The Mining Law Review

Fourth Edition

Editor
Erik Richer La Flèche

Law Business Research

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EDITOR'S PREFACE

I am pleased to have participated in the preparation of the fourth edition of *The Mining Law Review*. The *Review* is designed to be a practical, business-focused 'year in review' analysis of recent changes and developments, and their effects, and a look forward at expected trends.

This book gathers the views of leading mining practitioners from around the world and I warmly thank all the authors for their work and insights.

The first part of the book is divided into 22 country chapters, each dealing with mining in a particular jurisdiction. Countries were selected because of the importance of mining to their economies and to ensure broad geographical representation. Mining is global but the business of financing mining exploration, development and – to a lesser extent – production is concentrated in a few countries, Canada and the United Kingdom being dominant. As a result, the second part of this book includes eight country chapters focused on financing.

The advantage of a comparative work is that knowledge of the law and developments and trends in one jurisdiction may assist those in other jurisdictions. Although the chapters are laid out uniformly for ease of comparison, each author had complete discretion as to content and emphasis.

The mining sector is facing uncertain times. Commodity prices are lower and continue to be soft. Demand growth from China, the world's largest consumer of commodities, has slowed considerably. New markets such as India are not picking up the slack. Operating costs in certain markets exploded during the good years and must now be reined in. Traditional lenders to the industry are more highly regulated and have less flexibility to assist companies during this difficult time. Equity markets know that big declines in the price of commodities have preceded recessions and bear markets and as a result are doubly cautious.

While times are tough, we know that mining is cyclical and that continued world population and economic growth as well as the depletion of current resources mean that growth in the mining sector will resume. The only question is when.

In the meantime, we are seeing a return to basics coupled with innovation. Companies are reducing their operating costs and curtailing exploration efforts. Executives are looking at new ways of doing things, from cost sharing to automation to alternative financing. When financing projects, companies now attempt to secure most if not all of the financing upfront. To do this they have to cobble together financings from various sources, including stream and royalty arrangements that in the past were only available once a project had been considerably de-risked. Adapting the financings to the particulars of each projects and making sure that the various bits work together and form a coherent whole is a source of interesting and sophisticated work for mining lawyers these days.

But companies are not the only ones implementing change. In some jurisdictions, Quebec for example, governments and other stakeholders (e.g., indigenous peoples) are taking advantage of the lull to put into place comprehensive strategies for welcoming new mining projects. Such strategies include clear timelines for the approval of projects, objective project approval standards, investments in infrastructure (e.g., ports, roads, railroads, airports and power lines), andtransparent rules regarding the sharing of project benefits among local communities, indigenous peoples and government, all so as to be able to ramp up quickly when opportunity strikes.

As you consult this book you will find more on topics apposite to jurisdictions of specific interest to you, and I hope that you will find this book useful and responsive.

Erik Richer La Flèche
Stikeman Elliott LLP
Montreal
October 2015

Chapter 30

UNITED KINGDOM

Kate Ball-Dodd and Connor Cahalane[1]

I INTRODUCTION

London is a leading financial market for international mining companies seeking to access the equity capital markets. The London Stock Exchange's Main Market is the listing venue for many of the world's largest mining groups by market capitalisation, including Anglo American, BHP Billiton, Glencore and Rio Tinto. The London Stock Exchange's growth market, AIM, also remains a popular listing venue for junior mining companies seeking to raise capital for exploration and development projects.

As at 30 June 2015, there were 34 (2014: 34) mining companies admitted to trading on the Main Market, with a combined market capitalisation of approximately £143 billion (2014: £200 billion). On the AIM market there were 126 (2014: 136) mining companies admitted to trading as at 30 June 2015, with a combined market capitalisation of approximately £3.7 billion (2014: £4.1 billion).[2]

In the 12-month period from 30 June 2014 to 30 June 2015, mining shares performed poorly as commodity prices continued to fall with many reaching their lowest levels in a number of years. These difficult conditions for mining companies have meant that the UK's equity capital markets have seen low levels of activity in this sector. With the public markets all but closed to mining companies, private equity has become an important provider of capital to the sector, in particular to junior miners, and it has been reported that over the past two years approximately US$12 billion has been raised by private equity funds for investment in mining and metals companies.

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1 Kate Ball-Dodd is a partner and Connor Cahalane is a senior associate at Mayer Brown International LLP.

2 Source for Main Market and AIM statistics is the London Stock Exchange website, www.londonstockexchange.com.

i New issues

In the 12-month period from 30 June 2014 to 30 June 2015, two new mining companies were admitted to the Main Market. In December 2014, Goldbridges Global Resources plc, a gold miner with assets in Kazakhstan, moved up to the Main Market from AIM. In May 2015, South 32 Limited, a diversified metals and mining company with mining assets producing bauxite, alumina, aluminium, silver, lead and zinc, manganese, thermal and metallurgical coal, and nickel, was admitted to trading on the Main Market following its demerger from BHP Billiton.

Three mining companies were admitted to trading on AIM in the 12 months from 30 June 2014 to 30 June 2015. The largest mining entrant to AIM by market capitalisation was Bacanora Minerals Limited, an exploration and development company with operations in Mexico focusing on borates and lithium, which raised £4.75 million resulting in a market capitalisation of £66.5 million on its admission in July 2014. In December 2014, Dalradian Resources Inc, a development and exploration company whose main asset is the Curraghinalt gold deposit in Northern Ireland, was admitted to trading on AIM. Dalradian's market capitalisation on admission was £53 million. The only other mining company to join AIM during the period was Tengri Resources, a development company with a gold-copper project in the Kyrgyz Republic. On its admission to trading in July 2014, Tengri had a market capitalisation of £18 million.

ii Secondary offerings

The largest Main Market secondary offering in the period from 30 June 2014 to 30 June 2015 was by Petropavlovsk Plc, a gold miner with significant assets in Russia, which in February 2015 raised £155.2 million through a rights issue as part of a refinancing of its debt. In February 2015, Anglo Pacific Gold plc, a global natural resources royalty company, raised £39.5 million through a placing and open offer of ordinary shares in connection with its acquisition of royalty interests in the Narrabri coal project in New South Wales. In October 2014, New World Resources plc, a Central European hard coal producer, completed a placing of shares to its existing shareholders, raising proceeds of approximately £27.3 million as part of a balance sheet restructuring.

During the same period, the largest secondary offering on AIM was by EMED Mining Public Ltd, an exploration and development company with assets in Europe, which in June 2015 raised £64.9 million through a placing and open offer. The next largest secondary offering on AIM was by Kirkland Lake Gold Inc, a Canadian gold producer and explorer with assets in Ontario, which raised £17.9 million through a placing in February 2015. Sirius Minerals plc, a potash development company, raised £15.8 million in March 2015 through a placing of ordinary shares.

II CAPITAL RAISING

i General overview of the legal framework

Under the UK listing regime, different admission criteria and listing rules will apply depending on whether a company is seeking to have its shares (or other securities)

admitted to a regulated market governed by the EU Prospectus Directive,[3] such as the Main Market, or to AIM, which has a more flexible regulatory structure.

Official List

In order to be admitted to the Main Market, a company must first apply to the UK Listing Authority (UKLA), a division of the UK's Financial Conduct Authority, to join the Official List.

Mineral companies

For the purposes of the Listing Rules (LR), which set out the admission requirements for the Official List, a mineral company is a company with material mineral projects (not just those whose principal activity is the extraction of mineral resources). The materiality of projects is assessed having regard to all the company's mineral projects relative to the company and its group as a whole. Mineral projects include exploration, development, planning or production activities (including royalty interests) in respect of minerals, including:

a metallic ore, including processed ores such as concentrates and tailings;

b industrial minerals (otherwise known as non-metallic minerals), including stone such as construction aggregates, fertilisers, abrasives and insulants;

c gemstones;

d hydrocarbons, including crude oil, natural gas (whether the hydrocarbon is extracted from conventional or unconventional reservoirs, the latter to include oil shales, oil sands, gas shales and coal bed methane) and oil shales; and

e solid fuels, including coal and peat.

Admission requirements

The Official List is divided into two segments: standard listings and premium listings. A standard listing is one that satisfies the minimum requirements laid down by the EU Prospectus Directive. A premium listing denotes a listing that meets more stringent criteria that are not required by the EU Prospectus Directive but that are seen as providing additional investor protections. A mineral company may apply for either a premium or standard listing provided it complies with the relevant admission requirements.

Standard listing

A mineral company seeking a standard listing must comply with the general admission requirements set out in the LR.[4] These include a requirement that the company is duly incorporated (either within the UK or, if a non-UK company, in the company's place of incorporation), and that the securities to be listed must be free from any transfer restrictions (subject to certain exceptions).[5] If the company is making an offer of new

3 EU Prospectus Directive (2003/71/EC).

4 LR 2.

5 LR 2.2.4R. For example, this does not prevent the company's shareholders from entering into agreements among themselves restricting their ability to transfer shares.

securities, any necessary constitutional, statutory or other consents required must be obtained prior to listing.[6] The expected market capitalisation of the securities to be listed must be at least £700,000 in the case of shares and £200,000 in the case of debt securities. While the UKLA has a discretion to admit a company with a lower market capitalisation if it is satisfied there will be an adequate market, from a practical perspective it is likely that the market capitalisation would need to be significantly higher for a listing to be economical.[7] While there is no requirement for a company seeking a standard listing to confirm to the UKLA that it has sufficient working capital to meet the requirements of the business for the next 12 months, if the company is also producing a prospectus (which is likely to be the case – see below), it will be required to include a working capital statement in the prospectus confirming whether the business has sufficient working capital for that period.

Premium listing

If a mineral company is seeking an admission of its shares to the premium segment of the Official List, in addition to the minimum requirements applicable to all listings set out above, the company must confirm to the UKLA that it has sufficient working capital available to meet the requirements of the business for the next 12 months.[8] At least 25 per cent of the class of the company's shares to be listed in the premium segment must be in the hands of the public in one or more EEA countries at the time of admission.[9] Where the company is already listed in a non-EEA country, shareholders in that country may be taken into account. For this purpose, 'public' means shareholders other than those holding 5 per cent or more of the class of shares being admitted, and also excludes shares held by the directors of the company or any persons connected to the directors.

Mineral companies are exempt from the premium listing requirement (which would otherwise apply) to have at least 75 per cent of their business supported by a historic revenue earning record.[10] If a mineral company seeking a premium listing cannot comply with the requirement to have published accounts covering at least three full years because it has been operating for a shorter period, then it must have published or filed historical financial information since the inception of its business.[11]

Controlling shareholders and relationship agreements

Following amendments to the LR that came into effect in May 2014, where an applicant for a premium listing will have a controlling shareholder on admission, the issuer must have in place a written and legally binding relationship agreement with the controlling

6 LR 2.2.2R.

7 LR 2.2.7R and LR 2.2.8G.

8 LR 6.1.16R.

9 LR 6.1.19R.

10 LR 6.1.9.

11 LR 6.1.8.

shareholder and have a constitution that allows the election and re-election of independent directors to be conducted in accordance with a dual voting structure set out in the LR.[12]

A controlling shareholder is defined as any person who exercises or controls (on their own or together with any person with whom they are acting in concert) 30 per cent or more of the voting rights.[13]

The relationship agreement must include provisions to ensure that the controlling shareholder complies with the following undertakings:

a transactions and arrangements with the controlling shareholder (or any of its associates, or both) will be conducted at arm's length and on normal commercial terms;

b neither the controlling shareholder nor any of its associates will take any action that would have the effect of preventing the new applicant or listed company from complying with its obligations under the LR; and

c neither the controlling shareholder nor any of its associates will propose or procure the proposal of a shareholder resolution that is intended or appears to be intended to circumvent the proper application of the LR.

Independent business

All applicants for a premium listing must now be able to demonstrate that they will be carrying on an independent business as its main activity.[14] The LR set out the following guidance on factors that will indicate when a company will not be considered to have a independent business:

a a majority of the revenue generated by the new applicant's business is attributable to business conducted directly or indirectly with a controlling shareholder (or any associate thereof) of the new applicant;

b a new applicant does not have:
- strategic control over the commercialisation of its products;
- strategic control over its ability to earn revenue; or
- freedom to implement its business strategy;

c a new applicant cannot demonstrate that it has access to financing other than from a controlling shareholder (or any associate thereof);

d a new applicant has granted or may be required to grant security over its business in connection with the funding of a controlling shareholder's or a member of a controlling shareholder group;

e except in relation to a mineral company (which has specific eligibility requirements in relation to its interests in mineral resources – see below), a new applicant's business consists principally of holdings of shares in entities that it does not control, including entities where:
- the new applicant is only able to exercise negative control;

12 LR 6.1.4B.

13 LR 6.1.2A.

14 LR 6.1.4.

- the new applicant's control is subject to contractual arrangements that could be altered without its agreement or could result in a temporary or permanent loss of control; or

f a controlling shareholder (or any associate thereof) appears to be able to influence the operations of the new applicant outside its normal governance structures or via material shareholdings in one or more significant subsidiary undertakings.[15]

Prospectus

As well as complying with the above admission requirements, a company seeking admission to the Official List (to the standard or premium segment) or making a public offer of securities in the UK must publish a prospectus setting out sufficient information to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the company.[16] The company must also confirm in the prospectus whether is has sufficient working capital to meet the requirements of the business for the next 12 months. The prospectus must be submitted for review by the UKLA, which will assess whether the document complies with the disclosure requirements set out in the Prospectus Rules (PR). A prospectus must not be published unless it is approved by the UKLA.[17] In the case of an offer of shares, the company and its directors must take responsibility for the contents of the prospectus, and may be liable for any inaccurate or misleading information in the document or for failure to comply with the relevant disclosure standards.[18]

Specific eligibility requirements for mineral companies

In addition to the independent business requirements set out above, if a mineral company seeking admission to the Official List (to the standard or premium segment) does not hold a controlling interest in a majority by value of the properties, fields, mines or other assets in which it has invested, the company must be able to demonstrate to the UKLA that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights that give it influence in decisions over the timing and method of extraction of those resources.[19]

Specific content prospectus requirements for mineral companies

In March 2013, the European Securities and Markets Authority (ESMA) published an updated edition of its recommendations for the consistent implementation of the EU

15 LR 6.1.4A.

16 Section 87A(2), Financial Services and Markets Act 2000.

17 A company that has its home Member State in another Member State may also have a prospectus approved by the competent authority in that jurisdiction and seek to have the prospectus 'passported' into the UK pursuant to Articles 17 and 18 of the EU Prospectus Directive.

18 PR 5.5.

19 LR 6.1.10.

Prospectus Directive, with revised recommendations as to the content requirements for prospectuses published by mineral companies.[20] When reviewing a prospectus, the UKLA will take into account these recommendations, which in effect supplement the requirements of the LR and PR.

The recommendations recognise that mineral companies are distinct from other companies in that a key factor in the assessment of their value relates to their reserves and resources. The recommendations seek to ensure that appropriate levels of transparency and assurance over the reserves and resources figures are made available to investors by setting out a framework for the additional disclosure of reserves and resources information, including the following information segmented using a unit of account appropriate to the scale of the company's operations (rather than on a per-asset basis):

a details of mineral resources and, where applicable, reserves and exploration results and prospects;

b anticipated mine life and exploration potential or similar duration of commercial activity in extracting reserves;

c an indication of the duration and main terms of any licences or concessions, and legal, economic and environmental conditions for exploring and developing those licences or concessions;

d indications of the current and anticipated progress of mineral exploration or extraction, or both, and processing, including a discussion of the accessibility of the deposit; and

e an explanation of any exceptional factors that have influenced the foregoing items.

Competent persons report

A competent persons report (CPR) is also required for all initial public offering prospectuses regardless of how long the company has been a mineral company. A CPR may also be required for secondary issues, but not where the company has previously published a CPR and has continued to update the market regarding its resources, reserves, results and prospects in accordance with one of the recognised reporting standards.

The CPR must be prepared by a person satisfying the competency requirements of the applicable codes or of the organisation set out in the recommendations, or who is a professionally qualified member of an appropriate recognised association or institution with at least five years of relevant experience.

The content requirements for the CPR are set out in the ESMA 2013 recommendations. These requirements vary depending on whether the CPR relates to a company with oil and gas projects, or a company with mining projects. The CPR must be dated not more than six months prior to the date of the prospectus, and the company must confirm that no material changes have occurred since the date of the CPR that would make it misleading. A list of acceptable internationally recognised reporting

20 ESMA update of the Committee of European Securities Regulators' recommendations for the consistent implementation of Commission Regulation (EC) No. 809/2004 implementing the Prospectus Directive (20 March 2013).

and valuation standards is also set out in the recommendations. The mining reporting codes are aligned with the Committee for Mineral Reserves International Reporting Standards (and do not include US SEC Industry Guide 7 on mining, or the Russian or Chinese standards).

Depository receipts

Companies incorporated outside the EU seeking admission to the Main Market often choose to do so through an issue of depository receipts. This is particularly the case for companies located in jurisdictions with restrictive foreign exchange controls where requirements to pay dividends in the local currency could make an investment in the company's shares less attractive to international investors. Depository receipts are negotiable instruments that represent an ownership interest in a specified number of the company's shares. The underlying shares are issued to a depository, which in turn issues depository receipts that can be denominated in a currency other than the issuer's local currency. Dividends received by the depositary can then be converted from the local currency into the currency of the depository receipts. Depository receipts may only be admitted to the Official List through a standard listing.

High Growth Segment

In March 2013, the London Stock Exchange launched the High Growth Segment, a new Main Market segment that sits alongside the premium and standard segments and provides an alternative route to market for European companies. As the High Growth Segment is an EU-regulated market, companies listed on this segment must comply with certain EU standards, including the Financial Conduct Authority's Disclosure Rules and Transparency Rules and the Prospectus Rules. However, as companies on the High Growth Segment are not admitted to the Official List, the LR do not apply and instead companies must adhere to the London Stock Exchange's High Growth Segment Rulebook.

The High Growth Segment is intended to attract medium and large high-growth companies that do not meet the eligibility criteria of the premium segment, in particular in relation to the free float requirement. However, the eligibility criteria for the High Growth Segment requires all companies seeking admission to be revenue-generating trading businesses, and mineral resource companies at the exploration stage are expressly listed as being ineligible for admission to the High Growth Segment.[21]

AIM

AIM is the London Stock Exchange's market for smaller and growing companies. Due to its status as an 'exchange regulated market' for the purposes of the EU Prospectus Directive, AIM is governed by a more flexible regulatory regime than the Main Market.

21 Guidance Note 2 to Rule 2.1 of the High Growth Segment Rulebook.

Role of the nomad

While admission to the Official List is regulated by the UKLA, the London Stock Exchange oversees the regulation of AIM and compliance with the AIM Rules. Each company seeking admission to AIM must appoint a corporate finance adviser that has been approved by the London Stock Exchange to act as a nominated adviser or 'nomad'. The company's nomad is responsible for assessing whether the company is an appropriate applicant for AIM, and for advising and guiding the company on its responsibilities under the AIM Rules.

Admission requirements

Unlike the Official List, there are generally no minimum market capitalisation requirements for a company seeking admission to AIM. However, investment companies must raise a minimum of £3 million in cash through an equity fundraising to be eligible for admission to AIM.[22]

There are also no express minimum requirements as to the applicant company's trading history or the number of shares in public hands although the nomad will consider this when assessing the company's suitability for listing. The shares must, however, be freely transferable and eligible for electronic settlement.

Fast-track admission to AIM

Companies that are already listed on certain other exchanges may qualify for AIM's fast-track admission process, in which case the company will not be required to produce an admission document.[23] To be eligible for fast-track admission, a company must have its securities traded on an AIM designated market[24] for at least the past 18 months, and should also have substantially traded in the same form during this period. Examples of mining companies who have used the fast-track process include Wolf Minerals Limited, which is also listed on the ASX and was admitted to AIM in November 2011, and Central Rand Gold Limited, which transferred its listing from the Main Market to AIM using the fast-track process in August 2013.

Admission document

A company seeking admission to AIM (other than a fast-track applicant) is required to publish an admission document. The company's nomad will be responsible for assessing whether the admission document complies with the content requirements

22 Rule 8, AIM Rules for Companies. For this purpose an 'investing company' is any company that has as its primary business or objective the investing of its funds in securities businesses or assets of any description.

23 However, as with any company seeking admission to AIM, a fast-track applicant may be required to produce a prospectus under the EU Prospectus Directive where, for example, an offer of securities is made to the public and no relevant exemption is applicable.

24 These include the Australian Securities Exchange, Deutsche Börse Group, NYSE Euronext, Johannesburg Stock Exchange, NASDAQ, NYSE, NASDAQ OMX Stockholm, Swiss Exchange, TMX Group and the UKLA Official List.

set out in the AIM Rules. While these requirements are less onerous than those that apply to a prospectus, a company preparing an admission document is subject to a general requirement to disclose any information that the company reasonably considers necessary to enable investors to form a full understanding of the assets and liabilities, financial position, profits and losses, and prospects of the applicant and its securities for which admission is being sought, the rights attaching to those securities and any other matter contained in the admission document.[25]

Due to the less onerous disclosure requirements, and as the admission document is reviewed and approved by the company's nomad rather than the UKLA, the process and timetable for admission to AIM can often be shorter and more flexible than the process for admission to the Official List.

Prospectus requirement for AIM companies

Although AIM is not a regulated market for the purposes of the EU Prospectus Directive, where a company seeking admission to AIM is also making an offer of its securities to the public in the UK, the admission document may also need to be approved as a prospectus by the UKLA unless it can avail of an applicable exemption. Where a company is offering its shares through a private placement, it will usually seek to rely on an exemption available for offers addressed solely to qualified investors, or fewer than 150 natural or legal persons per EU Member State (i.e., other than qualified investors).

Specific content requirements for mineral companies

In addition to the general requirements set out in the AIM Rules, a mining company seeking admission to AIM is required to comply with the AIM Guidance Note for Mining, Oil and Gas Companies (the Guidance Note).[26]

The Guidance Note states that nomads are expected to conduct full due diligence on mining companies seeking admission to AIM, including by carrying out site visits and personal inspections of the physical assets where it is practical to do so. A formal legal opinion from an appropriate legal adviser is also required on the incorporation status of the company and any relevant subsidiaries, as well as the company's title to its assets and the validity of any licences.

Competent persons report

A mining company seeking admission to AIM is required to include in its admission document a CPR on all its material assets and liabilities. The CPR must comply with the disclosure requirements set out in the Guidance Note and the company's nomad is responsible for ensuring that the scope of the CPR is appropriate having regard to the applicant's assets and liabilities.

The CPR must be prepared no more than six months prior to the date of the admission document by a person who meets the minimum requirements for competent persons set out in the Guidance Note. These require the competent person to be a

25 Schedule 2(k), AIM Rules for Companies.

26 AIM Guidance Note for Mining, Oil and Gas Companies (June 2009).

professionally qualified member of an appropriate association, independent of the applicant and to have at least five years of relevant experience.

Where information is extracted from the CPR for inclusion elsewhere in the admission document, that information must be presented in a manner that is not misleading and provides a balanced view. The Guidance Note also requires that the competent person must review the information contained elsewhere in the admission document that relates to the information in the CPR, and confirm in writing to the applicant and the nomad that the information is accurate, balanced, complete and not inconsistent with the CPR.

Lock-ins for new mining companies

The Guidance Note and the AIM Rules require that, where a mining company seeking admission to AIM has not been independent and earning revenue for at least two years, all related parties (which include the directors and any shareholders holding 10 per cent or more of the voting rights) and applicable employees must agree not to dispose of any interest in the company's securities for at least one year from the date of admission to AIM.

ii Tax considerations

In general terms, the UK tax regime does not distinguish between domestic mining companies and overseas mining companies that are subject to UK tax (for example, as a result of being tax resident in the UK or carrying on a trade through a permanent establishment in the UK).

The basic UK tax regime for mining companies is similar to that for other companies – the main rate of corporation tax is 20 per cent (set to reduce to 19 per cent from 1 April 2017, and 18 per cent from 1 April 2020), there is no limit on the period for which tax losses can be carried forward and set off against future profits (provided that they are incurred in the same trade that suffered the losses and relief is not withdrawn in certain circumstances following a change in the ownership of the company incurring the losses), and the usual withholding taxes regime applies. In broad terms, withholding tax applies at a rate of 20 per cent (subject to any applicable double tax treaty and certain other exemptions) to interest and royalty payments. There is no withholding tax on dividends.

The usual capital allowances regime for long-life assets and integral features (8 per cent writing down allowance per annum) and other plant and machinery (18 per cent writing down allowance per annum) applies to mining companies. In addition, persons engaged in mining activities can benefit from the mineral extraction allowance, which is a form of capital allowance available to those who carry on a mineral extraction trade (a trade consisting of, or including, the working of a source of mineral deposits) and incur qualifying expenditure. Qualifying expenditure for these purposes can include expenditure on mineral exploration and access, and expenditure on acquiring mineral assets (defined as mineral deposits, land comprising mineral deposits, or interests in or rights over such deposits or land).

A major advantage offered to mining companies by the UK is that there are no specific mining or mineral taxes (although excise duty is payable on mineral oils, at varying rates, unless an exemption applies). There is also, generally, no UK VAT on

exports. However, mining companies' activities may render them subject to the following indirect taxes:

a climate change levy: a tax on energy, with a variable rate depending on the nature of the fuel used. Reduced rates are available for energy intensive businesses that have entered into a climate change agreement with the Environment Agency;

b aggregates levy: a tax on the commercial exploitation (which includes both extraction and importation) of gravel, sand and rock, currently charged at £2 per tonne – this is subject to various exemptions, including exemptions for spoil from any process by which coal or another specified substance has been separated from other rock after being extracted from that rock, for material which is more than half coal, and for spoil from the smelting or refining of metal; and

c landfill tax: a tax on the disposal of waste to landfill, currently charged at the standard rate of £82.60 per tonne or the lower rate of £2.60 per tonne (set to increase to £84.40 and £2.65 per tonne respectively from 1 April 2016), depending on the material being disposed of; there is an exemption for the disposal of naturally occurring materials extracted from the earth during commercial mining or quarrying operations, provided that such material has not been subjected to and does not result from a non-qualifying process carried out between extraction and disposal. From 1 April 2015, disposals in Scotland are subject to the Scottish landfill tax, which applies to the same activities and at the same rates as mentioned above.

Apart from the mineral extraction allowance, there are no special allowances or incentives for persons engaged in mining activities, or their investors or lenders.

III DEVELOPMENTS

On 1 October 2012, ESMA published a consultation paper seeking views on proposed further amendments to its recommendations regarding mineral companies. These include proposed amendments to the definition of 'material mining projects' to clarify that materiality should be assessed from the point of view of the investor; and projects will be material where evaluation of the resources (and, where applicable, the reserves or exploration results, or both) that the projects seek to exploit is necessary to enable investors to make an informed assessment of the prospects of the issuer. In addition, ESMA proposes to establish a rebuttable presumption within the definition of materiality that mineral projects can be material both where the projects seek to extract minerals for their resale value as commodities; or the minerals are extracted to supply (without resale to third parties) an input into an industrial production process (which includes but is not limited to the example of stone extracted in the cement and aggregates industry) and there is uncertainty as to either the existence of the resources in the quantities required or the technical feasibility of their recovery.

The consultation paper also sets out a proposal to amend certain of the existing exemptions from the requirement to publish a CPR, including a new exemption for non-equity securities (other than depositary receipts over shares).

ESMA expects to publish revised recommendations in due course.

Appendix 1

ABOUT THE AUTHORS

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Kate Ball-Dodd is a partner in the corporate department of Mayer Brown International LLP. She has a wide-ranging corporate practice that encompasses corporate finance, mergers and acquisitions (including public takeovers), equity fund raisings, joint ventures, and corporate governance. She advises a number of quoted companies and financial intermediaries on the UKLA Listing Rules and Disclosure and Transparency Rules, the Prospectus Rules, the AIM Rules, the Takeover Code and general company law. Ms Ball-Dodd speaks regularly at external conferences on corporate governance and takeovers.

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