The Mining Law Review

Fifth Edition

Editor
Erik Richer La Flèche

Law Business Research

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Erik Richer La Flèche

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EDITOR'S PREFACE

I am pleased to have participated in the preparation of the fifth 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, 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 21 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 six 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 continues to face challenging and uncertain times. The current down-cycle is longer than most and shows no sign of abating for most minerals. Stockpiles are high and production capacity has yet to be curtailed in a meaningful manner. Projections are for prices to remain generally soft until such time as supply and demand is rebalanced.

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 question is when.

To compound matters, when growth resumes it is likely to be uneven. Firstly, recovery is unlikely for some minerals. For example, the market for thermal coal is flat or declining as coal is being phased out in many plants and is being replaced by natural gas or renewable energy. Second, the use of rare earths and other 'high-tech metals' will continue to grow at a faster rate as the use of high technology and energy storage products becomes more generalised. Third, demand growth will be more diffused. China is the world's largest consumer of commodities but it will no longer be sufficient to look only at China to understand the

market. China is moving away from mineral intensive infrastructure and export-led growth and moving to a slower, domestic service-led economy. The Indian subcontinent, despite impressive economic and demographic growth and sizeable infrastructure and other needs, is unlikely to replace China. As a result, it will be necessary to look at a selection of markets to understand future demand growth.

The mining world is thus condemned to adapt. To survive, miners must be lean, innovative, able to scale production according to demand and unafraid to close higher-cost facilities. This state of affairs has become the new normal.

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
September 2016

Chapter 27

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 2016, there were 32 (2015: 34) mining companies admitted to trading on the Main Market, with a combined market capitalisation of approximately £139 billion (2015: £143 billion). On the AIM market there were 117 (2015: 126) mining companies admitted to trading as at 30 June 2016, with a combined market capitalisation of approximately £3.7 billion (2014: £4.1 billion).[2]

While the second half of 2015 proved to be another difficult period for mining companies, the first half of 2016 brought some welcome relief with prices rebounding for a number of commodities. As at 30 June 2016, the mining sector has had two successive quarters of improving conditions, driven by sustained increases in commodity prices, with iron ore up by 4 per cent and gold up by 7 per cent in the second quarter. This has led to an increased level of fundraising by mining companies relative to recent years, though activity still remains modest by historical standards.

The UK's vote to leave the EU and the subsequent fall in the value of the UK pound against the US dollar helped to rally mining share prices, at least in the short term. Although the overall impact of the UK leaving the EU on mining companies is expected to be limited

1 Kate Ball-Dodd and Connor Cahalane are partners at Mayer Brown International LLP.

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

(as few have material operations in the UK), uncertainty as to the nature of the UK's future relationship with the EU, along with continuing volatility in global markets, may have an impact on UK markets and the ability of mining companies to access funding.

i New issues

In the 12-month period from 30 June 2015 to 30 June 2016, no new mining companies were admitted to the Main Market. Only one mining company was admitted to trading on AIM during the same period – Mkango Resources Limited, a Canadian dual TSX-V and AIM listed mineral exploration and development company, focused on rare earth elements and associated minerals in the Republic of Malawi.

ii Secondary offerings

The largest Main Market secondary offering in the period from 30 June 2015 to 30 June 2016 was by Glencore Plc, an Anglo–Swiss multinational commodity trading and mining company, which raised £1.6 billion through a placing of new shares (representing 9.9 per cent of the company's existing issued share capital) in September 2015 to reduce the company's indebtedness and strengthen its balance sheet. Lonmin Plc, a platinum group metals producer, raised £269 million through a deeply discounted rights issue in November 2015. The proceeds were used to reduce the company's net debt and fund capital expenditure and redundancy costs. Hochschild Mining Plc, a silver and gold mining business operating in North, Central and South America, raised £64 million in October 2015 through a rights issue. Part of the proceeds went towards repaying the company's outstanding bank indebtedness.

During the same period, the largest secondary offering on AIM was by Hummingbird Resources Plc, a West African gold company, which raised £49.5 million in June 2016 through a placing. The proceeds of the placing will be applied towards the engineering and construction of Hummingbird's Yanfolila gold project in Mali. Dalradian Resources Inc raised £20 million in October 2015 to fund exploration, land acquisition and permitting activities at the company's Curraghinalt gold project in Northern Ireland.

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 (FCA), to join the Official List.

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

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

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 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

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.

6 LR 2.2.2R.

7 LR 2.2.7R and LR 2.2.8G.

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 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

8 LR 6.1.16R.

9 LR 6.1.19R.

10 LR 6.1.9.

11 LR 6.1.8.

12 LR 6.1.4B.

13 LR 6.1.2A.

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 their main activity.[14] The LR set out the following guidance on factors that will indicate when a company will not be considered to have an 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 or a member of a controlling shareholder's 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;
- 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

14 LR 6.1.4.

15 LR 6.1.4A.

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

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 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;

17 A company that has its home Member State in a Member State other than the UK 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.

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).

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 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 FCA's Disclosure Guidance 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.

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

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

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.

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 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.

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

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

Competent persons report

A mining company seeking admission to AIM is required to include in its admission document a CPR on all of 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 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[27]

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 17 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; although the government has recently proposed to restrict the amount of a company's or group's profit that can be relieved by carrying forward losses to 50 per cent from 1 April 2017 where carried forward losses exceed £5 million in an accounting period), 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.

27 Specific tax rules for the oil and gas sector are not addressed here. This section focuses solely on mining companies involved in exploration for and extraction of minerals other than oil and gas.

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 (at a rate of 25 per cent or 10 per cent on a reducing balance basis), 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 taxable supplies of 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 £84.40 per tonne or the lower rate of £2.65 per tonne (set to increase annually in line with RPI rounded to the nearest five pence), 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 have been subject to the Scottish landfill tax, and Wales is set to impose its own landfill disposals tax from April 2018.

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

i UK vote to leave the EU

In June 2016, the UK held a referendum that resulted in a vote to leave the EU. Although the main rules governing public offers of securities and applications for admission to trading on regulated markets in the UK (including the Main Market) are derived from EU law, principally the EU Prospectus Directive, this directive itself closely follows the UK rules that were in place prior to the introduction of the Prospectus Directive in 2003. While leaving the EU might lead to an overhaul of the relevant UK rulebooks to remove references to EU legislation, in practice there is unlikely to be a material change in the regulatory framework

and practice governing equity capital market transactions in the UK, at least in the short term. In addition, the FCA has a history of 'gold plating' many of the rules derived from EU capital markets legislation, which has led to the UK having very much its own bespoke listing regime, which runs alongside the harmonised EU rules (for example, the different admission criteria and continuing obligations applicable to standard listings as opposed to those applicable to premium listings).

One of the intended benefits of a common European framework for the approval of prospectuses is the issuers' ability to use a prospectus approved by a competent authority in one Member State to market securities in another Member State through the Prospectus Directive's 'passport' regime. Leaving the EU will mean that a prospectus approved by the FCA will no longer be able to be passported to another EU country. However, only a minority of prospectuses approved in the UK need to be passported out as they are used to market securities only to qualified investors in other EU countries.

ii Market abuse regulation

At the EU level, concerns of market distortion arising through regulatory arbitrage have led to the introduction of new harmonising measures in the form of an EU Regulation on Market Abuse (MAR), which has a direct effect on all EU Member States, including the UK, and most of its provisions came into force on 3 July 2016. Part of the reason for moving to a regulation-based regime is to have a single European rulebook, which is directly enforceable. Directives have to be implemented in each Member State, which can lead to variations in how things are done in different countries. MAR seeks to establish a more uniform interpretation of the market abuse framework, which more clearly defines rules applicable to insider dealing, market manipulation and unlawful disclosure of inside information in all Member States.

Mining companies with shares listed on the Main Market or admitted to trading on AIM are required to comply with MAR, including in particular the provisions relating to:

a prohibition on insider dealing;

b restrictions on unlawful disclosure of inside information;

c safe harbour rules relating to market soundings procedures to be followed when 'wall crossing' investors for transactions;

d restrictions relating to market manipulation;

e requirement on issuers to publically disclose inside information as soon as possible, subject to limited exceptions where the issuer may be permitted to delay disclosure if certain conditions are met;

f requirement to maintain insider lists with details of persons with access to inside information; and

g requirements for persons discharging managerial responsibilities and persons closely associated with them to disclosure their transactions in an issuer's securities and a prohibition on such persons conducting transactions during a closed period of 30 calendar days before the announcement of an interim or a year-end financial report.

iii ESMA consultation paper

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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