

Global Mining Group NEWSLETTER

WHY A NEW PUBLICATION?



By John Turner, Global Mining Group Leader, Toronto

These days we all run the risk of information overload. That said, there is always a need for timely information on developments and events that affect our business. As the recipient of the award for "Mining Law Firm of the Year" for four years in a row we decided there was a need for regular bulletins on mining and that we were well placed to fill that gap with contributions from our offices in Vancouver, Calgary, Toronto, Montréal, Québec City, London and Johannesburg. The plan is to have quarterly bulletins supplemented by "specials" dealing with important developments. We hope you find our first offering interesting and informative. We encourage reader feedback so we can improve quality and content to meet your needs.

We look forward to seeing you all at PDAC where we will be at Booth # 303.

GOOD NEWS FOR CANADIAN FLOW-THROUGH SHARE ISSUERS AND INVESTORS

By Andrew Derksen, Toronto

The recently released 2009 Canadian Federal Budget extended the 15% Mineral Exploration Tax Credit (the FTC) for one year to flow-through share agreements made on or before March 31, 2010.

The existing "look-back" rule allows for funds raised in one calendar year using the FTC to be applied to eligible exploration up to the end of the following calendar year. Therefore, investors who invest in flow-through share agreements can receive a tax credit of up to 15% of specified expenses renounced to investors in flow-through shares.

The 15% FTC applies in addition to the flow-through share mechanism provided for in the Income Tax Act (Canada). The flow-through share mechanism permits Canadian resource expenses incurred by a principal business corporation to renounce to a shareholder an amount in respect of Canadian resource expenses not exceeding the consideration received by the corporation for the issuance of the shares. Such renounced expenditures are deductible by the shareholder if they had directly incurred the expenditure.

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QUÉBEC: THE MOST ATTRACTIVE JURISDICTION FOR MINING EXPLORATION

By Jean-M Gagne, Québec City

According to the most recent annual survey of mining companies prepared by the Fraser Institute¹, Québec is the most attractive jurisdiction for mining exploration.

For a second year in a row, Québec comes first as to the attractiveness of its governmental mining policies according to the point of view of exploration managers.

Governmental policies are measured by considering many grounds such as: uncertainty regarding the interpretation and the enforcement of existing laws and regulations, notably for what concerns environmental matters and taxation, and including regulatory duplication and inconsistencies between the jurisdictions (for example, between the federal and the provincial); political stability; issues related to Natives, to protected areas, to the availability and quality of infrastructures, to the socioeconomic conditions (as local purchasing policies,

schools, hospitals, etc.) and to the labour laws; quality of geological databases and security.

Moreover, Québec finishes in second place, behind Chile, in the list of places where mining potential, in connection with existing governmental policies, is more encouraging for mining exploration.

THE PLAN NORD: GREEN LIGHT FOR NORTHERN QUÉBEC'S MINING DEVELOPMENT

By Jean-M Gagne, Québec City

This fall, during the electoral campaign, Québec's government announced its intention to develop the northern Québec region as to favour tourism, forestry and mining exploration on this vast territory.

For the mining industry, this project means that the government intends to accelerate its support for exploration and to adapt workforce training to businesses' realities, with the objective of creating 4,000 new jobs in this sector within the

next 10 years. Géologie Québec's budget will be raised in order to accelerate the mapping of the territory and to target the sites presenting an economic interest. The budget allowance of the Mining Heritage Fund will also be raised as to ensure the funding of continuing exploration work and to support Québec's innovation and exploration organizations.

Finally, as to the training programs for the workforce, the government wishes to

establish an "Institut national des mines". The role of this institute would be to coordinate training with all of the interested parties in the mining industry.

¹ Fred McMAHON and Cam VIDLER, The Fraser Institute Annual Survey of Mining Companies 2007/2008, Fraser Institute, 2008.

ZAMBIAN GOVERNMENT PROPOSES TO CUT MINING TAXES

By Dimitri Cavvadas, Johannesburg

On January 16, 2009 Rupiah Banda, President of Zambia, stated that the government was contemplating a cut in mining taxes after numerous complaints and threats of litigation from foreign investors in the country's struggling mining industry who claim that the government has reneged on the development agreements that it signed with them to maintain lower taxes.

In April of 2008 the government introduced a 25 percent windfall tax, a 15 percent variable profit tax (on income above 8 percent of sales) and raised mineral royalties to 3 percent from 0.6 percent and corporate tax to 30 percent from 25 percent.

Since the commencement of the global

economic slowdown, the Zambian government has been deliberating the best way to mitigate the impact on mining brought about by the effects of higher taxes introduced in 2008 and the reduction in global metals prices. Zambia also has some of the highest fuel prices in Southern Africa (at nearly \$2 per litre), this is compounded by the high electricity tariffs that mining operations in Zambia are subject to.

Copper is Zambia's biggest export and the mines are a major source of employment in the region. Consequently, Ministers have been in crisis talks throughout the month of January with owners of copper and cobalt mines in an attempt to determine ways to cut operational costs to keep the mines open. Nevertheless, the combined impact of the drop in commodity prices, the new tax regime and increased fuel/energy costs has already taken its toll on the Zambian mining sector with the closure of Luanshya Copper Mine in November 2008.

Consequently, foreign owners of Zambian copper/cobalt mines have been lobbying the government to cut fuel prices and mining taxes and to reduce electricity tariffs to help them survive a commodities downturn.

On January 30, 2009, the Zambian Finance Minister, Situmbeko Musokotwane, stated in his budget speech that the Zambian government would abolish the controversial 25 percent windfall tax on mining companies from April 1, 2009. However, the 15 percent variable-profit tax which (in order to capture windfall gains arising in the sector) will be retained. Minister Musokotwane also confirmed that the Zambian government will cut duty for heavy fuel oils from 30 percent to 15 percent and will remove customs duty on copper powder, copper flakes and copper blisters in the hope of reducing the operating costs of mining companies as well as encouraging the utilization of local smelting capacity

SOUTH AFRICA PASSES NEW MINE HEALTH AND SAFETY AMENDMENT BILL

By Dimitri Cavvadas, Johannesburg

The recently passed Mine Health and Safety Amendment Bill (MHSB), provides that mining companies can incur criminal liability for breaches of health and safety regulations. The somewhat controversial Bill forces mine management and staff to be personally accountable for accidents and fatalities and provides for those found to be liable for fatalities and safety-related contraventions to be fined up to 3 million rand or serve up to five years in prison or both.

The MHSB criminalizes the Mine Health and Safety Act to a large extent. At present, most of the breaches of the Act by an employer may only lead to the imposition of an administrative fine. However, in terms of the Bill, breaches by the employer may lead to both administrative fines and criminal liability. Many have argued, including the South African Chamber of Mines, that simultaneously imposing administrative fines and punitive liability is unconstitutional and

will result in a decrease in investment in the South African mining industry.

The MHSB also introduces corporate homicide on the part of a corporation in addition to culpable homicide. This additional liability is extended to the CEO, managers, employees and agents.

LONDON STOCK EXCHANGE TO CONSULT ON PROPOSED NEW AIM RULES FOR INVESTING COMPANIES AND OTHER CHANGES

By Chris Chrysanthou, London

The London Stock Exchange has issued a notice (December 18, 2008) detailing its proposed changes to the AIM Rules for Companies (the "AIM Rules") relating specifically to "investing companies". As well as the proposed changes relating to "investing companies" the notice also sets out other proposed changes.

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Investing companies

The LSE's notice sets out proposed changes to the AIM Rules relating to investing companies which will also include an "AIM Note for Investing Companies".

The proposed changes to the AIM Rules include:

- the requirement to have a detailed and precise "investing policy" setting out the company's investment parameters (in place of the current "investment strategy"). All subsequent material changes to the "investing policy" will require prior shareholder approval;
- clarification as to the types of investing company that the LSE expects to be appropriate for admission to AIM;
- rules relating to investment managers for externally managed investing companies, with specific disclosure requirements;
- rules regarding independence between the Board, the Nominated Adviser and any investment manager;
- confirmation that the specific disclosure requirements of Annex XV of Appendix 3 to the Prospectus Rules apply to an investing company's admission document;
- information on how the class tests (Rules 12-16 of the AIM Rules) are to be applied in relation to investing companies; and
- clarification that the £3 million fundraising required by AIM Rule 8 should be from independent investors rather than the existing owners/managers.

Other changes

Amendments are also being made to the AIM Guidance Note on Mining, Oil and Gas Companies, although these are not substantive and relate more to miscellaneous changes to update the AIM Guidance Note on Mining, Oil and Gas Companies by, for example, amending cross references to the AIM Rules for Nominated Advisers.

The LSE is also proposing to clarify that the new Note for Investing Companies and the Note on Mining, Oil and Gas Companies will now form part of the AIM Rules applicable to companies and nominated advisers.

The LSE's notice also sets out changes to AIM Rule 5 and the payment of fees thereunder. Fees are now payable post admission rather than three days prior to admission. The changes to AIM Rule 5 have immediate effect as they are only administrative.

CHANGES TO OFFICER CERTIFICATION REQUIREMENTS

By Lata Casciano, Vancouver

Effective December 15, 2008, the Canadian Securities Administrators ("CSA") have replaced Multilateral Instrument 52-109 – Certification of Disclosure of Issuers' Annual and Interim Filings, and its related forms and companion policy (collectively, the "Old Rules") with National Instrument 52-109 – Certification of Disclosure of Issuers' Annual and Interim Filings, and its related forms and companion policy (collectively the "New Rules"). In conjunction with the New Rules, the CSA also made consequential amendments to National Instrument 51-102 –

Continuous Disclosure Obligations. The New Rules apply to all reporting issuers other than investment funds.

The purpose of the New Rules is to "improve the quality and readability of reporting issuers' annual and interim disclosure". The New Rules incorporate a number of new requirements and are similar to rules currently in effect in the United States adopted by the Securities and Exchange Commission ("SEC"), with a few notable exceptions. For example, unlike the SEC, the CSA will not require external auditor attestation.

The changes in the New Rules are of greatest significance to non-venture issuers that do not make filings with the SEC under Rules 302 and 404 of the Sarbanes-Oxley Act ("SOX") and cannot rely on exemptions available for issuers that make such filings with the SEC.

The article can be viewed at the link below:

http://www.fasken.com/officer_certification_requirements/

ECUADOR APPROVES NEW MINING LAW

By Andrew Derksen, Toronto

On January 29, 2009, the New Ecuadorian Mining Law (the "New Law") was published in the Ecuadorian Government's official registry and came into force.

The New Law provides welcome relief to international miners active in Ecuador who have significant interests in the massive gold, silver and copper deposits located in the south of the country.

The New Law reflects the Government's belief that mining is beneficial for the

country, and that it must be carried out in a sustainable manner. Article 4 of the New Law holds that environmentally responsible mining is in the public interest of Ecuador. The New Law gives companies the right to hold unlimited numbers of mining concessions, renewable, with 25-year terms. The Government will levy a royalty of no less than 5%, with portions of the revenue collected directed to local mining regions. A new competitive process will also be established to award concessions.

While environmental and peasant groups are not happy with the New Law (the Confederation of Indigenous

Nationalities of Ecuador says the New Law favours transnational mining companies and plans civil-disobedience campaign to prevent projects in areas where indigenous communities live), Ecuadorian President Rafael Correa has stated that he would not back down in the face of protests from these groups. During his recent state of the State speech to the National Assembly, Correa called opponents of the law "fundamentalists" who would leave Ecuador a country of "beggars sitting on a sack of gold" and stated that "it is necessary to propel responsible mining."

NEWS & PUBLICATIONS

Mining Consolidation Expected

A member of the Global Mining group, Gregory Ho Yuen, was quoted in the November 2, 2008 edition of the Financial Post. The article was titled "Mining consolidation anticipated", and included his commentary on intermediate companies kick-starting a new wave of acquisitions.

The article can be viewed at the link below:

<http://www.financialpost.com/news/story.html?id=927287>

Recorded Live Video Webcast "Dealflow in Mining: A Current Canadian Perspective"

On January 15, 2009, the Global Mining Group and the Toronto Stock Exchange and TSX Venture Exchange, in co-ordination with the Prospectors and Developers Association of Canada (PDAC), hosted a live video webcast about the current market conditions and developments as they apply to financings and other transactions in the mining sector. Raziel Zisman organized and moderated this event where John Turner participated as a panelist.

For the recorded live video webcast and more information about the event, please use the link below:

http://www.fasken.com/tsx_videoconference_15_jan_09/

The Opportunities and Threats of Climate Change

The ongoing development of Canadian and International carbon-related regulations is raising significant concerns in the mining industry is discussed in CIM Magazine in an article written by Florence Dagicour. Although climate related risks are of deep concern, the mining industry can benefit from new and emerging carbon markets. This article provides a more detailed discussion of these climate-related risks and the potential opportunities that may present themselves in the Canadian mining industry.

The article can be viewed at the link below:

<http://www.fasken.com/opportunities-threats-climate-change/>

UPCOMING EVENTS

PDAC Conference:

Toronto, Ontario
March 1, 2009 to March 4, 2009.
Fasken Martineau will be at booth #303.

Additional information about the event can be viewed at the link below:

http://www.virtual-exhibition.com/site/view_exhibitor_profile.html?id=5001262&event_id=16&si_user_id=0

AIM Seminar:

Toronto, Ontario
March 4, 2009.
AIM Listings in the Current Economic Environment featuring special guest speaker Anne Moulrier from the London Stock Exchange with a presentation by Greg Ho Yuen (Fasken Martineau - Toronto) and Mark Camilleri (Fasken Martineau - London).

Registration and additional information about the event can be viewed at the link below:

http://www.fasken.com/aim_seminar_march_4_2009/

ABOUT OUR GLOBAL MINING GROUP

Fasken Martineau has been ranked as the number one firm worldwide for mining legal expertise by the International Who's Who of Mining Lawyers for four consecutive years. We have over 150 years of experience in the mining industry, domestically and internationally. The lawyers in our Global Mining Practice are particularly experienced in addressing the international dimensions that characterize

many mining industry transactions today, and we are the only law firm globally with offices in each of the key mining finance centres of Toronto, Vancouver, London, and Johannesburg. We have significant experience in all legal aspects of the mining industry and offer expertise with respect to financing, regulatory, and commercial aspects at every stage of the mining process from exploration through to reclamation.

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