REGULATORY UPDATE

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Singapore, April 2017
OR,

PUTTING THE BLOCKS TOGETHER!
THE STORY SO FAR
EXPLOITATION CODE

Components

- Exploitation Regulations: July 2016 + submissions (43)
- Environmental Regulations (DP): January 2017
- Inspectorate provisions
- Consolidated Exploitation Code (incl. financial terms)
- + Guidelines, recommendations, templates etc.
- Building a “total package”
EXPLOITATION REGS

Key development areas

- Stakeholder input / LTC discussions
- Sponsoring state role
- ISA: who is responsible of what actions?
- Time limits: key to certainty
- Guidelines & templates: level of detail?
- Areas of confusion: terminology / regulation of plans
- Confidentiality

[Flowcharts!]
ENVIRONMENTAL REGS ++

Key points

- Berlin workshop March 2017:
  - A good start 😊
  - Article 145: precise wording but clear objectives?
  - An environmental strategy?
  - “Serious harm”: acceptable impact criteria
  - Definitions: BASE

- Standards: need for a process and procedure
- Developing incentives say for BAT/BEP
- Adaptive management
- Regional planning and management
- Performance thresholds
- Awaiting workshop report
EXPLOITATION CODE

Principles for Regulatory Development

- Content and terminology consistent with the Convention, the 1994 Agreement
- The Area and its resources are the common heritage of mankind: its development is for the benefit of mankind as a whole;
- A stable and coherent and time bound framework: to provide regulatory certainty for commercial decision-making
- Commercial viability of the exploitation of mineral resources in the Area and the need to monitor and mitigate any resultant environmental impact from exploitation; and
- To be developed on the basis of inclusiveness and fairness, to encourage wider participation from members of the Authority, including developing states.
- Need for clear, unambiguous rules and their application to facilitate / promote industry development and access to funding
EXPOlITATION CODE

Heading in the right direction?

- To date no showstoppers
- Devil in the detail? NB stakeholder consultation
- Information and knowledge? Where to target?
- Not re-inventing the wheel
- And......
It would not be possible for Noah to do in our day what he was permitted to do in his own ... the inspector would come and examine the ark, and make all sorts of objections.
WHAT TO REGULATE & HOW TO REGULATE IT......
Next steps

- Re-draft in light of stakeholder / LTC comments
- Re-visit “Environmental Regs”: good feel for modification
- Combine [+ inspectorate provisions?]
- Re-issue to LTC August 2017
- Guidelines / templates: EIS, EMMP, Feasibility
- Confidentiality: list of non-confidential information
- Jurisdictional competence: workshop at conceptual stage
- Responsibility & liability working group
- A solid & robust financial model........why we are here
OBJECTIVES & PRINCIPLES
(FINANCIAL TERMS)

Article 13, Convention:

- Optimum revenues (Best?)
- Attract investments and technology
- Equal treatment and comparable financial obligations

Section 8, 1994 Agreement:

- Fair system
- Rates of payment “within range”
- Not complicated
- Royalty or royalty / profit-share system
- Periodic review
THE “PAYMENT REGIME” TO DATE

2015
- Discussion Paper on Financial Terms
- Stakeholder submissions
- Singapore workshop
  - Transitional regime: encourage investment / growth
  - Fee + royalty
  - Review (+ 10 years)
  - Stability initial years
- Bellagio workshop

2016
- Payment Regime #1 (San Diego)
- [Issued Exploitation Regs incl. Part V Financial Terms]

2017
- This workshop – key
- Discuss financial model (brick wall!) to date
- ISA to take away / model ranges & scenarios
- Initial output to LTC August 2017??

HIGHLIGHTS
- PR #1
  - Comparative analysis of payment mechanisms v. stakeholder objectives & criteria
  - Compensation to CHM for resource: appropriate mechanisms / transitional approach (certainty in early years)
  - Challenges: valuation; transparency; untested regs.; untested economics; mineral price volatility; trade-offs
  - Fee + “light” then “normal” ad valorem royalty
  - Environmental incentives / policy approaches (link with R&L)
  - Administration & management
- PR #2
  - Cost components matrix: consistency in terms
  - Value chain understanding: phases, timelines, funding, mine life; content; metal extraction scenarios, impact of regs etc.
EXPLOITATION REGS – Part V Financial Terms

Stakeholder observations I

- Equitable sharing criteria?
- Informational requirements: need / further clarity
- ISA costs?
- Calculation, timing, quantum of Annual Fixed Fee
- Metals in royalty basket?
- Commencement of commercial production - parameters
Review of payment mechanism: certainty & stability balanced with a review need

Commercially viable mechanism, that is: -

(i) simple, clear and transparent

(ii) accounts for factors such as the volatility of metals and minerals prices; and

(iii) takes into account not only the revenue but also the upfront capital costs involved in the exploitation of resources.
THANK YOU

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ROYALTIES
ROYALTIES – VALUE BASED

Typical base / point of assessment

- Mineral content of the ore at mine mouth (for Area, say point of first offloading)
- Mineral content contained in first product sold
- Mineral recovered
- Gross sales revenue
- GSR less costs
- Net smelter return

Determining a sales value, order of priority

- International reference prices
- Actual sales values / revenues where sold to third party
- The arm’s length price, where ore is transferred to a related party

Key issues

- Simplicity of calculation / administration
- Auditability
- Valuation? International reference pricing: avoids transfer pricing complexities. But valuation basket?
- Valuation point: point of first offloading?
- One size may not fit all mineral resource categories
- Lack of progressivity compared to profit share mechanism
ROYALTIES

PR #1

- Variety of different mechanisms attempting to capture value
- Sliding-scale (price): e.g. Queensland, rate determined by international pricing
- Sliding scale (profit / margin): e.g. South Africa, formula with min / max royalty linked to EBIT
- Base royalty + royalty surtax e.g. Mongolia, lower on metal products