13, 2010 – Team drafts prepared**
- **April 24 and 25, 2010 - Civil Society Consultation**
- **April 26 – 28, 2010 – SEERIL**

- **June 2-4, 2010 - Governance for Extractive Industries Program Wilton Park, UK.**
- **June 17-18, 2010 - World Economic Forum , Ulan Bataar.**



Timeline

- **August 21, 2010 - Initial Draft circulated for comments**
- **August 25-26, 2010 - Public Finance Transparency Program, Kazakhstan.**
- **August - September 2010 – Review of Comments, October 4 draft prepared**
- **October 4, 2010 – IBA Annual Meeting**
- **Draft open for Public Comment**
- **October and November, 2010 – Review comments, finalize MMDA 1.0**
- **December, 2010 - Completion of MMDA 1.0.**



Web or Paper?

- Web based TOC and Text with links
- Result – Quick Printing!
- PDF format



MODEL MINING DEVELOPMENT AGREEMENT 1.0 (MMDA) DRAFT OCTOBER 4, 2010

Note to Users: For many of the principal clauses in this document, there example clauses provided from existing mine development agreements, and for certain clauses are several alternatives suggested. This is an interactive document, and clicking on the indicated links will take the reader to the website where additional information is presented.



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* * * * *

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2.0 Development of Mining Area

2.1 Term of this Agreement

This Agreement takes effect on the Effective Date (or upon the date of final approval of this Agreement, if required, by the State) and shall remain effective for [25] years. So long as the Project remains in Commercial Production the Company, if not in default under this Agreement, shall have the option to renew this Agreement up to [FOUR] time(s), each for an additional period up to [10] years, on terms and conditions that the Parties may then agree upon to reflect then-existing and foreseeable conditions, unless sooner terminated in accordance with the terms of this Agreement.

Example 1

Subject to the terms of this Agreement, this Agreement shall remain in force for a period equal to the term of the large scale mining licences and for such further period as the large scale mining licences may be renewed from time to time provided that, where Company, at the expiry of the initial period on 31 March 20xx, applies to Government for the renewal of any of the large scale mining licences and:

- (1) Government rejects the application for renewal; or
- (2) Any of such large scale mining licences are renewed in a manner other than in accordance with Company's application for renewal under [LAW].

Example 2

The term of this Agreement is ___ years beginning on the Effective Date, and for such additional period, if any, for which this Agreement shall be extended or renewed.



5.0 Royalty and Other Duties

5.1 Calculation of Royalty

The Company shall pay to the State a Royalty calculated at the Royalty rate set forth in this Section on all Minerals produced, saved and sold or otherwise disposed of from the Mining Area, and on other minerals at a rate, amount of product and value to be agreed between the State and the Company, in accordance with Section 5.1(b). Royalty shall be calculated as follows:

[NOTE: The State and Company should choose an appropriate Royalty Rate and type of Royalty clause for agreement, type of Mineral deposit and consistent with national legislation. Different royalty types may be appropriate for different Minerals. Examples of royalty types are as follows:]

Value-based Royalty (Gross value)

Value-based Royalty (Net value)

Profit-based Royalty



[Alternate Sections 5.1(d) if the Royalty Rate is to be adjusted based on profitability of the mining operation:]

(d) The Royalty rate under this Agreement shall be adjusted based on the profitability of operations under this Agreement, [annually][quarterly] at the commencement of each [year] [quarter] after [the Date of Commencement of Commercial Production][recovery by the Company of all of its costs and expenses for the exploration and development of the Mining Area incurred through Commencement of Commercial Production]. Such profitability shall be determined by the application of the “**Operating Ratio**”

[Alternate Section 5.1(d) to adjust unit-based Royalty for inflation:]

The Royalty rate for each Mineral shall be adjusted [annually] [every ____ years] after the Date of Commencement of Commercial Production at the commencement of such year. The Royalty rate shall be adjusted up or down based upon the variation



2.3 Exclusivity

The rights granted to the Company herein to conduct Mining Operations, subject to Section 2.6.4, are exclusive. The State undertakes not to grant any rights to prospect for or to mine minerals in the Mining Area or market minerals from the Mining Area to any third party during the term of this Agreement. The State shall undertake to prevent artisanal miners and other settlers from entering the Mining Area, but is not obligated to use force to do so. If, despite the foregoing, conflicting prospecting or mining rights are granted by the State, the State shall indemnify and defend the Company from claims of mining rights by third parties.

Example 1

Effective as of the Effective Date, the Government grants the Concessionaire the exclusive right to use the Initial Concession Area in accordance with the terms of this Agreement.

Example 2

Section 1.3

1.3 Exclusive Right of the Contractor. The Contractor is hereby granted the exclusive rights to explore, mine, utilize, process, refine, market, transport, export and dispose of Minerals and mineral products and by-products that may be derived or produced from the Contract Area, subject to such permitting requirements that may be applicable under pertinent laws, rules and regulations. The Contractor shall not, by virtue of this Agreement, acquire any title to lands within the Contract Area: Provided, that it may do so by any mode of acquisition provided by the laws of the [Country].

Example 3

Section 13.2

13.2 Rights of the Contractor. The Contractor shall have the following rights:

- a. The exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof, the Act, IRR and other pertinent laws, rules and regulations, and to determine the timing, nature, extent and location of Exploration, Mine Development, construction, and the mining and treatment process to be utilized in the Mining Operations.



Example 3

Section 13.2

13.2 Rights of the Contractor. The Contractor shall have the following rights:

- a. The exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof, the Act, IRR and other pertinent laws, rules and regulations, and to determine the timing, nature, extent and location of Exploration, Mine Development, construction, and the mining and treatment process to be utilized in the Mining Operations.

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MMDA: Mineral Tenure Provisions

Michael Bourassa

(Partner, Fasken Martineau DuMoulin)

**Model Mining Agreement and Community Concerns
IBA Annual Conference, Vancouver**

October 4, 2010



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Some Relevant Definitions

“Commercial Production” -- 60.0% of the Project’s constructed initial annual design capacity as shown in the Feasibility Study.

“Date of Commencement of Commercial Production” means the first day of the calendar quarter after that quarter in which the Commercial Production equals sixty percent (60.0%) of the Project’s constructed initial annual design capacity as shown in the Feasibility Study for a continuous three (3) month average.



Some Relevant Definitions (cont'd)

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the international mining industry and includes but is not limited to the guidance provided by the **ICMM, Performance Standard 1 (Social and Environmental Assessment and Management Systems), Standard 3 (Pollution Prevention and Abatement), and Standard 6 (Biodiversity Conservation and Sustainable Natural Resource Management)**, by ISO 140001 standards.



Some Relevant Definitions

(cont'd)

“**Independent Sole Expert**” means an individual employee of an internationally recognized mining consulting firm competent on international mineral markets and prices as the Parties may agree in writing, or failing such agreement, as shall be appointed for this purpose on the application of either Party by the President of the ICC in Paris in accordance with the provisions for the appointment of experts under the Rules for Expertise of the ICC.



2.1 Term of this Agreement

- This Agreement takes effect on the Effective Date (or upon the date of final approval of this Agreement, if required, by the State) and shall remain effective for [25] years. So long as the Project remains in Commercial Production the Company, if not in default under this Agreement, shall have the option to renew this Agreement up to [FOUR] time(s), each for an additional period up to [10] years, on terms and conditions that the Parties may then agree upon to reflect then-existing and foreseeable conditions, unless sooner terminated in accordance with the terms of this Agreement.
- 4 alternative clauses



2.2 Grant of Mine Development Rights

- The State hereby grants to the Company full and complete access to the Mining Area, the exclusive right to mine and market Minerals extracted from the Mining Area, including the rights to:
 - any other permit, concession, grant or any other activity of whatever nature
 - make all necessary excavations
 - construct plant, machinery, buildings
 - stockpile
 - construct and maintain houses



2.2 Grant of Mine Development Rights (cont'd)

- take and use water
- construct and maintain all transportation and telecommunication facilities
- adjust production schedules
- engage in all other activities
- acquire, import, construct, install plants, etc.
- cut and utilize timber, and quarry stone, sand

-
- 5 alternative clauses



2.3 Exclusivity

- The rights granted to the Company herein to conduct Mining Operations, subject to Section 2.6.4 (i.e.. Social Impact Assessment and Action Plan), are exclusive.
- The State undertakes not to grant any rights to prospect, mine or market minerals any third party.
- The State shall undertake to prevent artisanal miners and other settlers from entering the Mining Area, but is not obligated to use force to do so. If, despite the foregoing, conflicting prospecting or mining rights are granted by the State, the State shall indemnify and defend the Company from claims of mining rights by third parties.
- 3 alternative clauses



2.4 Legal Title to Minerals

- The State agrees that the Company will acquire property in and title to the Minerals from the State upon severance of the Minerals from the land in Mining Area.
- 1 alternative clause – the Company shall obtain title to the Minerals upon their extraction.



2.5 Traditional and Native Titles

- The Company shall, consistent with Section 2.6.4, receive cooperation and verification from the State to ensure that the local people or Indigenous or Tribal Populations are in fact the rightful owners or occupiers of the surface of the Mining Area. Their past permanent or seasonal occupation or use of the Mining Area shall create a presumption of rightful occupation. Where the surface rights to any land within the Mining Area are held or owned by local or Indigenous or Tribal Populations as recognized by Applicable Law or relevant customary law, the Company shall pay rent to the holder for the use of the surface area at a reasonable rate agreed by the holder and the Company. Such payments shall be a credit against the annual rental fee payable to the State under this Agreement.
- *The primary provisions relating to indigenous peoples are at 2.6.4 Social Impact Assessment and Action Plan and 26.0 Local Community Development.*
- 3 alternative clauses



2.6 Obligations Prior to Construction

- Within ____ months of the Effective Date and prior to commencing construction of the Project, the Company shall submit the following documents, as further described in this Agreement (collectively, the “Documents”):
 - (a) Feasibility Study.
 - (b) Environmental Management Plan (including Closure Plan).
 - (c) Social Impact Assessment and Action Plan.
 - (d) Financing Plan.
- 2 alternative clauses



2.6 Obligations Prior to Construction

2.6.1 Feasibility Study

- (prior to commencing construction) – the Company shall have a FS prepared by an independent third-party (and if prepared by the Company, verified by an Independent Sole Expert) on the basis of sound engineering and economic principles in accordance with Good Industry Practice. The Feasibility Study shall, at a minimum, include the following:
 - [20 items listed]
- 5 alternative clauses



2.6.2 Environmental Protection

- The Parties to this Agreement believe that the Project can be developed, economically operated, and closed while protecting the natural capital of [COUNTRY] and the productivity of its ecosystems, managing adverse environmental impacts to eliminate, minimize, or mitigate them to acceptable levels, and compensating for any remaining impacts. Throughout the lifecycle of the Project, the Parties to this Agreement shall endeavour to eliminate, minimize, or mitigate adverse environmental impacts and avoid unnecessary loss or damage to [the COUNTRY'S] ecosystems.



2.6.3 Environmental Management Plan

- The Company, prior to commencing construction, shall have an EMP prepared (and updated prior to any major change to the mine plan) by an independent third-party (and if prepared by the Company, verified by an Independent Sole Expert) on the basis of sound engineering and economic principles in accordance with Good Industry Practice.
- Objective of the EMP – prevent degradation, protect public H&S, preserve water quality, recognize use of area by future generations.
- 12 items are listed to be contained in the EMP
- 6 alternative clauses



2.6.4 Social Impact

Assessment and Action Plan

- The Company, prior to commencing construction, shall have a SIAAP prepared (and updated prior to any major change to the mine plan), which shall at a minimum, contain the following:
 - a plan to mitigate the potential adverse impact of the Mining Operation
 - a plan to eliminate unreasonable interference with living conditions
 - where the surface is occupied by communities, a plan using guidance from Performance Standard 5 of the IFC as it may from time to time be amended (and which requires 8 additional provisions to be included in the plan)
- 8 alternative clauses



2.6 Obligations Prior to Construction

2.6.5 Financing Plan

- The Financing Plan shall include such provisions as the Company shall determine consistent with its commercial requirements and Good Industry Practice. The Company shall be responsible for raising all of the financing necessary to implement the Financing Plan for the Project.



2.6.6 Requested Changes by State

- The State shall cause its appropriate agencies, as promptly as reasonably possible after receipt, to review the Documents and provide comments
- The State may request the Company to make such revisions as are reasonable to contribute to the efficient development of locally required infrastructure
- 2 alternative clauses



2.7 Requirement to Obtain Permits

- Where the Company is required under this Agreement or Applicable Law to obtain a permit, the Company shall obtain the necessary permit from the appropriate State agency (including the Local Government) prior to proceeding with or undertaking the activity authorized by the permit.



2.8 Construction

- The Company shall submit to the State a detailed schedule for the performance of all planned activities during the construction period. The schedule shall include all activities identified in the Feasibility Study and include the details to be developed for construction. The schedule shall include an estimated duration of the key components of all planned activities to be performed during the construction period including a critical path, milestones and decision points.
- 5 alternative clauses



2.9 Reduction or Suspension of Operations

- Where for reasons beyond the Company's control, (including market conditions), the Company proposes to reduce or suspend Mining Operations, the Company shall notify the State . . . giving reasons for the proposed suspension, and the State, upon determining that the reason for suspension is reasonable, shall approve the suspension for up to six (6) months in the first instance, and for a further period not exceeding twelve (12) months.
- The State may terminate if the Company suspends Mining Operations for more than 36 months.
- 2 alternative clauses



2.10 Continuation of Existing Rights

- The rights, obligations and liabilities of the Company and the State subsisting prior to the Date of the Commencement of Commercial Production, except as superseded herein, shall continue and bind both the Company and the State during term of this Agreement.



Conclusions

- The goal is to draft tenure provisions that are:
 - Comprehensive
 - Adaptable and user-friendly to Companies and Governments
 - Helpful in negotiations
- Each project, each jurisdiction will have different requirements and parameters



Thank You



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MMDA: Environmental & Community Provisions

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Model Mining Agreement and Community Concerns, Vancouver

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Issues

- Approach, principles and objectives of this section
- Sections Protecting and Promoting Environment and Community
 - Tenure
 - Rights & Obligations
 - Annexes



Approach, Principles and Objectives

- The social license to operate can no longer be taken for granted
- The social license to operate must be negotiated
- The negotiations must be inclusive
 - Company, government(s), community(ies)
- The result must be balanced
- No one size fits all prescription
 - Makes processes very important



Approach, Principles and Objectives

- Reflects a shift from rents-based negotiations to a more comprehensive interest-based negotiation
- From win-lose to win-win-win
 - Company-Government-Community



Approach, Principles and Objectives

Win-win-win:

- Company: stable economic and social environment, long term relations
 - Government: steady and fair return on resources
 - Community: social, economic and environmental development
 - Scope: reflected in following slides
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Approach, Principles and Objectives

Win-win-win:

- Balance must be reflected throughout the text, not simply a question of environmental or social “add-ons”
- Role of Table of Contents as a negotiating agenda
 - Not every issue relevant to each situation
 - Principles can choose which are relevant, useful
 - Legitimacy of the agenda is important



Tenure

- 2.6 Obligations Prior to Construction
 - Environmental Protection clause stating commitment to lifecycle management of environmental impacts
 - Requirement to Prepare Environmental Management Plan (alternative clauses address EMP and EIA)
 - Requirement to Prepare Social Impact Assessment and Action Plan



Rights & Obligations

- 12.0 Mutual Obligations
 - Applicability of IFC Performance Standards and Equator Principles
 - Parties' Commitment to Protect Human Rights
- 17.2 Tax Stabilization Clause
 - explicitly excepts new environmental & human rights laws



Rights & Obligations Land & Water Provisions

- 21.5 Water
 - Company to use modern technology to minimize Project water use, maximize efficiency, recycle where feasible
 - Make self-discovered water available to community
- 30.0 Mining Closure/Post Closure Obligations
 - Consistent with Community Development Agreements
 - Employing guidance in ICMM Planning for Integrated Mine Closure Toolkit
 - Plan in consultation with Communities
 - Cost guarantees & continued monitoring



Rights & Obligations “Community Relations” provisions

- 23.5 Company Security
 - Must comply with national law & Voluntary Principles on Security and Human Rights
- 25.0 Supply Chain: Use of Local Goods and Services
 - Local procurement preference
 - Comply with Local Business Development Programme (alternate clause)



Community Relations Obligations (Cont.)

- 26.0 Local Community Development
 - Requires Company to negotiate Community Development Agreement(s)
 - CDA must address funding of development
 - CDA must address environmental, social and economic impacts during and after mining
 - CDA prevails over local mining agreement in event of conflict: breach of CDA constitutes breach of mining agreement and may warrant termination of mining agreement.



Community Relations Obligations (Cont.)

- 27.0 Community Health
 - Mandatory Company programs and facilities; subsidized care
- 28.0 Employment and Training
 - Minimum levels; investment in capacity development & skills enhancement
- 29.0 Labour Standards
 - Compliance with national law, Good Industry Practice, international standards
 - No child labour or forced labour
 - Observe Good Industry Practice re employee safety



Community Relations (cont.)

- 31.0 Forums for Citizen Grievances
 - Company-provided grievance procedure
 - Use of national court system or customary law procedures
 - Arbitration alternative
- Annexes to Agreement
 - A. Mining Area: excludes protected areas, national parks., reserves, World Heritage sites
 - B. CDA Objectives
 - C. Local Business Development Plan



Thanks



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