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PDAC Signature Program:

A look at key business and risk mitigation trends in the global mining industry

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Protecting your global mining assets

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Introductions

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Protecting your global mining assets

Introduction

- International Commercial Arbitration and Investor State Arbitration offer opportunities to mitigate risk
- Investor State Arbitration arises from investment treaties
- Allows for the investor to bring a claim directly against a state in international arbitration, under public international law (has advantages / disadvantages)

Protecting your global mining assets

Introduction

- General procedure for a claim:
  - Cooling off period, arbitration, annulment proceedings, collection
- Option of arbitration may provide opportunity for a business resolution

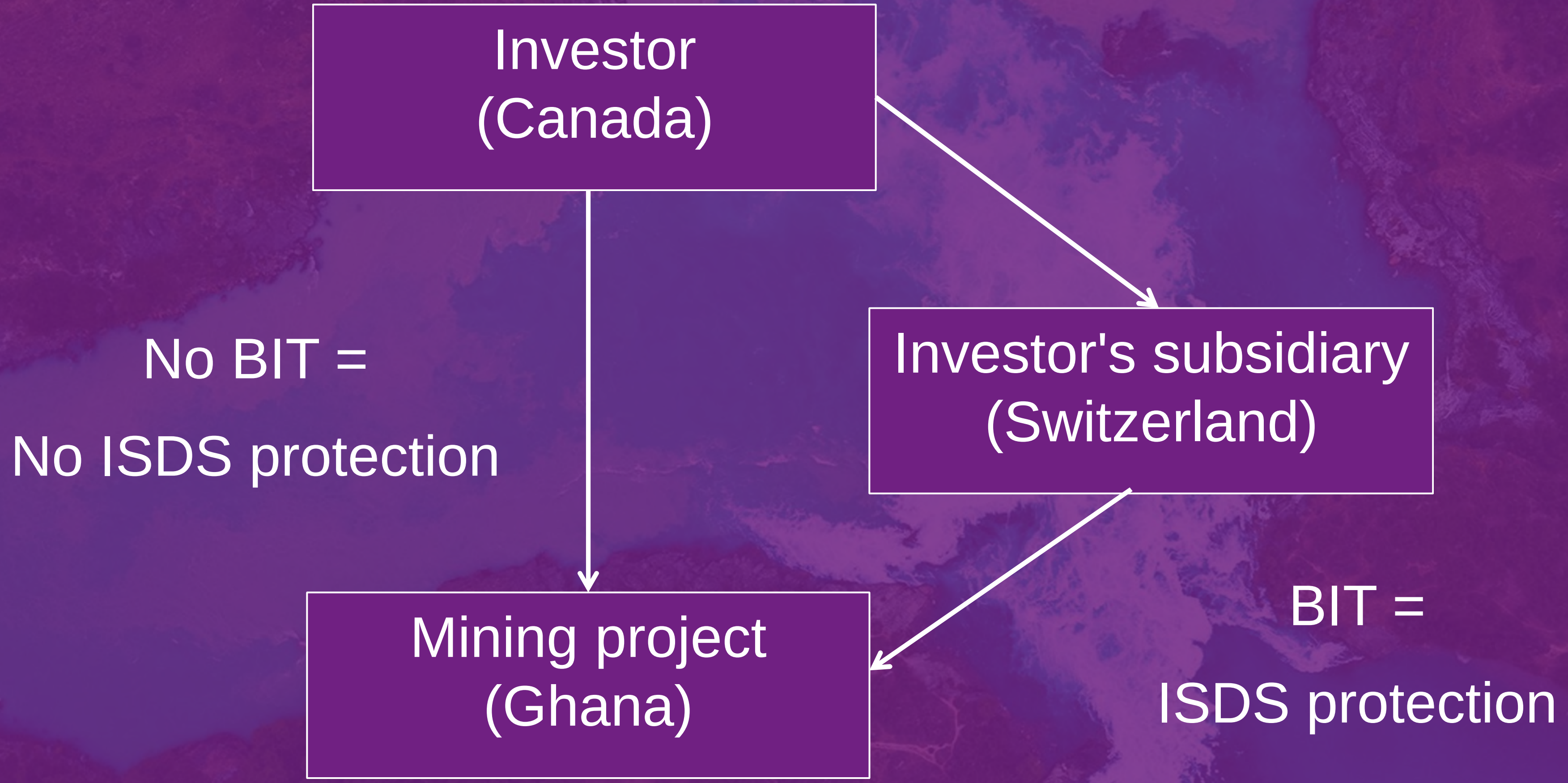
How do companies leverage this to mitigate risk?

Protecting your global mining assets

Structuring the investment

- Over 2500 bilateral investment treaties (BITs), regional investment treaties and free trade agreements with investment protections (FTAs)
- Easy to “get right” and also easy to “get wrong”
- Almost always have to be structured appropriately <u>before</u> a claim arises
- Nuances between treaties on what qualifies as an “investor” and “investment”
- Also nuances between treaties on specific actions that are carved-out, where a host state may act without giving rise to a claim
- Be cautious of “fork in the road” clauses

Structuring a mining investment: example of a Canadian company investing in a gold mine in Ghana



Protecting your global mining assets

Grounds for claims

Many protections offered by treaties that may ground a claim:

- National treatment
- Most favoured nation treatment
- Protection against expropriation without adequate compensation
- Fair and equitable treatment
- Full protection and security
- Minimum standard of treatment
- Free movement of capital in and out of the jurisdiction

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Damages

- What happens if a project is in exploration stages?
- Different methods and approaches to valuing damages
- May be technical and economic issues

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Costs and funding of arbitrations

- Typical costs: legal fees, experts, tribunal costs etc.
  - Advance deposits common for tribunal costs
- Nature of costs awards
- Potential for third party funding

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Collecting arbitral awards

- What happens if a state does not pay?
- Negotiating settlements
- Seizing assets abroad
- Secondary market for awards

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Mining finance: From streaming agreements to deal structuring, what do you need to know for your next deal?

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Cerrado Gold Inc.
TSXV: CERT

- In Brazil, the Company is focused on bringing its keystone Serra Alta deposit into production at its Monte do Carmo project (MDC) in Tocantins, Brazil

- The Company also owns the Minera Don Nicolas mine (MDN), located in Santa Cruz, Argentina; a producing high-grade gold mine

CERRADO GOLD

Ascendant Resources Inc.
TSX: ASND

- Significant high-grade VMS deposit with robust resource expansion opportunities
- Located in the prolific Iberian Pyrite Belt which hosts numerous world class mines
- Established mining district with solid infrastructure supporting accelerated development

ASCENDANT
RESOURCES INC.

Question 1: What are the Main Differences Between Streaming Agreements and Royalty Agreements?

Question 2: Why did Cerrado and Ascendant do Streaming Deals Instead of Royalty Deals?

Question 3: What were the Key Deal Terms/Novel Aspects of Cerrado's and Ascendant's Streaming Agreements?

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Strategies for managing above-ground risks in Latin America

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ESG and mining: From the latest in trends to mitigating risks - what you need to know

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ESG Trends in Africa

African Mining: ESG from an Investor’s field of view

Road to Wigan Pier George Orwell

“Ideally, the worst type of slum landlord is a fat wicked man, and member of the upper classes preferably a bishop, who is drawing an immense income from extortionate rents.

Actually, it is a poor old woman who has invested her life's savings in three slum houses, inhabits one of them, and tries to live on the rent of the other two — never, in consequence, having any money for repairs…”

ESG in Africa – Sustainability?

Communities

- If you don’t have a reasonably positive working relationship with the host community you don’t have a mine
- Life of mine of 40 years, and mine often forms the hub of any community
- Sins will be remembered, long after the benefits forgotten
- Communities straddle: <u>social</u>, the <u>environment</u> as community is often the first affected (water, land use, emissions, dust, roads) and <u>governance</u> – (open communication, performing undertakings, relationship between local and central government)

ESG in Africa – Sustainability?

Governance

- ABAC concerns
- value destruction brought about by non-compliance
- Requires focus in acquisitions or co-investment with local partners, especially “anointed” local partners, acquiring a suspected right, specific warranties from sellers and triggers in JV agreements

ESG in Africa: Practicalities

Joint ventures in Africa

- Managing Risk – diligence and operations
- Red lines and consequences
- Reporting and controls
- ESG officers and the ESG function
- Role of Counsel

ESG in Africa: Reporting

Joint ventures in Africa

- Huge number of standards of measurements and performance BUT convergence in reporting: adoption/creation of the International Sustainability Standards Board by IFRS Board at COP26
- Largely seen as helpful and adoptable – and increasingly developed for reporting / enforcement across EU, Nigeria the first to adopt these standards
- Impact on funders, operators and end users of the mined product

ESG trend in Canada

Managing the Energy Transition

- Decarbonization of mining operations has become central trend in the sector, for meeting 2030 and 2050 emissions reduction targets.
- Availability of government investments / incentives to lower emissions.
- Greater attention on ESG risks associated with exploration and development of critical mineral deposits.

ESG Disclosure Standards

- Investors, insurers and other stakeholders expect ESG disclosures to mirror financial disclosures.
- Increased regulation of content and quality of ESG data.
- Alignment of mining specific and broader ESG reporting standards continues to evolve, with expected finalization of the IFRS Foundation’s Sustainability Standards in June 2023 and the GRI Mining Specific Standard in 2024.

Managing Global Supply Chain

- ESG concerns increasingly addressed through and across a company’s entire supply chain, not just own operations.
- Mining companies are under increasing pressure to ensure supply chains are free of human rights abuses, including forced labor and child labor.
- Government of Canada is increasingly active in ensuring Canadian companies are meeting standards for responsible business practices.

Social License to Operate

- Canada’s mining industry increasingly recognizing need to partner with Indigenous groups as part of ESG Strategy.
- Trend towards Indigenous equity ownership interests, where Indigenous rights may be impacted.
- Recognition of business case for increased Indigenous ownership, and involvement in the permitting process.

ESG case law impacting mining in Canada

ESG Regulatory and Litigation Risk

- For mining companies, ESG concerns must be addressed through and across a company’s entire chain, not just its own operations
- Focus has been on greenwashing including regulatory investigations into deceptive marketing practices by industry lobby groups and financial institutions using language such as “clean” and “sustainable” in promotional materials
- Environmental claims include municipalities in British Columbia allocating funds for future climate-change related class action lawsuits

ESG Securities Disclosure Risk

Case Study

- In January 2022, Keurig agreed to pay a $3 million fine following an investigation by the Competition Bureau over claims related to the sustainability of Keurig's single-use coffee pods
- An investigation by the Competition Bureau found that Keurig's recyclability claims were misleading or false with respect to its coffee pods
  - Outside of BC and Quebec, they were not widely accepted at municipal recycling programs
  - The steps that consumers were instructed to take to allow them to be recycled were incorrect in some municipalities
- In March 2022, a class action was filed in Federal Court seeking $500 million in damages including full refunds of all amounts paid for K-Cup Pods and machines

ESG Class Action Risk

Proposed National Instrument 51-107

- In October 2021, the Canadian Securities Administrators (CSA) published a CSA Notice and Request for Comment (Notice) on proposed National Instrument 51-107 Disclosure of Climate-related Matters (NI 51-107) and its proposed Companion Policy 51-107CP
- NI 51-107 would require issuers to disclose certain climate-related information in compliance with the recommendations from the Task Force on Climate-related Financial Disclosures in four areas: Governance, Strategy, Risk Management, and Metrics and Targets
- October 2022: CSA provided an update that it is "actively considering international developments and how they may impact or further inform" NI 51-107 in relation to recent amendments from the SEC and a proposed general standard for climate-related disclosure from the ISSB

ESG Environmental Litigation

Litigation commenced by private companies

- Trend of companies going on the offensive and suing governments who either make policy decisions or pass legislation that interferes with their property rights
  - In June 2022, a coal company sued the Government of Alberta for $3.441 billion in damages after the Government put an “indefinite moratorium” on certain areas of the Rockies
  - In September 2022, an Australian coal company sued the Government of Alberta for $3.53 billion in relation to the same reversal in policy, arguing that the Government has eliminated “all reasonable use” of the property.
  - A Quebec company filed a lawsuit in June 2022 against the Quebec Government in relation to its ban on hydrocarbon exploration and exploitation

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Critical Minerals: Are we meeting demands?

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Critical Minerals: Are we meeting demands?

It is too soon to tell, but here’s what we know and can expect:

- **It’s in the Budget:** the 2022 Federal Budget:
  - Proposes to provide up to **CA$3.8 billion** in support over eight years to implement **Canada’s first Critical Minerals Strategy**,
    - Including significant investments that would focus on priority critical mineral deposits to contribute to the development of a domestic zero-emission vehicle value chain
  - Proposes to create **thousands of jobs for Canadians**
  - Introduces a **new “super flow-through” 30% Critical Mineral Exploration Tax Credit** (**CMETC**) aimed at increasing investment for certain mining companies exploring for specified critical minerals

Critical minerals

What are critical minerals?

Critical minerals are those minerals and metals that are:

- Necessary for clean energy production
- Of significant importance to the national economy
- Important to national security and have a high-risk supply chain

The most common minerals included on critical minerals lists are those needed to produce batteries, including:

- Lithium
- Cobalt
- Copper
- Graphite

Canada's critical minerals

- Natural Resources Canada, Canada's Critical Minerals List 2021
- https://www.nrcan.gc.ca/sites/nrcan/files/mineralsmetals/pdf/Critical_Minerals_List_2021-EN.pdf

Canada’s critical minerals

To be deemed “critical” in Canada, a mineral must be:

- Essential to Canada’s economic security and its supply is threatened
- Required for our national transition to a low-carbon economy, or
- A sustainable source of highly strategic critical minerals for our partners and allies

Of Canada’s 31 critical minerals, six are initially prioritized for their distinct potential to spur Canadian economic growth and their necessity as inputs for priority supply chains. These six minerals are lithium, graphite, nickel, cobalt, copper, and rare earth elements

Canada’s list of 31 minerals, as well as the federal government’s priority value chains, will be reviewed and updated every few years

Natural Resources Canada, Canada’s Critical Minerals List 2021

https://www.nrcan.gc.ca/sites/nrcan/files/mineralsmetals/pdf/Critical_Minerals_List_2021-EN.pdf

Critical minerals

Why are critical minerals important?

Production of products and tech required for green energy, including electric vehicles

- Battery minerals include lithium, nickel, cobalt, graphite, manganese, aluminum, tin, tantalum, magnesium and vanadium

National security

- Critical minerals are used in the production of semiconductors to control modern technology

Increased demand – short term

- Shortages expected in supplies of lithium and copper
- Additional investment of US $21 billion will be needed to finance increased lithium production to 2025
- Additional investment of US $100 billion will be needed to finance increased copper production to 2030

Increased demand – long term

- The World Bank estimates an increase in critical mineral demand of 500% by 2050
- Demand for lithium and graphite is expected to increase by up to 4,000% by 2050

Critical minerals

What are the risks to critical mineral availability?

Limited supply

- High exploration costs and limited historic investment.
- High production costs.
- Difficult locations to extract mineral reserves and resources.

Price increases and instability

- Price increases
  - lithium and cobalt
  - copper, nickel and aluminum
- Price instability
  - nickel prices increased due to short squeeze

Concentration of production

- Production of rare earth metals is concentrated in a small number of countries

Canada’s critical minerals strategy

A generational opportunity

For:

- Canadian workers and businesses
- Canada to lead the low carbon transition to clean, inclusive growth

To:

- Grow a strong, globally competitive Canadian economy
- Establish Canada as the global supplier of choice for clean energy in a net-zero world
- Ensure a prosperous and clean future for Canadians from coast to coast to coast

Canada’s critical minerals strategy

The objectives

- Support economic growth and competitiveness
- Promote climate action and strong environmental management
- Advance reconciliation with Indigenous peoples
- Foster diverse and inclusive workforces and communities
- Enhance global security and partnership with allies

Canada’s critical minerals strategy

Areas of focus and specific initiatives to achieve objectives

- Driving Research, Innovation and Exploration
- Accelerating Responsible Project Development
- Building Sustainable Infrastructure
- Advancing Reconciliation with Indigenous peoples
- Growing a Diverse Workforce and Prosperous Communities
- Strengthening Global Leadership and Security

Impact of Canada's first critical minerals strategy

Assisting companies to advance exploration projects

- In a working paper on Energy Transition Metals published in October 2021, the International Monetary Fund noted that it expects global demand for copper, nickel, cobalt, and lithium to increase over the next twenty years, with significant increases expected in both prices and demand in the event of a net-zero emission scenario (a scenario that assumes we transition to net-zero CO_2 emissions in 2050)
- A recent World Bank Group report finds that the production of Critical Minerals could increase by nearly 500% by 2050 to meet the surging demand for clean energy
- Canada, being recognized as a leading mining nation with enormous potential for the discovery of mineral resources, is well positioned to benefit from a rise in global demand for Critical Minerals
- These new measures implemented under the Strategy should reduce part of the risk profile associated with such early-stage projects
- These trends and the new measures should assist the advancement of projects with potential for Critical Minerals

Canada’s protection of national security interests

Investment Canada Act

- Review of investments in critical minerals sector, such as lithium
- Foreign investments in sector reviewed under “net benefit” criteria and national security concerns
- Policy Regarding Foreign Investments from State-Owned Enterprises in Critical Minerals
  - Applications for control of critical minerals businesses by foreign state-owned enterprises will only be approved on an exceptional basis
  - Participation of a foreign state-owned enterprise in a Canadian critical minerals business will support a finding that the investment could be injurious to Canada’s national security, even if the investment is not a controlling interest.
  - This policy was applied recently and resulted in an order for three Chinese investors to divest their minority interests in three Canadian lithium mining companies

- *(*) Government of Canada orders the divestiture of investments by foreign companies in critical minerals companies, Innovation, Scient and Economic Development of Canada, Statement, November 2, 2022*
- *(**) Policy Regarding Foreign Investments from State-Owned Enterprises in Critical Minerals*

International critical minerals strategies

Sustainable Critical Minerals Alliance(*)

- Canada, along with Australia, France, Germany, Japan, the United Kingdom and the United States, launched the Sustainable Critical Minerals Alliance to drive the global uptake of environmentally sustainable and socially inclusive and responsible mining, processing and recycling practices and responsible critical minerals supply chains
- Members of the Alliance
  - Encourage actions taken domestically and globally to advance the objectives of the Sustainable Critical Minerals Alliance
  - Call on national governments worldwide to join the Alliance

- *** Government of Canada – Critical minerals in Canada, Canada.ca*

New super flow-through financing tax credit for investors

The Critical Mineral Exploration Tax Credit (CMETC)

- A new 30% federal income tax credit for specified mineral exploration expenses incurred in Canada
  - Received royal assent: December 15, 2022
  - Longevity: temporary measure
  - **Goal:** increasing investment in mining companies exploring for specified critical minerals (used for solar panels, batteries, permanent magnets and other electric vehicle components)
  - 15 specified critical minerals : Cooper, Nickel, Lithium, Cobalt, Graphite, rare earth element, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metal, uranium
- Entitles the investor to a 30% mineral exploration non-refundable income tax credit in addition to the general income tax deduction of 100% with respect to Canadian exploration expenses (CEE) renounced by an issuer

The impact of the new CMETC

Encouraging capital-raising activities and interest in the Canadian critical minerals space

- The impact of the new 30% CMETC should be significant:
  - Flow-through shares (FTS) investor (Ontario tax resident) / $1,000 FTS subscription
    - o Net investment cost: $315
    - o Break-even point: $430
- Substantial tax incentive should stimulate investor interest in flow-through financings by Canadian issuers exploring for critical minerals, including through alternative investment vehicles such as flow-through funds
  - Flow-through funds play an important role in the junior mining industry, raising significant amounts of capital for deployment to junior mining companies
- Significantly improved income tax incentives, and anticipated uptick in flow-through financings by critical minerals mining companies, should stimulate an uptick in the aggregate amount of capital raised by flow-through funds while the 30% CMETC is available
- Introduction of the new CMETC and the other incentives geared towards clean energy will enable Canada to become a more attractive destination for critical minerals investment

The new CMETC

Conditions

- Similarities with the 15% mineral exploration federal income tax credit
  - Determining the existence, location, extent or quality of a mineral resource in Canada (Purpose Test)
  - From or above the surface of the earth
  - “Mineral resource” within the meaning of the *Income Tax Act*
- Taxpayers cannot claim both the 30% CMETC and the 15% mineral exploration federal income tax credit with respect to the same qualifying resource exploration expenditure, and the latter cannot be used as a “fallback” option
- Exploration plan that <u>primarily</u> targets critical minerals
  - Certification by “qualified professional engineer or professional geoscientist”
  - Within a 12-month period preceding the FTS Agreement

The new CMETC

Pitfalls to be avoided

- Purpose Test: an expense may have more than one purpose
- Being a listed “critical mineral” is not sufficient
  - Must qualify as a “mineral ressource” pursuant to the *Income Tax Act* (Canada)*;*
  - A base metal deposit or a mineral deposit in respect of which the Minister of Natural Resources has issued a certification to the taxpayer confirming that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit (on a case-by-case basis)
- Concerns as to whether a mining exploration project will qualify if, contrary to what was initially expected the mineral deposit does not primarily contain specified critical mineral?
  - Not a result-based obligation
- Careful drafting of FTS agreements