Columbia Center on Sustainable Investment
A JOINT CENTER OF COLUMBIA LAW SCHOOL AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues
No. 156 September 14, 2015
Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)
Managing Editor: Adrian P. Torres (adrian.p.torres@gmail.com)

The case for harmonizing the international regulation of mining

by
Robert Milbourne*

Mining and other natural resource companies are among the largest foreign direct investors in emerging markets. Together with governments and civil society, they are increasingly championing the sustainable development of natural resources. There is, of course, nothing sustainable about extracting a finite resource when it comes to extractive industry investments. Sustainability, therefore, is arguably about minimizing the negative impacts on communities and the environment while maximizing the social and economic development gains from an investment. From a private sector perspective, this is generally achieved by obtaining title to resource extraction in exchange for social and environmental commitments (in addition to royalties and tax revenues). But what commitments are appropriate? The varying standards of regulations and fiscal packages across countries, states and provinces produce arbitrage, with some countries seeking to attract investment when the free hand of the market would otherwise result in mineral development elsewhere. Though mining companies may benefit temporarily, they could lose out when managing complex regulatory requirements and compliance measures across multiple jurisdictions, or when a perceived unfair deal is subsequently forced to the renegotiation table. These inefficiencies highlight the need for international measures to harmonize the regulation of the mining industry.

With the globalization of the mining sector, national, state and provincial governments can no longer claim to be regulating a purely local industry. Rather, there is now a clear need for international coordination of standards and policies to ensure all stakeholders maximize the inherent opportunities presented by major resource developments. For example, if property developers had to grapple with different zoning rules in various parts of a city, they would move to places where consistency prevailed – to enhance profit margins, ease of doing business and ultimately the efficiency of scale that spurs further development.

The mining sector faces similar inefficiencies. Provinces and states across the United States, Canada and Australia currently regulate the mining sector under separate standards and expectations. If these developed economies struggle with consistency, how can major emerging resource rich countries – such as Mongolia and Myanmar – achieve this goal? While global consensus on politically sensitive issues like levels of royalties, state equity rights and local

content requirements may be unrealistic at this stage, there are common standards that could be replicated to achieve compliance and the maximization of effective regulatory outcomes. In turn, this should help mitigate environmental damage and harm to workers in the industry.

Lessons learned from one project should be shared with others around the world in a coordinated fashion. Standards of reporting, approvals and regulations governing exploration, project development, operations, and mine closure and rehabilitation can be made broadly consistent. Encouraging the sharing of best practices on administrative aspects can accelerate investment and enhance outcomes. Common themes – title issuance, relinquishment, conditions to mineral exploration and development, environmental mitigation and rehabilitation standards, occupational health and safety precautions – are capable of increased harmonization or standardization at minimal cost, and are likely to achieve significant return. Under the auspices of the International Bar Association's Mining Law Committee, a model agreement, based on international best practice principles, was developed to serve as a template for the contract negotiations between mining companies and host countries for the development of a mine.[1] However, there is nothing close to a model law for mineral development. The closest effort has been the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, which has proposed a mining policy framework.[2] In the past few years, countries such as Kenya, Mongolia, Myanmar, and Zambia have been reforming their mining codes, yet little alignment in reform has occurred.

Presently, the International Seabed Authority, the International Council on Mining and Metals (ICMM), the United Nations General Assembly, and the Extractive Industry Transparency Initiative may be the only truly global bodies regulating or providing standards for the sector, each from very different perspectives and with different agendas. In the age of arctic, deep sea and near-earth mining, in which mines have the potential to transform host country economies, the time is ripe for a movement toward more systematic standardization of mining regulations. This incudes reducing red tape and bureaucratic compliance, enhancing effective regulation of the sector to provide greater security to workers and the environment and greater assurances to resource developers that laws are consistent, effective and predictable. This harmonization can be achieved through various mechanisms: expansion and enhancement of the role of civil society and industry organizations like the ICMM; an agreement among a core group of countries to form a secretariat for the coordination of international mining and metals policies and investments; or by expanding the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development into a permanent center of expertise that would assist in the coordination of standards, regulations and procedures across jurisdictions.

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* Robert Milbourne (robert.milbourne@klgates.com) is Partner at K&L Gates LLP and Adjunct Professor at the University of Queensland School of Law. The author is grateful to Natty Davis, Herbert M'cleod and Sophie Thomashausen for their helpful peer reviews.

[1] International Bar Association, Model Mining Development Agreement Project, available at http://www.ibanet.org/Article/Detail.aspx?ArticleUid=41f1038e-dcbf-44fd-ad17-898b7aa04a1a.

[2] Other initiatives, such as the Natural Resource Charter, the World Bank's Mineral Assessment Framework, or the African Union's African Mining Vision, provide broad principles or precepts for improving the governance of the mining sector, but have not attempted to harmonize regulatory aspects of the legal and regulatory framework governing mining investments.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Maree Newson, mareenewson@gmail.com.

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