

Mining

In 28 jurisdictions worldwide

Contributing editors

Michael Bourassa and John Turner



2015

GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Mining 2015

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Global Overview

Michael Bourassa and Samantha Alfonzo

Fasken Martineau

The steady slow-down of the global market was felt again this year in the mining sector. Dropping commodity prices and the continued uncertainty of the international economy reduced global exploration and investment capital. Despite these unfavourable economic conditions, the resiliency of the mining industry was on display with activity peppering the sector throughout the year. Significant legislative developments and partnerships continue to expand and advance the ever-changing face of international mining. Though the sector remains difficult to forecast, this year's trends reveal continued evolution within the global mining industry.

Mining jurisdictions

Each year the Fraser Institute publishes its Survey of Mining Companies. This survey ranks countries based on their attractiveness to investors by analysing policy factors, mineral endowments and economic conditions. Atop this year's Investment Attractiveness Index is Finland. While, traditionally, Scandinavian countries have scored high, this year, Finland is the region's only representative in this index's top 10. North American regions performed well with Saskatchewan surging up to second place and Manitoba also significantly improving its ranking. This year's top 10 jurisdictions include Finland, Saskatchewan, Nevada, Manitoba, Western Australia, Québec, Wyoming, Newfoundland and Labrador, Yukon, and Alaska. The median investment attractiveness of the United States continued to grow this year; however, significant drops in their Policy Perception Index were recorded. Only California, Colorado and Utah saw improvement in the perception of their policies. The remaining states all experienced a slight decrease in scores.

Though mining investment decisions are predominantly based on mineral potential, a region's onerous legislation, taxation and underdeveloped infrastructures remain strong deterrents for investors. This year saw a decrease of global investments in mining from those disclosed in 2013. The Fraser Institute reported the worldwide exploration budget of its participants at US\$2.7 billion, down from the US\$3.2 billion recorded the previous year. With the continued decrease in exploration capital, the importance of a favourable political climate has become crucial to attracting and winning investors. Although many jurisdictions implemented legislative changes to create investor-friendly environments, the current trend of mining code revision seeks to foster more efficient and sustainable developments in the mining industry. Economic growth and community improvement are at the forefront of current regulatory changes, as well as a strong emphasis on environmental protection and rehabilitation.

Over the course of 2014, countries in French Africa and Latin America modernised their mining codes to do just this. These regions hold great geologic potential, but many countries are among the highest-ranked on the Fraser Institute's 'Room for Improvement' list. According to the survey, the exploitation of these countries' mineral endowments, most notably Argentina, Burkina Faso, Ecuador and the Ivory Coast, are hindered by unfavourable mining regulations for investors. Time will tell whether these newly implemented policies yield the desired international investments and domestic improvement initiatives.

Legislative initiatives and deals in Africa

Dwindling international investment has resulted in many French African nations looking to revise their mining codes. Although the region experienced a similar sweep of legislative reforms in the early 2000s, these investor-friendly revisions, though successful in bringing more foreign investment and increasing mining exports, did not result in a

corresponding growth for these nations' GDPs. More far-reaching economic effects are anticipated through legislative reforms to the mining sector in many nations in the region. Other regions were marked by significant partnerships with Russia. Both Zimbabwe and South Africa have entered into substantial resource development agreements in order to modernise and expand their mining industry and infrastructures. The widespread legislative changes in French Africa and the economic partnerships of Zimbabwe and South Africa reveal the continuing tendency of the continent to develop a more sustainable and advanced mining industry.

Burkina Faso

Having established itself as one of the most successful mining jurisdictions in Africa over the past decade, Burkina Faso's economy has been slowed recently by falling international gold prices. As the main export of the country, gold accounts for a sizeable amount of the nation's GDP. Although the implementation of legislative changes to the country's Mining Code have been anticipated for some time, recent political upheaval in the region continues to threaten progress. Demonstrations against the mining industry have persisted since the overthrow of President Blaise Compaoré in October 2014, pressuring the transitional government to initiate change. In response, a series of reforms targeting the mining sector have been instituted since November. Though the transitional government has proposed new revisions to the Mining Code, the details have yet to be released. It is expected that these changes will be largely based on those proposed in 2013 that had, among other provisions, increased state participation in the capital of the project company, shortened duration of mining conventions, the creation of a local community fund and reducing the period of tax stability. Although these revisions will no doubt look to produce a more equitable distribution of mining revenue between the state and investors, continued unrest within the country and upcoming elections in October 2015 could hinder further progress.

The Ivory Coast

In a bid to end their economy's over-reliance on agriculture, the Ivory Coast has adopted a new mining code aimed at increasing transparency and modernising its mining industry. While many of the provisions of the New Mining Code refine and clarify existing processes, many details will require separate ordinances and decrees to be fully implemented. Notable elements of the New Mining Code include:

- requirements for local content and capacity training;
- the creation of a community and rehabilitation fund;
- a requirement for all title holders to be of Ivorian nationality - exploitation permit holders must additionally be incorporated as a company; and
- profits from the sale of a mining title to be subject to taxation, though the Code does not indicate which provisions of the Tax Code should be applied.

The impact of these changes will not be apparent for some time. The Mining Code has left much flexibility for the government and, as a result, perhaps a degree of uncertainty for international investors.

Gabon

Gabon joins other nations in French Africa with the adoption of a new mining code in 2015. The policy changes follow the current trend across the region, introducing more precise social and environmental obligations

while trying to conserve the attractiveness of their country to foreign mining investment. This pattern of legislative changes to the mining codes of the area reveals a consistent desire to develop a more efficient and sustainable mining industry.

Guinea

The saga of the Rio Tinto Simandou iron ore project, in south-east Guinea, continues to garner international attention. Mired in accusations of corruption and ongoing international legal disputes, the project has enormous economic and infrastructural implications for the region. Simandou is the world's largest untapped iron deposit and its exploitation would make Guinea one of the world's top iron ore exporters. At full production the region would produce 100 million tons of high-grade iron ore per year. Other significant elements of the project include the construction of extensive infrastructure, including a 650km trans-Guinea railway across a thickly forested mountain range and a new deep-water port to the south of Conakry. Though the wealth of iron deposits in the region represent enormous profit potential for investors, the site lies at the heart of international legal disputes. The region will no doubt continue to command attention as the Guinean government has announced that it will auction off the northern half of the Simandou deposit in 2015. With iron prices dipping to a five-and-a-half-year low, the auction will certainly test the appetite of international investors.

Democratic Republic of Congo

In December 2014, Jin Cheng Mining Limited, a wholly-owned subsidiary of Zijin Mining Group Co Ltd, acquired a 51 per cent equity interest in La Compagnie Minière de Musonoie Global SAS. Based in the Democratic Republic of Congo, the vast mineral resources available through this acquisition provides Zijin Mining Group with the opportunity to expand their mining presence in Africa and access the significant copper resources of the region. The major asset of La Compagnie Minière de Musonoie Global SAS is the Kolwezi Copper Mine, which has yet to be put into commercial production. Situated at the border between Zambia and the Democratic Republic of Congo, the mine will provide raw materials to Zijin's refinery project after being entered into service.

Zimbabwe

In need of economic resuscitation, the Zimbabwean government signed a US\$3 billion dollar platinum mining deal with Russia in September 2014. The deal represents the largest single foreign investment in the country, whose economy has suffered from international sanctions. The agreement will see the development of a mine in the Darwendale district, north-west of the nation's capital, Harare, and will create the largest platinum mine in the country. The early months of 2015 have seen little development in this project, however, which seems to have been stymied by further financial constraints placed on both Russia and Zimbabwe and the continuing fall of commodities prices.

South Africa

Russian-South African nuclear partnership

A recent partnership with the Russian government will see South Africa's nuclear power generation potential increase substantially. The deal lays the groundwork for the construction of large-scale nuclear power plant procurement and development across the country. Russian state-owned Rosatom Corp will also build technology-based research reactors and assist in developing a comprehensive nuclear infrastructure in the African country. The deal will reduce South Africa's reliance on coal, which currently accounts for approximately 80 per cent of the nation's electricity. The reactors are expected to go online in 2023.

Northam Platinum's important black economic empowerment (BEE) deal

In another landmark BEE deal, Northam Platinum shareholders approved a fully funded 6.6 billion rand transaction that will increase ownership levels in the company for historically disadvantaged South Africans (HDSA) to 35.4 per cent. According to Northam, the deal, announced in October 2014 and passed in March 2015, achieves meaningful empowerment while also ensuring fair treatment to its current shareholders. The stipulated 10-year security of HDSA ownership in the company ensures Northam will exceed the minimum Mining Charter equity requirements. The deal, whose provisions ensure the immediate economic participation of the HDSA, will also result in excess of 4 billion rand injection of funds into Northam.

Bengwenyama Minerals v Genorah Resources

Two farms in the magisterial district of Sekhukhune, Limpopo province are at the heart of a contentious, enduring legal battle where constitutional and prospecting rights clashed. The most recent Supreme Court of Appeal ruling was the third judgment delivered against Genorah and the Roka Phasha Community, which decided that their mineral prospecting rights had been wrongly granted. The legal issues of the case revolved around competing applications for preferential community prospecting rights and discussion on whether a corporate vehicle can be used by a community to assert these rights. The Supreme Court of Appeal held, inter alia, that the Bengwenyama community instituted a claim for land restitution, and that there was an overwhelming probability that it would be granted to the community.

Mineral and Petroleum resources development

The National Assembly of South Africa passed the Mineral and Petroleum Resources Development Amendment Bill (MPRDA) in March 2014. These revisions represent the most far-reaching changes to the MPRDA since its promulgation in 2004. The new amendments include:

- granting the Minister of Mineral Resources wide discretionary power to determine the terms and conditions applicable to the beneficiation of mineral resources. The Minister has the discretion to set percentages, quantities, qualities and timelines of beneficiation;
- abolishing the 'first-in, first assessed' principle, which has governed applications for mineral rights in South Africa for over a century; and
- introducing state participation in the exploration and production of the oil and gas sector. The state will now acquire 20 per cent free carried interest in all new exploration and production rights.

These amendments will have significant impact on both mining and petroleum industries and concerns linger about the effects these substantial changes will have on the country's economy.

Legislative initiatives and deals in Latin America

Mining in Latin America continues to be an exciting industry to observe. The trend of resource nationalism that dominated the area in recent years has produced significant changes to the codes and taxation governing the mining industry. Latin America remains an important area to watch.

Mexican energy reforms

In August 2014, the Mexican government's legislative branch approved substantial reforms to the country's energy industry. Aimed at increasing private and public investments into the exploration and extraction of hydrocarbons, the changes have significant implications for the mining industry. Although previously enjoying preferential treatment over other activities, mining will now be subordinate to the extraction and exploration of oil and other hydrocarbons. Holders of mining concessions are now obligated to inform the Ministry of Energy of the discovery of any hydrocarbons. Failing to inform the relevant government bodies of the presence of this valued resource is grounds for cancellation of mining concessions under the new legislation. Along with Mexico's new mining taxation regime, the effect of these new legislative reforms will be felt by both companies and the government alike. Although these changes will undoubtedly alter mining in Mexico, there is still enormous potential for this sector as only between 25 to 30 per cent of the nation's land has been explored for mining resources to date.

Ecuador

Other developments in Latin America include proposed amendments to Ecuador's mining law. The Ecuadorian government has announced significant changes to the regulation of the sector that include, among other things:

- changes to the country's windfall tax, to offer investors more certainty;
- creation of a Mines Ministry; and
- the reopening of the mining registry after seven years to grant new concessions.

Mining investment in the country has been comparatively modest, as companies had previously faced the highest taxation rate in the region. The effects of this onerous taxation have been substantial for Ecuador. In 2014, Canada's Kinross Gold Corp abandoned Fruta del Norte, Ecuador's largest gold mine, because of the government's unwillingness to waiver on the 70 per cent revenue-based windfall profits tax. Purchased by the company in

2008 for US\$ 1.2 billion, the mine is estimated to have almost 10 million ounces of gold in indicated and inferred resources. Although the changes to the mining legislation and taxation have been proposed but not yet implemented, the government's recent willingness to revise the legal framework and taxation of the mining industry has already yielded results. In March 2015, Fortress Minerals, owned by Swedish-Canadian mine financier Lukas Lundin, purchased the Fruta del Norte mine for US\$ 240 million. The deal was noteworthy as a vote of confidence in Ecuador.

Argentina

Mining in Argentina continues to be difficult to manage for foreign investors. With restrictions placed on imports of goods and services and exchange rate controls being implemented, the region was an unattractive market for mining companies. Inflation was high in the country as well, exacerbating already difficult economic and political conditions. The tide turned this year, however, when Argentina took significant steps to attract foreign investment: a better system to measure inflation was established and the nation's currency was devalued to bring it closer to its real value. With First Quantum's recent acquisition of the Taca Taca copper project, interest in the country appears renewed. As the country's Merval Index booms and general election excitement builds, it seems Argentina has much left to offer.

Legislative initiatives and deals in Asia

Significant changes occurred over the course of 2014 in the Chinese mining industry. The year was marked by substantial foreign acquisitions by China and the evolution of the country's energy industry, with a dramatic decline in coal mining, consumption and export.

China's MMG Ltd acquires Peruvian copper project

Chinese companies continued to increase their international mining presence, with significant acquisitions in Africa and Latin America in 2014. Among them was the acquisition of the Las Bambas copper project in Peru for US\$5.85 billion by a Chinese consortium of MMG, Guoxin International Investment Corp Ltd and state-owned CITIC Metal Co Ltd. With China responsible for 40 per cent of the global demand for copper, this is a crucial acquisition to help meet the country's ever-increasing need for this metal. Construction of the mine is nearing completion and is scheduled to produce 400,000 tonnes of copper per year, beginning in 2015. This substantial production is equivalent to 12.5 per cent of the copper imports China recorded in 2013 and will provide key raw materials for both construction and power generation in the country.

Chinese coal production

In 2014, coal production in China fell for the first time this century and further declines are expected. With an abundance of clean air and renewable energy policies passed across the globe and also within China, the impact on the Asian nation's coal industry has been apparent. In the past four years falling international demand for coal has forced 5,920 mines to close across China and resulted in the coal industry's performance ranking among the worst in the country, with profits declining by 46.2 per cent. Many of the effects on China's coal industry will continue to play out as the country slowly decreases its demand for coal as part of its five-year energy strategy.

Chinese corruption crackdown

Beginning in 2013, the Chinese government launched an ambitious anti-corruption effort. Inspections of state-run conglomerates continue to increase as Beijing prepares for significant reforms to government industry. China's top anti-corruption body, the Central Commission for Discipline Inspection, has announced a comprehensive investigation of central government state-owned enterprises to be completed in 2015. Amid the reported 100,000 officials punished, the state's anti-corruption efforts have extended through the army and financial sector, removing prominent leaders from their enviable heights. Lucrative businesses, including those in the mining industry, will continue to come under intense government scrutiny as the anti-corruption initiative evolves.

Legislative initiatives and deals in Europe

The European mining sector was marked with contentious developments across the continent. Local pressure and governmental action forced some developments to a standstill and left many with uncertain futures. Although some projects have weathered the storm of political and social scrutiny, governments in the region continue to be heavily influenced by local sentiment towards particular projects.

EU – Corporate Social Responsibility Transparency Directive

On 16 April 2013, the European Commission adopted a proposal for a Directive to enhance the transparency of companies on social and environmental matters. The Directive amends Directives 78/660/EC and 83/349/EEC, known as the Accounting Directives, which deal with the preparation of annual and consolidated financial statements.

The objective of the new proposal is to increase the transparency and improve the performance of European companies on environmental and social matters, thereby contributing to long-term economic growth and employment. All large companies in the EU (those having more than 500 employees, €20 million balance sheet or €40 million net turnover) will have to disclose information on policies, risks and results regarding, among other things, environmental matters, human rights, and anti-corruption and bribery issues. The Directive entered into force on 6 December 2014.

DG Enterprise and Industry critical raw material list

DG Enterprise and Industry released its communication on critical raw materials for the European Commission in 2014. The materials that make up this list are considered critical not necessarily due entirely to their geological scarcity, but also because of the political and economic stability of the supply, the material's level of production concentration, its potential for substitution and recycling rate. The 2014 list includes 13 of the 14 materials identified in the previous study. Only tantalum was moved off the list due to a now lower supply risk. This year, six new materials are included on the list: borates, chromium, coking coal, magnesite, phosphate rock and silicon metal. The 2014 communication was comprised of a total of 20 critical raw materials. As the projected global demand for raw materials continues to rise, the identification and evaluation of international supply will become an increasingly important element to weigh and analyse.

Astur Gold's project in Spain

Once the site of one of the largest gold mines in the Roman Empire, Salave has a rich mining history. Imprints of these ancient mines survive throughout the region, with more than 500 ancient mining sites currently known in the north-west Iberian coast. Astur Gold's attempts to exploit the region's significant storied wealth, however, were halted when their proposed underground mine was not approved by the Ministry of Economy and Employment of the Principality of Asturias. The negative decision on their environmental impact assessment threatens to deny Astur Gold the right to develop a mine over a substantial underground gold deposit in the region. Significant opposition to the development of the mine persists locally. With this recent decision by the Ministry, the project has essentially been halted. Astur Gold has announced that it has filed a lawsuit seeking damages for expenditure to date and lost profits.

Eldorado's Skouries mining project

Eldorado Gold's Skouries project has been the object of various legal challenges dating back to its ownership by TSX Gold and European Goldfields, and in each case these challenges have been denied by the Greek courts and the efficacy of the licensing of project has been confirmed. Notwithstanding these challenges, the project appears to have substantial local community licence and, until the change of government in Greece in late 2014, the full support of the Greek government. On 27 February 2015, Eldorado received a notice from the Greek Ministry of Energy revoking the approval required to complete final construction of the processing plant at the project. Such notice indicated, however, that the Ministry may reverse its decision once it completes an internal review process and Eldorado has remained committed to advancing the Skouries project. As of 1 May 2015, project development work was continuing.

Krumovgrad gold project approval

Dundee Precious Metals Inc has, for some time, intended to construct a gold mine in south-eastern Bulgaria. The proposed mining site is located at Ada Tepe, south of the town of Krumovgrad, and has long been embroiled in local opposition and environmental controversy. Recent approval by the local council of the terms of reference submitted by Dundee Precious Metals, however, marks a critical step towards the construction, permitting and land acquisition necessary to move the project forward. The next significant step in the project will be the preparation and approval of the detailed development plan. Though much of the permitting and approval process remains, it is anticipated that construction on the mine will soon begin.

Legislative initiatives and deals in Canada

Canada's mining industry was marked this year with a momentous Supreme Court Decision, which will undoubtedly affect resource development across the country. Canadian mining companies continue to assert their international clout, with both acquisition and sale activity in numerous global jurisdictions. The strength of the domestic mining industry was reinforced with strong results in the Fraser Institute study, with five provinces and one territory ranked in the top 10. As always, the mineral endowments of the nation continue to attract substantial international interest.

Tsilqhot'in Nation v British Columbia

The past 40 years have seen the elaboration of aboriginal rights and land title by the Supreme Court of Canada. The recent *Tsilqhot'in Nation* decision has continued the conversation on aboriginal governance, providing both an important precedent and greater clarity to this enduring issue. The case involved the Tsilqhot'in Nation, a semi-nomadic people who had occupied territory in the interior of British Columbia for traditional customs and practices. The British Crown asserted sovereignty over the region in 1846. In this recent landmark judgment, the Supreme Court recognised the existence of aboriginal title on a specific tract of land for the first time. The test for aboriginal title, first outlined in *Delgamuukw v British Columbia*, included three components: sufficiency, consistency and exclusivity of occupation. Where the British Columbia Court of Appeal had previously confined sufficiency of occupation to site-specific settlements, this recent Supreme Court decision extends its definition to include areas traditionally used for hunting and harvesting. This allows for more substantial areas to be included by claimants than would have been possible under the former 'site-specific' approach. Aboriginal title confers ownership rights similar to those associated with fee simple, including significant rights to manage, develop and profit from the land. However, use of the land must not prevent future generations from use and enjoyment of the land. Without consent from the title-holders, government actions that affect the land may be justified if there is a compelling and substantial public interest and actions are consistent with the government's fiduciary duty to aboriginal peoples. However, prior to establishing title, the government only owes a procedural duty to consult and, if appropriate, accommodate. Although this Supreme Court ruling has conveyed unprecedented authority and control to aboriginal peoples over their ancestral lands where aboriginal title is established, the discussion and issues surrounding aboriginal title will undoubtedly persist.

The Mount Polley tailings dam breach

On 4 August 2014, a perimeter section of the Mount Polley mine tailings dam in British Columbia breached, releasing water held within the tailings impoundment into the surrounding area. A report produced by an independent Expert Panel that was created by the British Columbia government to consider the root cause of the incident was released to the public on 30 January 2015. The use of dam facilities at other mine developments in the province precipitated a recommendation in the Expert Panel Report that all operating mines with tailings impoundments be required to establish an independent tailings dam review board to provide ongoing design, construction and operational advice.

The end of the mergers and acquisition (M&A) mania

This past year M&A activity slowed considerably. Activity in the past year was highlighted by its focus on 'demergers' and by struggling juniors taken over for what is perceived to be attractive valuations for the acquirer.

IAMGOLD sale of its Niobec Mine

In January 2015, IAMGOLD Corporation completed the sale of its Niobec Mine, one of the world's three niobium producers. The mine provides 7 per cent of the world's niobium supply, a key alloy element used to strengthen steel. The buyer was a consortium comprised of Magris Resources Inc, CEF Holdings Limited and Temasek, a Singapore-based investment company. The buyers have also agreed to purchase a nearby earth element deposit when production begins. The sale of the mine for US\$500 million by IAMGOLD had long been anticipated, and is a significant transaction achieved in a difficult market for the mining industry.

The mineral industry: looking forward

The resiliency of the mining industry was exhibited again this year with substantial transactions continuing throughout 2014, despite a slowing global market. Significant legislative reforms were implemented across French Africa and Latin America, changing the face of mining in those regions. Although faced with the challenge of dropping international commodity prices and the complex navigation of changing political landscapes, the resourcefulness of the international mining industry was on display. The coming year will undoubtedly see the industry continue to strive for growth within a difficult global market.

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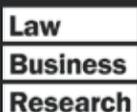
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