

Global Mining Group NEWSLETTER

EDITOR'S NOTE



The success of the first issue encouraged us to continue with the newsletter. These are busy times in the global mining industry driven by high gold prices and depressed prices for other minerals. Topics in this issue include items on important current decisions and new legislation. Reader feedback on content would be much appreciated. We are taking what we think is justifiable pride in being named as Global Mining Law Firm of the Year for the fifth consecutive year by Who's Who Legal Awards. We are working hard to make it six in a row by continuing to offer the quality and diversity of service that gained us this prestigious award.

John S.M. Turner, Global Mining Group Leader, Toronto

OSC DECISION REGARDING HUDBAY

OSC Decision in HudBay Identifies Fair Treatment of Shareholders as the Key Consideration in Requiring HudBay Shareholder Approval of the Transaction and Questions the Independence of Financial Advisers

The Ontario Securities Commission recently released its full decision on HudBay Mineral Inc.'s proposed share exchange acquisition of Lundin Mining Corporation. The decision raises a number of issues that should be considered in structuring

acquisition transactions, which are discussed in this latest bulletin from the Securities and Mergers & Acquisitions Group.

To view the bulletin, please use the following link:
http://www.fasken.com/sma_hudbay_bulletin_june2009/

Lata Casciano and Lindy Bremner, Vancouver

ARTICLES

Editor's Note	1
OSC Decision Regarding HudBay	1
Congo Conflict Minerals Act of 2009	2
South Africa's DNE Split by NewSouth Africa Code of Good Practice	2
'Confidential' means what it says	3
Private Member's Bill Threatens Canada's International Extractive Sector	3
Hostile Takeovers	4
Venezuela Gold Sales Law	5
Introduction of the new Code of Good Practice for the South African Minerals Industry – no cause for alarm	5

NEWS & PUBLICATIONS

Canada: A Global Mining Centre of Excellence	6
"On the back of an envelope"	6
Ontario Mining Act Seminar	6
Fasken Martineau named Global Mining Law Firm of the Year for fifth consecutive year by Who's Who Legal	7

CONGO CONFLICT MINERALS ACT OF 2009

In an attempt to stem the flow of mineral and mining finance which it sees as fueling the civil war in the Democratic Republic of Congo (DRC), the US Senate is forging ahead with new legislation, in the form of the Congo Conflict Minerals Act of 2009 (the "Bill"), that will compel US companies to track and disclose the country of origin of minerals used in common electronic products.

Conflict minerals (such as cassiterite, coltan and wolframite) used in electronic devices are a major source of funding for armed groups in eastern Congo. According to a recent study commissioned by the Enough Project, Congolese armed groups earn approximately US\$85million a year from the trade in tin, US\$8million from tantalum and US\$2million from tungsten.

If passed, the Bill would provide the authority for the US government to ensure that the US mineral trade does not inadvertently support armed conflict or contribute to human rights abuses while at the same time developing mechanisms to allow the Congolese people to benefit from their natural resources. The Bill will require greater transparency from US companies that are involved in commercial activities involving conflict minerals (in particular, electronics companies) by disclosing the country of origin of their minerals to the Securities and Exchange Commission. If the minerals are from the DRC, or neighboring countries, companies would be required to disclose the mine of origin. The Bill also calls for expanded US efforts to improve conditions and livelihoods for communities in eastern Congo who are dependent upon mining.

In the longer-term, the Bill sponsors hope that the DRC and its neighbors will establish a regional framework to prevent the illicit trade of conflict minerals. Supporters of the Bill have

been quick to point out that they are not seeking to restrict or ban the export of natural resources from the DRC as such sanctions would simply push companies and foreign investment out of the region and therefore endanger the livelihoods of small-scale miners. The hope is rather to regulate the trade so as to ensure that people of the DRC benefit from the sale of their country's resources.

The prospects for the success of Bill are, as yet, unclear. However, commentators are optimistic that the legislation will pass in some form this year given the bipartisan support for the Bill. The Obama administration has not commented on the legislation as it is still reviewing its DRC policy, however, NGOs remain hopeful that the administration will support the Bill.

Dimitri Cavvadas and Al Gourley, Johannesburg

SOUTH AFRICA'S DNE SPLIT BY NEW SOUTH AFRICA CODE OF GOOD PRACTICE

South Africa's new President, Jacob Zuma, has split the Department of Minerals and Energy into two separate departments, namely, mining (on the one hand) and energy (on the other), each headed by a separate minister, with a view to affording greater attention on industry specific issues.

The mining industry has historically been the driving force of the South African economy. Consequently, mining issues have generally overshadowed energy-related matters. However, in recent years, the role of energy has grown. Political commentators, who had

previously expressed the view that the mining and energy sectors have become too complicated to continue to be housed in one Ministry, have welcomed the moves by President Zuma.

The South African Chamber of Mines reported, in response to the announcement of the split, that its members were pleased with the appointment of Susan Shabangu as the minister responsible for mining (the "Minister") in view of her previous role as deputy minister of Minerals and Energy. Similarly, the National Union of Mineworkers said it too welcomed her appointment, stating that the former unionist was "action-oriented" (Reuters 2009).

Perhaps the most urgent issues facing the Minister are the improvement of mining

safety and the need to mitigate the potential loss of jobs due to the global economic downturn. The Minister's first tasks will also include the supervision of the first major review of the Mining Charter and the processing of new mining licence applications which, in the opinion of many players in the mining industry, take too long to be reviewed. The Minister is also likely to play a key role in establishing a national mining company, which South Africa's ruling ANC has previously stated is a priority for the new government.

Dimitri Cavvadas and Al Gourley, Johannesburg

'CONFIDENTIAL' MEANS WHAT IT SAYS

The Ontario court recently issued an injunction to stop Rusoro Mining Ltd from continuing with a hostile bid for Gold Reserve Inc. Rusoro, who had no confidentiality agreement with Gold Reserve and no standstill obligations, were found by the court to have made use of confidential information provided to them by advisors with whom

Gold Reserve already had such an agreement and to whom the confidential information was disclosed. The outcome and the reasons for the decision are instructive for professional advisors on the issues of handling confidential information and the consequences of not taking appropriate steps to protect its confidentiality.

Our commentary on this decision can be viewed at the following link:

http://www.fasken.com/cim_eye_on_business_june2009/

Berkley D. Sells and Charles L.K. Higgins, Toronto

PRIVATE MEMBER'S BILL THREATENS CANADA'S INTERNATIONAL EXTRACTIVE SECTOR

In what appears to be a misguided attempt to address a complex issue, a member of the Canadian Parliament recently introduced a private member's bill seeking to punish Canadian companies for violating undefined environmental and human rights standards abroad.

Bill C-300 (An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas Corporations in Developing Countries) is punitive in nature and based on the premise that Canadian mining activities abroad are inconsistent with international social and environmental best practices and with Canada's commitments to human rights.

The Bill if passed would oblige a Minister of the Government of Canada to investigate any complaint received, no matter where it arises, about the operations of Canadian companies abroad. A company found to have violated any of the (undefined) social and environmental guidelines, could lose all of its government funding and consular support. The Bill as introduced lacks any procedural protections for Canadian companies or the Ministers investigating them, while allowing complainants to act with impunity. It also raises the significant problem of Canada's capacity, expertise or jurisdiction to enforce corporate social responsibility (CSR) guidelines abroad or to supersede local authorities, which is why no other country in the world has legislation like Bill C-300 in place.

The Bill if passed would effectively preempt the Canadian Government's own comprehensive CSR Strategy for the

International Extractive Sector released in March, 2009, which represents the culmination of three years of consultations involving experts and stakeholders from a variety of fields, including foreign policy, the environment, industry, human rights and sustainable development. By contrast the authors of Bill C-300 failed to undertake any consultation with industry, or domestic or foreign government officials. It is difficult to see how the two could coexist.

Canada is recognized internationally as a leader in CSR and its companies are preferred investors all over the world. The Bill's passage could instantly erase much of that goodwill.

Charles Todd, Toronto

HOSTILE TAKEOVERS

"10 Crucial Issues" covered at a recent seminar hosted by us include:

- Cross Border Timing Issues - *Marty Fisher-Haydis*
- When and Why to Form an Independent Committee - *Bill Orr*
- Retaining Investment Banks - *Jonathan Levin*
- The Role of the Ontario Securities Commission - *Robert Shirriff*
- Shareholder Rights Plans - *Richard Steinberg*
- NI 43-101 Issues in Takeover Bids - *Chuck Higgins*
- Accounting Issues - *Jonathan Levin*
- Deal with Stock Exchanges - *Krisztián Tóth*
- Legal Issues with Communications Strategies - *Peter Downard*
- Using Litigation Effectively - *Robert Harrison and Berkley Sells*

To view the recorded webcast and more information about the event, please use the following link:
http://www.fasken.com/hostile_takeovers_12_may_09/

VENEZUELA GOLD SALES LAW

The Minister for Economy and Finance, Nelson Merentes, has issued a new resolution which has the affect of increasing the amount of gold that local producers must market inside of Venezuela. The new resolution, which was recently announced in the Gaceta Oficial No. 39.169., requires that at least 70 percent of production must be marketed within sovereign Venezuelan territory. Of

that amount, 85 percent must be offered for sale directly to the Central Bank of Venezuela with the remainder going to the domestic processing industry. If the Central Bank refuses to purchase the gold, producers will still have the right to sell it elsewhere.

The move appears aimed at increasing Venezuela's gold reserves while reducing

reliance on supporting them with U.S. dollars. The resolution, in conjunction with the currency control regime in place pegging the Venezuelan Bolivar at 2.15 to the US Dollar (the unofficial "black" market rate has the Bolivar trading at over 6 to the Dollar), would result in gold being sold domestically at a significantly lower price than the current international market price for gold.

Andrew E. Derksen, Toronto

INTRODUCTION OF THE NEW CODE OF GOOD PRACTICE FOR THE SOUTH AFRICAN MINERALS INDUSTRY

The recent publication of Codes of Good Practice for South Africa's Mining Industry (the "Codes") enacted under the Mineral and Petroleum Resources Development Act of 2002 (the "MPRDA") could potentially destabilize accepted black economic empowerment ("BEE") principles presently applied in the mining industry and threaten the security of tenure of title holders.

Non-compliance with the Codes would now render the license holding entity to be in breach of the MPRDA and could lead to the suspension or cancellation of mining permits. Refining licences, beneficiation licences and jewellery permits or any other mineral processing authorization issued by the South African Department of

Minerals and Energy ("DME") and the South African Diamonds and Precious Metals Regulator would now be granted or refused based on the principles of the Codes.

The principle concerns under the Codes relate to provisions which fail to award full credits to an entity entering into a sale with a BEE party if the BEE party still has debt associated with this purchase two years after the deal's conclusion. BEE ownership (which must reach 26% by 2014) would thus only be recognized once the BEE party has paid back all transaction debts. Parties seeking to comply with BEE equity requirements would then be faced with a difficult choice: either write off the debt associated with BEE ownership, or be at risk of not fulfilling their BEE equity requirements.

Many of the compliance targets of the Codes (which include ownership,

management control, employment equity and beneficiation, among others) are unclear and some of these targets could potentially entail large expenditures for mining entities. The ambiguities of these compliance targets and lack of materiality threshold measures in the context of a breach afford the DME a wide discretion to cancel or suspend mining licences under the MPRDA.

Following criticism from the industry, which was never given the opportunity to review or comment the Codes before they were enacted, leaders from the Chamber of Mines, the National Union of Mineworkers and the Department of Mining are joining a subcommittee to discuss the Codes to deal with the concerns of stakeholders in an effort to find common ground. The fact that the Codes have been referred back to the working groups may mean that there is still an opportunity to change them.

Dimitri Cavvadas and Al Gourley, Johannesburg

NEWS & PUBLICATIONS

Canada: A Global Mining Centre of Excellence

This article written by CIM Magazine discusses why Canadian mining retains its leadership position despite the global economic crisis.

To view the article, please use the following link:

http://www.fasken.com/canada_global_mining_excellence/

***Robert L. Shirriff and
Andrew E. Derksen, Toronto***

"On the back of an envelope"

Two members of our group Andrew Gabrielson and Michael Bourassa gave a paper recently on a topic of perennial interest to everyone in the mining business. They discussed the binding nature, pitfalls, principles and drafting considerations involved in Letters of Intent, MOUs, term sheets and Expressions of Interest.

The paper can be viewed at:
http://www.fasken.com/preliminary_agreements_june_2009/

ONTARIO MINING ACT SEMINAR

Fasken Martineau and PDAC Joint Event

Bill 173 proposes many amendments to the Ontario Mining Act. A panel of experts assembled June 8th in the Fasken Martineau office in Toronto and linked by video conference to the Fasken Martineau offices in Montréal, Québec City and Vancouver to address questions and concerns.

The seminar attracted over 100 people to the Fasken offices and 150 people viewed by webcast. Following the presentation, we had an interactive Q&A period with our panel guests and accepted questions via our on-line attendees.

The presentation highlighted many issues and concerns around the following topics:

- Introduction and General Overview - Michael Bourassa, Fasken Martineau
- A Summary of the Enforcement Provisions of the Mining Act - Jim

Blake, Mclean & Kerr LLP; and Chair, National Resources Section, Ontario Bar Association

- Mine Closure & Environmental Amendments - Charles Kazaz, Fasken Martineau
- Some observations from the West on Aboriginal Community Consultation Provisions - Charles Willms, Fasken Martineau
- Balancing Mining with First Nations' Rights - Neal Smitheman, Fasken Martineau
- Diamond Royalty Provisions - Matt Manson, President and CEO, Stornoway Diamond Corporation
- Bill 173 Act vs. Regulation Bill 191 - Garry Clark, Executive Director, Ontario Prospectors Association
- Legislative Procedures and Next Steps - Philip Bousquet, Senior Program Director, Regulatory Affairs, PDAC

PDAC used the results of the seminar to help prepare a submission on the Bill to the Ontario Government prior to the July 4 deadline.

Please click here to view the recorded webcast:

<http://co2digital.com/fasken/20090608/>

[Click here](#) to view a blackline of proposed amendments to Ontario's Mining Act as set forth in Bill 173, introduced by First Reading on April 30, 2009.

FASKEN MARTINEAU NAMED GLOBAL MINING LAW FIRM OF THE YEAR FOR FIFTH CONSECUTIVE YEAR BY WHO'S WHO LEGAL

Who's Who Legal named Fasken Martineau as the Global Mining law Firm of the Year for 2009. This is the fifth consecutive year the firm has been recognised having won the award every year since its inception.

"In a highly competitive field, winning Who's Who Legal Law Firm of the Year Award for Global Mining is an outstanding achievement", commented David Corbett, firm Managing Partner.

"Fasken Martineau set out to create a world class global mining law practice and we are proud to say that we are achieving that goal. Winning this award for five consecutive years speaks to the depth of experience which we offer to clients in Global Mining and across a wide range of practice areas."

Who's Who Legal is the Strategic Research Partner for the American Bar Association's Section of International

Law. The 2009 Who's Who Awards in various were made based on feedback received in ongoing research, past performance in research, and overall aggregate number of weighted votes cast. The survey polls clients and private practice professionals to identify the leading firms and individuals in 30 practice areas, as well as the top firm in over 50 countries and five US states.

GLOBAL MINING GROUP REGIONAL CONTACTS

VANCOUVER

Vancouver

Josh D. Lewis
604 631 4853
jlewis@fasken.com

London

Al Gourley
+44 207 917 8671
agourley@fasken.co.uk

CALGARY

TORONTO

Toronto

John S.M. Turner
416 865 4380
jturner@fasken.com

Johannesburg

Al Gourley
+27 11 685 0800
agourley@fasken.co.uk

OTTAWA

MONTRÉAL

QUÉBEC CITY

Québec City

Jean M. Gagné
418 640 2010
jgagne@fasken.com

LONDON

JOHANNESBURG

This publication is intended to provide information to clients on recent developments in provincial, national and international law. Articles in this newsletter are not legal opinions and readers should not act on the basis of these articles without first consulting a lawyer who will provide analysis and advice on a specific matter. Fasken Martineau DuMoulin LLP is a limited liability partnership and includes law corporations.

© 2009 Fasken Martineau DuMoulin LLP



www.fasken.com

Vancouver
604 631 3131
vancouver@fasken.com

Calgary
403 261 5350
calgary@fasken.com

Toronto
416 366 8381
toronto@fasken.com

Ottawa
613 236 3882
ottawa@fasken.com

Montréal
514 397 7400
montreal@fasken.com

Québec City
418 640 2000
quebeccity@fasken.com

London
44 (0)20 7917 8500
london@fasken.co.uk

Johannesburg
27 11 685 0800
johannesburg@fasken.com

