

Updated prospectus content recommendations for mineral companies

Background

The European Securities and Markets Authority (**ESMA**) has published an update of the CESR recommendations for the consistent implementation of the Prospectus Directive, with revised recommendations as to the content requirements of prospectuses issued by mineral companies. The CESR recommendations contain various recommendations as to the content of prospectuses, and are taken into account by the UK Listing Authority in deciding whether a prospectus should be approved.

Mineral companies are distinct from other companies in that a key factor in the assessment of their value is their reserves and resources. A key challenge for regulators is to ensure appropriate levels of transparency and assurance over the reserves and resources figures reported to the market. The CESR recommendations set out a framework for additional disclosure of reserves and resources information. Following concerns that this framework lacked clarity compared to regulatory standards in other markets, in April 2010 the Committee of European Securities Regulators (**CESR**) launched a consultation on a new framework for disclosure.

ESMA became CESR's successor at the start of 2011, and on 23 March 2011 ESMA published a feedback statement on the April 2010 consultation, together with ESMA's update of the CESR recommendations.

ESMA's update of the CESR recommendations largely follow the amendments proposed in the April 2010 consultation. This alert considers some of the key provisions of the updated recommendations.

Which companies are subject to the updated recommendations?

"Mineral companies" now means companies with material mineral projects, not just those whose principal activity is the extraction of mineral resources. The materiality of projects will be assessed having regard to all the company's mineral projects relative to the issuer and its group as a whole. Companies performing only exploration are no longer exempt from the recommendations. However, mineral companies which are only issuing wholesale debt will be exempt from the recommendations (historically, the recommendations applied to all prospectuses issued by a mineral company).

Competent persons report

A competent persons report (**CPR**) will be required for all IPO prospectuses regardless of how long the issuer has been a mineral company, and not just where the issuer has been a mineral company for less than three years. A CPR may also be required for further issues, but not where the issuer 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. In its April 2010 consultation, CESR noted that market practice expects a CPR at float but not generally after float and the updated recommendations are consistent with this practice.

The updated recommendations include recommended content for the CPR.

The proposal to include a CPR in a prospectus where there have been significant changes (either through acquisition or organic development) has not been adopted – instead an overview of the new assets will be required. However, a mineral experts report will continue to be necessary under the UKLA Listing Rules on a Class 1 acquisition or disposal of mineral resources.

Reporting and valuation standards

A new list of acceptable internationally recognised reporting and valuation standards has been drawn up. All are aligned with either the Society of Petroleum Engineers PRMS system or Committee for Mineral Reserves International Reporting Standards (CRIRSCO). On that basis, US SEC Industry Guide 7 on mining is excluded, as are Russian and Chinese standards.

Cashflow projections

Historically, mineral companies without a three year trading history were also required to include a two year cashflow projection validated by accountants. In its April 2010 consultation CESR proposed to abolish this requirement, and to replace it with a new requirement to expand the use of proceeds section of the prospectus where new funds are being raised to finance exploration or development. Whilst the requirement for a cashflow has been abolished as proposed, the new requirement in relation to use of proceeds has not been implemented.

Basic disclosure requirements

The updated recommendations continue to set out basic disclosure requirements for all prospectuses.

Conflict with third country securities laws

The updated recommendations include a provision allowing an issuer to omit an item required by those updated recommendations where third country securities laws prohibit disclosure of that item.

If you have any questions or require specific advice on any matter discussed in this alert, please contact:

Robert Hamill

Co-Head, Global Energy Group
+44 20 3130 3558
rhamill@mayerbrown.com

James Broadhurst

Senior Associate
+44 20 3130 3873
jbbroadhurst@mayerbrown.com

Justine Usher

Professional Support Lawyer
+44 20 3130 3517
jusher@mayerbrown.com

or your regular contact at Mayer Brown.

Mayer Brown is a leading global law firm serving many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, São Paulo, Washington DC
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro
ALLIANCE LAW FIRMS: Spain (Ramón & Cajal); Italy and Eastern Europe (Tonucci & Partners)

Please visit our web site for comprehensive contact information for all Mayer Brown offices. www.mayerbrown.com

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership (regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.

© 2011. The Mayer Brown Practices. All rights reserved.