

THE MINING LAW  
REVIEW

EIGHTH EDITION

Editor  
Erik Richer La Flèche

THE LAWREVIEWS

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REVIEW

EIGHTH EDITION

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# PREFACE

I am pleased to have participated in the preparation of the eighth edition of *The Mining Law Review*. The *Review* is designed to be a practical, business-focused ‘year in review’ analysis of recent changes, 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 19 chapters, each dealing with mining in a particular jurisdiction. These countries were selected because of the importance of mining to their economies and to ensure a 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 the book has three chapters that focus 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.

At the time of writing, world macro-economic conditions remain generally good for the mining industry as a whole. Economic growth continues, albeit at a slower pace, and the demand for minerals is steady, even rising in the case of precious metals and rare earths. But will this Goldilocks scenario continue?

The world appears to have entered an environment where well-established economic laws no longer apply. Rising private debt and government deficits, negative or miniscule interest rates in all time scales, low inflation bordering on deflation, lower unemployment levels in many economies, all appear to coexist amiably without adverse consequences. This runs counter to economic orthodoxy and more and more experts question aloud whether this is sustainable.

Gold and other precious metals have greatly benefited from this novel economic environment and are experiencing a renaissance as a hedge against the unknown. This in turn has led to some headline-grabbing M&A activity among major gold miners as they seek to replenish reserves.

Trade frictions have also played a role in improving circumstances for some minerals. For example, China has implied that exports of its rare earths could be curtailed for non-economic reasons, leaving the US, Japan and Europe to take inventory of discovered resources and funding new exploration.

All this to say that the mining industry is likely to be affected unevenly as the next 12 months unfold.

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

**Erik Richer La Flèche**

Stikeman Elliott LLP

Montreal

September 2019

Part II

# CAPITAL MARKETS

# UNITED KINGDOM

*Kate Ball-Dodd*<sup>1</sup>

## I INTRODUCTION

London is a leading financial market for international mining companies seeking to access the equity capital markets. London Stock Exchange's (LSE) 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. 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 2019, there were 51 mining companies admitted to trading on the Main Market and 106 mining companies admitted to trading on the AIM market.<sup>2</sup>

### i New admissions

In the 12-month period from 30 June 2018 to 30 June 2019, seven new mining companies were admitted to the Main Market of the London Stock Exchange – Resolute Mining Limited, Pure Gold Mining Inc., Ferro-Alloy Resources Limited, MOD Resources Limited, Joint Stock Company National Atomic Company Kazatomprom, Kavango Resources plc and Danakali Limited.

Joint Stock Company National Atomic Company Kazatomprom is a Kazakhstani uranium producing company representing circa one-fifth of the global primary production. This was a major event due to the size of the company and its holdings. All the company's 13 mining assets are located in Kazakhstan. Sovereign Wealth Fund Samruk-Kazyna sold 15 per cent of its shareholding in the flotation. The company is dual listed on the Astana International Financial Centre and the LSE. The opening price market capitalisation was £2.410 billion and raised approximately £311.26 million in the process.

Resolute Mining Limited is an Australian gold mining company with ownership of three mines, namely the Syana Gold Mine in Mali, the Ravenswood Gold Mine in Australia and the Bibiani Gold Mine in Ghana. The company is dual listed on the Australian Securities Exchanges (ASX) and the LSE. The opening price market capitalisation was approximately £515.5 million.

Pure Gold Mining Inc. is a Canadian gold mining development company with ownership of the Madsen Red Lake Gold Mine in Canada. The company is targeting the

---

1 Kate Ball-Dodd is a partner at Mayer Brown.

2 Source for Main Market and AIM statistics is the London Stock Exchange website, [www.londonstockexchange.com](http://www.londonstockexchange.com) – Companies and Securities – Company List sub-section.

second half of 2020 for first production. The company is dual listed on the Toronto Stock Exchange (TSX) and the LSE. The opening price market capitalisation was approximately £84.33 million.

Ferro-Alloy Resources Limited is a Guernsey vanadium mining and mineral processing company with operations in Southern Kazakhstan, notably the Balasausqandiq Vanadium Project. The company is dual listed on the Kazakhstan Stock Exchange and the LSE. The opening price market capitalisation was £200.31 million and raised approximately £5.26 million in the process.

MOD Resources Limited is an Australian copper exploration and development company focused on the central and western Kalahari Copper Belt in Botswana, notably with its wholly owned T3 Copper Project. The company is dual listed on the ASX and the LSE. The opening price market capitalisation was approximately £53.44 million.

Kavango Resources plc is a UK mining group focusing on mineral deposits in Botswana. The opening price market capitalisation was £4.36 million and raised approximately £1.5 million in the process.

Danakali Limited is an Australian potash company focused on the development of the Colluli Potash Project in Eritrea. The company is dual listed on the ASX and the LSE. The opening price market capitalisation was approximately £118.88 million.

## **ii Secondary offerings**

The largest Main Market secondary offering by a mining company in the period from 30 June 2018 to 30 June 2019 was by SolGold Plc, an Australian gold and copper mining company that is also listed on the Toronto Stock Exchange. SolGold raised approximately £45 million through a private placement.

During the same period, the largest secondary offering by a mining company on AIM was by Yellow Cake Plc, a specialist company established by Bacchus Capital Advisers operating in the uranium sector with a view to holding physical uranium for the long-term. The total proceeds of the placing was approximately £25 million. Interestingly, following strong investor demand, Yellow Cake plc agreed with the joint bookrunners to increase the size of the placing to £25.9 million from the £22.9 million originally proposed.

## **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 Prospectus Regulation,<sup>3</sup> such as the Main Market, or to AIM, which has a more flexible regulatory structure.

#### ***Official List***

To be admitted to the Main Market, a company must first apply to the UK's Financial Conduct Authority (FCA), to join the Official List.

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<sup>3</sup> Regulation (EU) 2017/1129.

### ***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 Prospectus Regulation. A premium listing denotes a listing that meets more stringent criteria that are not required by the Prospectus Regulation but are seen as providing additional investor protections. A mineral company may apply for either a premium or a 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.<sup>4</sup> These include a requirement that the company is duly incorporated (either within the United Kingdom (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).<sup>5</sup> If the company is making an offer of new securities, any necessary constitutional, statutory or other consents required must be obtained prior to listing.<sup>6</sup> 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. Although the FCA 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.<sup>7</sup> While there is no requirement for a company seeking a standard listing to confirm to the FCA that it has sufficient working capital to meet the requirements of the business for the

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4 Listing Rules (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.

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 FCA that it has sufficient working capital available to meet the requirements of the business for the next 12 months.<sup>8</sup> 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.<sup>9</sup> If 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 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 an historic revenue earning record.<sup>10</sup> 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.<sup>11</sup>

### ***Controlling shareholders and relationship agreements***

When 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.<sup>12</sup>

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

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

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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 be able to demonstrate that they will be carrying on an independent business as their main activity.<sup>14</sup> 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.<sup>15</sup>

### ***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.<sup>16</sup> The company must also confirm in the prospectus whether it 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 FCA, which will assess whether the document complies with the requirements set out in the Prospectus Regulation

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14 LR 6.1.4.

15 LR 6.1.4A.

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

supplemented by the Delegated Regulation<sup>17</sup>. A prospectus must not be published unless it is approved by the FCA.<sup>18</sup> 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.<sup>19</sup>

### ***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 FCA 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.<sup>20</sup>

### ***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 Prospectus Directive, with revised recommendations as to the content requirements for prospectuses published by mineral companies.<sup>21</sup> When reviewing a prospectus, the FCA will take into account these recommendations (to the extent applicable), which in effect supplement the requirements of the LR and the Prospectus Regulation Rules (PRR).

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;

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17 Commission Delegated Regulation (EU) 2019/980..

18 A company that has its home Member State in a Member State other than the United Kingdom may also have a prospectus approved by the competent authority in that jurisdiction and seek to have the prospectus 'passported' into the United Kingdom pursuant to Articles 24 to 26 of the Prospectus Regulation.

19 PRR 5.3.

20 LR 6.1.10.

21 European Securities and Markets Authority update of the Committee of European Securities Regulators' recommendations for the consistent implementation of Commission Regulation (EC) No. 809/2004 implementing the EU Prospectus Directive (ESMA/2013/319).

- 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 if 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 European Union that are 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 depository 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***

The High Growth Segment is a third category of listing on the Main Market 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 Regulation. 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 Rule Book.

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.<sup>22</sup>

### ***AIM***

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

### ***Role of the nomad***

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 £6 million in cash through an equity fundraising to be eligible for admission to AIM.<sup>23</sup>

There are also no express minimum requirements regarding 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.

### ***AIM Designated Market Route***

Companies that are already listed on certain other exchanges may qualify for AIM's fast-track admission process, known as the AIM Designated Market Route, in which case the company will not be required to produce an admission document.<sup>24</sup> To be eligible for fast-track admission, a company must have had its securities traded on an AIM designated market<sup>25</sup> for at least the previous 18 months, and should have substantially traded in the same form during this period. Examples of mining companies who have used the fast-track process

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22 Guidance Note 2 to Rule 2.1 of the High Growth Segment Rule Book.

23 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.

24 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.

25 These include the top-tier markets of the Australian Securities Exchange, Deutsche Börse Group, NYSE Euronext, Johannesburg Stock Exchange, NASDAQ, NYSE, NASDAQ OMX Stockholm, Swiss Exchange, TMX Group and the FCA Official List.

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 an AIM Designated Market 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.<sup>26</sup>

In view of the less onerous disclosure requirements, and as the admission document is reviewed and approved by the company's nomad rather than the FCA, 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 Prospectus Regulation, if 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 FCA unless it can avail of an applicable exemption. If 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).<sup>27</sup>

The Guidance Note states that nomads are expected to conduct full due diligence on mining companies seeking admission to AIM, including 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, the company's title to its assets and the validity of any licences.

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<sup>26</sup> Schedule 2(k), AIM Rules for Companies.

<sup>27</sup> AIM Guidance Note for Mining, Oil and Gas Companies (June 2009, as updated on 21 July 2019).

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

When 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, if 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<sup>28</sup>**

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 19 per cent (due to reduce to 17 per cent from 1 April 2020) and there is currently no limit on the period for which tax losses can be carried forward and set off against future profits. Losses arising from 1 April 2017 can be carried forward and set off against taxable profits of different activities within a company, or be surrendered within a group to set off against taxable profits either in the same period or future periods. However, the amount of annual profit that can be relieved by carried-forward trading losses is limited to 50 per cent, subject to an allowance of £5 million per group. It was announced in the Autumn 2018 Budget that, from 1 April 2020, the government proposes to introduce a similar restriction on the use of carried-forward capital losses. The usual withholding taxes regime applies to mining companies. 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 normal dividends.

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<sup>28</sup> 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 (6 per cent writing down allowance per annum) and other plant and machinery (18 per cent writing-down allowance per annum) applies to mining companies. The writing-down allowance for long-life assets and integral features was reduced from 8 per cent to 6 per cent per annum effective from 1 April 2019 for businesses within the charge to corporation tax and from 6 April 2019 for businesses within the charge to income tax. 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 imports) of gravel, sand and rock, currently charged at £2 per tonne. This is subject to various exemptions, including 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 that 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 £91.35 per tonne or the lower rate of £2.90 per tonne,<sup>29</sup> 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. Disposals in Scotland have been subject to the Scottish landfill tax since 1 April 2015 and Wales has imposed its own landfill disposals tax since 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.

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<sup>29</sup> These rates are subject to annual increases in line with the retail price index, rounded to the nearest five pence.

### **III DEVELOPMENTS**

#### **i Prospectus Regulation**

On 21 July 2019, the Prospectus Regulation came into force, providing a new legislative structure containing the requirements governing prospectuses. The scope of the Prospectus Regulation is similar to that of the Prospective Directive and local implementing legislation which it has now repealed and replaced. The reform of the prospectus requirements is underpinned by the European Commission's overarching objectives of facilitating fundraising on capital markets and making prospectuses less burdensome to issuers; better protecting investors; and harmonising the scrutiny and approval of prospectuses across EU Member States. Among some of the significant changes, the new Prospectus Regulation introduces a more prescriptive regime on risk factors; a new Q&A format for the prospectus summary and imposes a seven A4 pages limit; simplified disclosure regime for secondary issues; abolishment of the requirement for auditor reports on profit forecasts and estimates; and the introduction of new obligations on financial intermediaries for supplementary prospectuses.

#### **ii UK leaving the European Union**

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 the Prospectus Regulation (previously, principally the EU Prospectus Directive). While leaving the European Union 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, at least in the short term. As the Prospectus Regulation is already in operation in the UK, in the event of leaving the EU, it is expected to automatically become law, under the European Union (Withdrawal) Act 2018. 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 very much having 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 Regulation's 'passport' regime. Leaving the European Union will mean that it will no longer be possible for a prospectus approved by the FCA to be passported to another EU Member State. 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 Member States.

#### **iii Market abuse regulation**

At the EU level, concerns of market distortion arising through regulatory arbitrage have led to the introduction of harmonising measures in the form of an EU Regulation on Market Abuse (MAR), which has a direct effect on all EU Member States, 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 that 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 the rules applicable in all Member States to insider dealing, market manipulation and unlawful disclosure of inside information.

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 the 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* a requirement for issuers to publicly 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* a requirement to maintain insider lists with details of persons who have access to inside information; and
- g* requirements for persons discharging managerial responsibilities and persons closely associated with them to disclose 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.

# ABOUT THE AUTHORS

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Kate Ball-Dodd is a partner in the corporate department of Mayer Brown. She has a wide-ranging corporate practice that encompasses corporate finance, mergers and acquisitions (including public takeovers), equity fundraising, joint ventures and corporate governance. She advises a number of quoted companies and financial intermediaries on the FCA Listing Rules and Disclosure Guidance and Transparency Rules, the Prospectus Regulation, the AIM Rules, the Takeover Code and general company law.

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