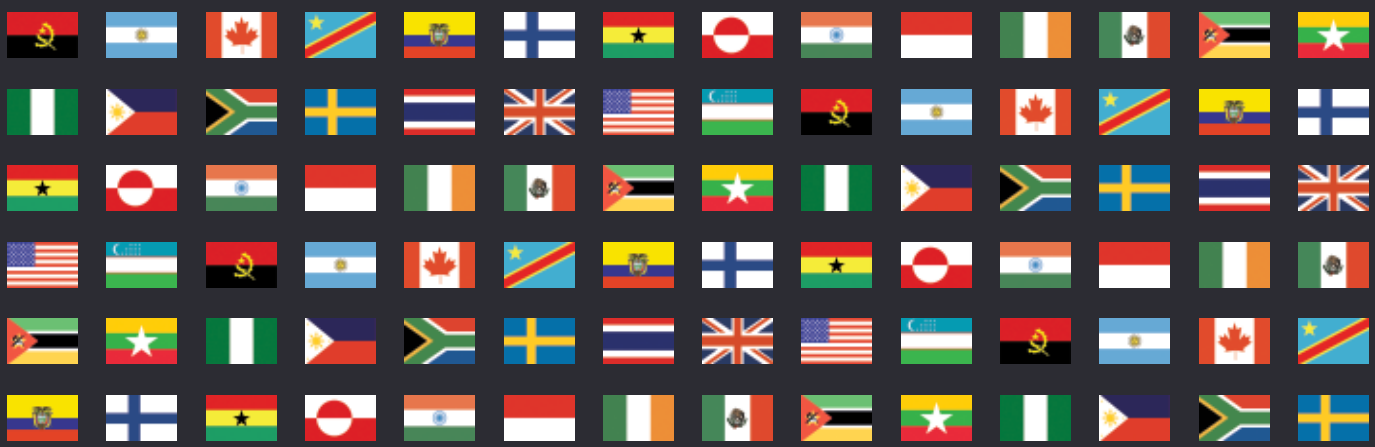
Mining 2021

Contributing editors
Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White
Cassels Brock & Blackwell LLP



LEXOLOGY
Getting The Deal Through

Cassels

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Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Ireland, Nigeria and Uzbekistan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.

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Cassels Brock & Blackwell LLP

MINING INDUSTRY

Standing

1 | What is the nature and importance of the mining industry in your country?

Mining is a main industry in Canada. In 2019, Statistics Canada reported the minerals sector directly and indirectly contributed C$109 billion (5 per cent) to Canada's GDP. The minerals sector accounted for approximately 719,000 jobs throughout Canada, with 392,000 jobs directly related to mining and processing and related activities.

Canada is home to numerous mining companies that explore for minerals in Canada and worldwide. In 2019, an approximate total of 1,300 Canadian mining companies had mining and exploration assets valued at C$263.2 billion. In addition, Canadian companies had mining and exploration assets worth C$177.8 billion located in 96 countries, including regions such as Africa, Australasia, Europe, South America and the United States.

The financial markets in Canada provide a large part of the funding for these companies, and the tax and securities laws provide significant incentives for investment in the mining industry in Canada. The stock exchanges facilitate the financing of junior and senior mining companies. Almost 50 per cent of the world's public mining companies are listed on the Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSX Venture). In the past five years, 37 per cent of all global mining equity capital was raised by companies listed on the TSX and TSX Venture. Canada has a large concentration of professionals in the technical, engineering, legal, accounting and management fields that sustain a robust mining industry.

Target minerals

2 | What are the target minerals?

Canada produces approximately 60 different minerals and metals at 200 active mines and 6,500 sand and gravel pits and stone quarries, positioning itself as a leading global producer. Canada ranks at the top in the global production of potash, and is a major producer of aluminium, cobalt, diamonds, copper, zinc, molybdenum, gold, nickel, platinum group metals, salt, titanium concentrates and uranium. Key exports include aluminium, coal, copper, diamonds, gold, uranium, nickel, potash, zinc, iron ore and steel.

Canada has increased interest and production in minerals used in battery technology and renewable energy including cobalt, lithium and nickel.

Regions

3 | Which regions are most active?

While all provinces and territories produce minerals to varying degrees, British Columbia, Ontario, Quebec and Saskatchewan are the largest producers. For additional information, including statistics on indigenous participation in the minerals and metals sector, see the Natural Resources Canada - Minerals and Metals Facts website (https://www.nrcan.gc.ca/mining-materials/facts/20507) and the Minerals and the economy section (https://www.nrcan.gc.ca/mining-materials/facts/minerals-economy/20529#indigenous).

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

4 | Is the legal system civil or common law-based?

Canada's legal system is a combination of common law and civil law. The common law applies in all provinces and territories of Canada, except for Québec, which is the only province with a civil code.

Regulation

5 | How is the mining industry regulated?

Canada is a federalist state: legislative authority with respect to mining is constitutionally allocated between the Federal Parliament and the country's 10 provincial Legislatures.

The provincial Legislatures principally regulate the exploration and extraction of minerals in the province through the ownership, administration and control of public lands and minerals, and legislative jurisdiction over natural resources. Any mining project is also subject to applicable federal laws (including with respect to the environment, fisheries, imports and exports and Indigenous peoples). The provincial mining regimes are generally consistent across all ten provinces.

Canada's Federal Parliament has the power to make laws in relation to minerals and mining on federal lands and in relation to mineral exports and imports, nuclear energy and minerals used to generate nuclear energy, inter-provincial transportation of dangerous goods, the use of explosives, navigable waters and, perhaps most importantly, the protection and conservation of the environment as it impacts federal jurisdiction, including migratory birds, species at risk and fisheries resources and their habitat.

Canada's three territories (Yukon, Northwest Territories and Nunavut) are under federal jurisdiction and are governed by territorial governments created by federal statute. In the Yukon and Northwest Territories, mineral rights are administered and controlled by the respective territorial government through statutory devolution. In Nunavut, mineral rights continue to be administered and controlled by the federal government. An agreement in principle was reached in 2019

with respect to the statutory devolution from the federal government to the Nunavut territorial government of administration and control of public lands and resources; however, full devolution will take a couple more years.

6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

Legislation regulating mining activities at the federal and provincial level fall into two main categories: (1) private matters of title and taxation; and (2) economic, social and environmental policies. With regard to the second category, commonly significant decision-making powers are delegated to subordinate bodies or officers to deal with the complexity of the various matters.

Each province and territory has its own laws regulating mining activity, and over the years has amended its relevant legislation to take into account prevailing attitudes related to environmental protection, sustainable development and consultation with local communities. In particular, legislation has been amended to reflect consultation with Indigenous communities – including First Nations, Inuit and Metis peoples. Federal and provincial or territorial laws and regulations related to environmental protection, labour and employment relationships, occupational health and safety matters, etc, also apply to mining activities.

Classification system

7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

Canada adheres to the Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Standards, which were adopted in 2005 to establish definitions and guidelines for the reporting of exploration information, mineral resources and mineral reserves in Canada. The CIM Standards are incorporated by reference into the Canadian Securities Administrators' National Instrument 43-101 (NI 43-101), which provides the standards for all technical public disclosure for mineral projects.

CIM is a member of the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) and CIM Standards are consistent with other members: Australia (JORC); Chile (National Committee); South Africa (SAM REC); the United Kingdom (National Committee); the United States; and western Europe.

Canadian companies dual listed in the United States must also comply with property disclosure regulations provided by S-K 1300 relating to mineral disclosure. The new system, which came into effect on 1 January 2021, is substantially similar to those of other CRIRSCO-based codes but provide for subtle differences in terminology and, in certain circulates, substantive requirements that differ from NI 43-101.

MINING RIGHTS AND TITLE

State control over mining rights

8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The Crown is the largest holder of minerals in Canada, both as fee simple owner of Crown lands and due to mineral reservations from historic Crown grants. Crown title to all Crown lands is however subject to Aboriginal treaty rights, claims for Aboriginal title or traditional use rights, and the provisions of any applicable modern treaty (land claim) agreement. Each Canadian province and territory has its own system of mineral tenure and legislation pertaining thereto and its own procedures whereby mineral interests may be granted by the Crown and acquired by private legal persons. The Constitution vests ownership of Crown minerals in a province to the provincial Crown and the regulation of mineral tenure, exploration, development, mine operation and environmental remediation in the provinces is predominantly a matter of provincial jurisdiction.

Mineral rights in Canada are a property right with three distinct associated rights.

The right of entry on Crown or private lands containing Crown minerals

The right of holders to enter upon, use, occupy and let down such part or parts of the surface rights of the claim as necessary for prospecting and efficient exploration, development and operation of the mines, minerals and mining rights therein. In all jurisdictions, compensation will be owed to existing surface rights owners.

Priority over other miners

A recorded mineral claim gives priority over other miners, so long as the claim remains in good standing. Disputes with respect to the recording, registration or priority of claims may be appealed to a quasi-judicial officer or board.

The right to a lease and to enter into production

The holder has the exclusive right, to apply for a mining lease over the area of the claim. A mining lease grants the right to enter into production and, upon production, to take title to the minerals and to process and dispose of them for valuable consideration.

Publicly available information and data

9 What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

Information and data publicly available regarding exploration and other mining activities in Canada are available through:

- provincial and territorial mining recorders' offices - provides services related to staking, ownership and mining claim maintenance, including receiving 'assessment work' reports and filings of exploration activities;
- provincial geological surveys - gathers geological information and may conduct broad ground or aerial surveys and publish maps, reports and digital data on geology and other technical information;
- provincial and territorial land title and registry offices – provides information about the title of leasehold and freehold property (including minerals), such information is accessible online for a fee;
- Natural Resources Canada - publishes commodity reviews (www.nrcan.gc.ca/mining-materials/publications/18733) and maintains a detailed listing of Canada's operating mines and mineral processing facilities (www.nrcan.gc.ca/mining-materials); and
- System for Electronic Document Analysis and Retrieval (SEDAR) - mandatory document filing and retrieval system for Canadian public companies (https://www.sedar.com/).

Acquisition of rights by private parties

10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

Most mineral rights are granted by statute by the government of jurisdiction. The provinces of British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Québec and Saskatchewan, along with the three territories, have adopted some form of modified free-entry system, which allows individuals and corporations to obtain mineral rights by recording or registering (in the case of Ontario) mining claims on their own initiative on public mineral lands deemed open for recording. The free-entry system relates only to the limited acquisition of mining rights or temporary limited tenure by mining claim. The acquired rights do not include the right to commercial production. If a mining claim holder wishes to develop a mineral deposit on the land subject to the claim, they must usually apply for and obtain a Crown mining lease.

Alberta, Nova Scotia and Prince Edward Island have adopted the Crown discretion mining system, under which the provincial government, as owner of the mineral resources, has the discretion to decide whether and on what terms a person may prospect for minerals usually in the form of a licence or permit. If a permit-holder wishes to develop a mineral deposit, it must usually apply for and obtain a Crown mining lease.

Finally, applications to record a mining claim must be filed within a specified time with the applicable ministry or agency. The recording is designed to give public notice of the area held by the recorder or claimant. The holder of a mining claim or licence or permit generally has the right to conduct exploration work and to transfer or sell an interest in that claim freely without Crown consent (but not a Crown mining lease, where Crown consent is required to sell or transfer a Crown mining lease).

Renewal and transfer of mineral licences

11 What is the regime for the renewal and transfer of mineral licences?

Most provinces provide for the transfer of mining claims through filing a simple transfer form and paying a fee to the government. Once filed, the transfer and new owner is noted on the abstract or register for the mining claim. For lease transfers, there may be a requirement for government consent from the particular mining department (eg, in Ontario, section 81(14) of the Mining Act restricts transfer of a lease until the consent of the Minister of Energy, Northern Development and Mines is obtained).

Duration of mining rights

12 What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

Security of tenure of a mineral claim is generally maintained through satisfying prescribed assessment work requirements or payment in lieu thereof. The term of a mineral claim will vary across provinces ranging from one to 10 years (including extensions). Mining leases are granted for terms ranging from 10 to 30 years.

Mineral title may be unilaterally terminated by the Crown due to failure by the holder to comply with the applicable legislation or the conditions of the mining interest itself. For example, a mineral claim may be terminated if prescribed work has not been performed, or if reports have not been filed within the prescribed time. Termination, however, is not automatic.

While the federal and provincial Crown have the discretionary power to designate lands as withdrawn or not open for mining activity, and to withdraw land for the creation of parks, existing mineral claims or mining leases have typically not been subject to withdrawals unless compensation has been paid.

In Canada there is no requirement to relinquish a portion of the mineral rights back to the government after a certain number of years.

Acquisition by domestic parties versus acquisition by foreign parties

13 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

In Canada, there is no defined distinction between the acquisition of mining rights by domestic and foreign parties. However, registration requirements of general application under applicable mining legislation still apply and foreign parties may be required to have an address for service within the province where they are operating.

Protection of mining rights

14 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Mining rights are protected by independent administrative tribunals. Appeals against these tribunals' decisions lie with the Canadian courts. The exercise of governmental discretion over mining rights and disputes is subject to the rules of Canadian administrative law and due process.

The provinces have broad jurisdiction over most international arbitrations and have passed legislation governing the conduct and enforcement of international arbitral proceedings. Canada's federal Commercial Arbitration Act applies to arbitrations involving the federal Crown. In 1986, Canada adopted the UNCITRAL Model Law on International Commercial Arbitration and signed the United Nations (UN) Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Canada ratified the International Convention on the Settlement of Investment Disputes into force on 1 December 2013.

Surface rights

15 What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

In most parts of Canada, the Crown lands available through the claim-staking and leasing process consist only of the mining rights because the surface rights are owned privately by another party or retained by the Crown. The owner of the mining rights is nevertheless entitled to conduct exploration and even mining activities on the leasehold interest, subject to compensation (and in some cases, advance notice) to the surface rights owner. Disputes arising in these situations can be settled through special tribunals (eg, the Mining and Lands Tribunal in Ontario) or through the courts. A mining rights holder is best advised to negotiate the acquisition of the surface rights.

Participation of government and state agencies

16 Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

In Canada, governments do not participate in mining projects, and their role is limited to regulation. In Quebec however, certain government entities invest and sometimes retain ownership interests in such projects and, indeed, have even sometimes acted as proponents of such projects (eg, Ressources Quebec, a wholly owned subsidiary of Investissement Quebec).

Government expropriation of licences

17 Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

There are general statutes dealing with expropriation in Canada for public purposes, which provide for market value-based compensation. Mining tenure cannot be expropriated or cancelled unilaterally by governments. Instances of expropriation might include land needed for transportation corridors (road and rail), transmission lines and national or provincial parks.

Protected areas

18 Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

Cultivated lands, park lands, railway lands, public roadways, environmentally sensitive lands (eg, conservation areas and bird sanctuaries), heritage lands, airport lands, town sites and other such developed areas are typically not open for mining activity, nor are lands in which a claim, mining exploration licence, mining concession or mining lease has already been granted.

Responsibility for environmental protection, including setting aside areas as parks and other forms of protection from development, is shared by the federal and provincial or territorial governments. Local governments can also protect certain areas from development by creating parks or specifically protected areas, or by limiting development through the enactment of by-laws and official community plans. Development is restricted according to the level of protection assigned to a protected area.

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

19 What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Corporations carrying on mining activities in Canada are subject to the general income tax rules applicable to all corporations. Federal income tax is levied under the Income Tax Act (Canada); the provinces and territories also have their own income tax statutes. A number of unique tax measures and rules also apply specifically to Canada's mining industry.

As a general matter, royalties and mining taxes are imposed separately from income taxes by the province or territory in which the minerals are mined. The rates and basis of royalties' calculation and mining taxes vary depending upon the type of mineral and the jurisdiction. In some jurisdictions, many minerals are not subject to provincial mining taxes or royalties. In other jurisdictions, the mining tax is levied on the basis of a progressive-rate system based on the mining profits or value of output, depending upon the particular jurisdiction. When the tax is computed by reference to mining profits, the rules for computing mining profits generally differ significantly from those applicable for income tax purposes. In many cases, an attempt is made to roughly calculate the mining profits at the pithead by permitting a processing allowance.

Tax advantages and incentives

20 What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

As is the case in other sectors, a corporation engaged in exploration and mining activities is entitled to deduct expenses incurred for the purpose of earning income. In addition, a corporation is entitled to deduct certain capital expenditures, including tax depreciation on tangible capital assets (capital cost allowance (CCA)). Recognising the capital-intensive nature of the mining industry, and to ensure the international competitiveness of the Canadian resource industry, the tax regimes applicable to exploration and mining contain a number of incentives designed to encourage investment, including the following:

- Mining taxes and royalties paid to a province or territory with respect to income from a mineral resource are fully deductible when computing income for federal income tax purposes.
- The depreciation of tangible assets for income tax purposes is allowed under the CCA system, under which the capital cost of a depreciable asset is included in a particular asset class, for which a maximum annual depreciation rate is prescribed. In addition, in 2018 the federal government introduced an 'Accelerated Investment Incentive', which provides for an enhanced first-year CCA deduction for certain properties that become available for use before 2028. A phase-out will begin for assets that become available for use after 2023.
- Certain other resource or mining expenses may also be deducted on a current or declining-balance basis. These expenses are added to cumulative resource pools classified as Canadian exploration expenses (CEE) and Canadian development expenses (CDE):
  - CEE include expenses that are incurred by the taxpayer for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada. Generally, CEE may be deducted at a rate of 100 per cent, up to the taxpayer's income for the year. Any unclaimed CEE may be carried forward indefinitely; and
  - CDE include expenses that are not CEE and are incurred for the purpose of bringing a new mine in Canada into production (ie, pre-production mine development expenses). CDE may be deducted at a rate of 30 per cent on a declining-balance basis. Unclaimed CDE may be carried forward indefinitely.
- Certain corporations carrying out exploration and mining activities in Canada can issue flow-through shares, pursuant to which the tax deductions attributable to certain expenditures incurred (such as CDE and CEE) are renounced by the corporation to the flow-through shareholders such that the shareholders (and not the corporation) may deduct the renounced expenditures in computing their income. As a result of the covid-19 pandemic, the federal government introduced legislative proposals to extend the time period in which a flow-through share issuer is required to incur expenditures such as CDE and CEE. An additional 15 per cent federal Mineral Exploration Tax Credit may be available with respect to certain flow-through mining expenditures (with many provinces offering parallel credits). In the 2018 federal budget, the federal government extended this credit until 2024. In British

Columbia, the parallel provincial 20 per cent Mining Exploration Tax Credit (enhanced to 30 per cent in prescribed Mountain Pine Beatle affected areas) was made permanent in 2019. As part of its covid-19 support methods, British Columbia has also proposed to extend the eligibility period for a flow-through share issuer to incur expenditures in alignment with the temporary federal timelines.

- Contributions made to a qualifying environmental trust used to fund future reclamation are deductible in the year in which they are made (as opposed to reclamation expenses, which are generally recognised for income tax purposes at the time the reclamation is carried out).
- Provincial governments also provide certain tax incentives for exploration and mining activities that are carried out in the province. These incentives take the form of income tax credits, or relief with respect to provincial mining taxes. For example, the Province of Ontario provides an exemption from mining taxes on up to the first C$10 million of profit for a new mine or the expansion of an existing mine.

Tax stabilisation

21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

Canada does not legislate for tax stabilisation; no tax stabilisation agreements are in force.

Carried interest

22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

No, the federal and provincial governments do not get involved by holding any interests in mining projects.

Transfer taxes and capital gains

23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

A mining project may be disposed of by way of a sale of the mining assets or of the relevant entity in which the mining project is held. The disposition of capital property in Canada generally results in a capital gain (or loss), with one-half of any capital gain being included in income. The disposition of mining assets may result in income (in the case of resource property), recapture (in the case of depreciable property) and capital gains on capital property. Non-residents are subject to tax in Canada on the disposition of 'taxable Canadian property', which includes real property and resource property situated in Canada, property used by the taxpayer in certain businesses carried on in Canada, and certain shares and partnership or trust interests that derive their value from real property or resource properties situated in Canada. Most provinces impose land transfer taxes on transfers of real property. The rates of land transfer tax vary by province, and transfers of resource properties are often exempt from land transfer tax.

Distinction between domestic parties and foreign parties

24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

Canadian residents are subject to tax on their worldwide income. A non-resident of Canada is subject to Canadian income tax on income from employment exercised in Canada, income from carrying on business in Canada and gains arising from the disposition of 'taxable Canadian property', which includes any interest in resource properties in Canada. A non-resident corporation that carries on business in Canada is also liable to pay branch taxes equal to 25 per cent of its profits, to the extent such profits are not reinvested in the Canadian business.

Certain types of property income paid to a non-resident by a Canadian resident (including rents and royalties) are subject to a 25 per cent non-resident withholding tax. Canadian income taxes payable by a non-resident of Canada may be reduced or be eligible for exemptions under an applicable tax treaty. In some provinces, there is potential for non-residents to be subject to land transfer taxes and equivalent duties on the acquisition of mining properties in Canada at tax rates that are higher than those imposed on Canadian residents.

BUSINESS STRUCTURES

Principal business structures

25 | What are the principal business structures used by private parties carrying on mining activities?

Canada's open economy allows for a wide range of business structures and forms, including: corporations, partnerships, limited partnerships, joint ventures and trusts. Corporations are popular with offshore investors because they are relatively simple to establish, can grow with the business, and offer flexibility in terms of business and tax planning. Offshore investors typically prefer to carry on business in Canada through a Canadian subsidiary because of concerns about limited liability, privacy, creditor protection and a local preference for dealing with a Canadian company. Financing options from Canadian lenders tend to be more favourable for locally incorporated subsidiaries compared with branch offices of foreign business entities. Joint ventures are also popular in most Canadian jurisdictions with early stage projects, as expenses can be flowed up directly to each joint venture participant and mineral tenures can be held beneficially by multiple parties as tenants in common or each joint venture participant can hold their pro rata interest in the mineral tenure directly.

Local entity requirement

26 | Is there a requirement that a local entity be a party to the transaction?

There is no such requirement, although for tax planning or other reasons, a foreign entity may choose to conduct Canadian activities through a local entity.

Bilateral investment and tax treaties

27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Canada has developed an extensive network of bilateral and multilateral free-trade and investment protection treaties, together with a network of double taxation alleviation agreements to promote and encourage foreign investment in the Canadian mining sector. Canada is one of the founder members of the World Trade Organization and is a signatory to numerous bilateral and multilateral free-trade agreements (FTAs), many of which contain both trade and investment protection provisions. Importantly, several of these agreements, provide foreign investors, including Canadian mining companies, the right to file a claim for damages against the government of the host country for expropriation or unfair or discriminatory treatment of their investments and investors. To date, Canadian investors in the mining, oil and gas industries have been complainants in approximately 70 per cent of Canadian investor-state cases, the majority of which targeted Latin America.

While Canada's FTA template calls for the inclusion of investor protection provisions in all such agreements, Canada has also concluded stand-alone foreign investment and protection agreements (FIPAs) with more than 40 countries, more than two-thirds of which are in force. In 2014, the Canada-China FIPA entered into force. Canada is currently negotiating FIPAs with 11 additional countries including India, Indonesia and Vietnam. Canada has approximately 90 bilateral taxation treaties with other countries, eight treaties that are under negotiation or re-negotiation and 11 treaties signed, but not yet in force. Such treaties are generally based on the Organisation for Economic Co-operation and Development (OECD) model for tax convention and alleviate double taxation of companies doing business in both jurisdictions. Among treaties of interest for foreign investors in the Canadian mining sector are the Canada-Barbados Double Taxation Agreement, signed in 1980 and the Canada-Cyprus Double Taxation Agreement, signed in 1984.

The Canadian mining sector is also subject to Canadian economic sanctions legislation as well as foreign anti-corruption legislation, including the Extractive Sector Transparency Measures Act (ESTMA), which requires Canadian mining companies to implement mandatory reporting standards and report annually on payments to all levels of government, domestically and internationally.

FINANCING

Principal sources of financing

28 What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Mining activities in Canada that are at the exploration stage are typically financed by raising capital through equity markets, such as the issuance of common shares (either by private placement or a public offering), the sale of flow-through unit shares, or joint venture transactions. Joint venture transactions are often entered into between a junior company and a more senior company, where the junior company grants the senior company an option to earn a majority interest in the junior company's project in exchange for incurring expenditures on the property or cash payments. This allows the senior company to fund the initial stages of the project before the two parties form a joint venture.

During the development or extraction stage of mining projects, debt financing is more common. This includes bonds, convertible debt offerings, credit facilities or syndicated loans from chartered banks. Once production of a mining project has been confirmed, the assets of the project can be offered as security for debt financing arrangements.

Recently, less traditional financing methods have become more popular to finance mining activities during all stages of a project. For example, royalties are often used in mining finance where the royalty holder is entitled to a certain percentage of the net profits received from sale of the mining product. Metal stream financings have also become more common, particularly during the early stages of mining activities. These financings involve a company agreeing to pre-sell a certain percentage of one or more metals or minerals produced from a mine to streaming company at a price fixed to lower than the market rate, with the streaming company paying a cash payment upfront and applied to mine development.

Direct financing from government or major pension funds

29 Does the government, its agencies or major pension funds provide direct financing to mining projects?

Many large pension funds in Canada have invested in Canadian mining projects. Additionally, Canadian governments will at times provide funding with respect to transportation and other infrastructure in regions where mining projects are located.

Security regime

30 Please describe the regime for taking security over mining interests.

Provinces and territories regulate the title regimes that provide for taking security over mining interests, and security must be registered in accordance with the applicable provincial statute. The nature of a mineral interest (as a chattel or an interest in real property) and the method of registration vary by province/territory. Most provincial/territorial mineral statutes and registries allow registrations to be filed on mineral interests to provide notice for the security that has been granted over claims. Some of these registration systems are merely a notice system and do not provide a priority regime. While third parties can see whether there is a security interest or other encumbrance over a mineral claim through the notice system, priority of such security interests and encumbrances are governed by common law. Other provinces have established a priority regime, and encumbrance priority is governed by the date of registration. It is important to determine which regime applies to a particular interest.

The types of security available for mining assets will depend on the location of the project and its stage of development. In a project's early stages, mineral claims can be granted under statute. Crown minerals must be registered in accordance with the applicable mining statute, as land title statutes and personal property security statutes do not normally apply to such Crown minerals. Privately held mineral interests may be titled under the applicable land titles system. The type of security granted will depend on the statute that granted the interest, as well as the registry related to the statute. As a mining project advances, tenure for mineral claims can be upgraded to a more secure form of tenure and related security, often a mining lease or similar tenure and related leasehold mortgage. Most Canadian provinces consider mining leases to be an interest in land, which means that security can be filed on title. This not only provides for a more secure form of security but can also provide for priority and enforcement rights. Government consent may be required to grant security in a government issued mining lease. Once a project is at the construction stage, security is more commonly given in the form of direct mortgages or charges on the infrastructure as well as the mineral interests and related guarantees and general security agreements.

RESTRICTIONS

Importation restrictions

31 What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions imposed on the importation of industrial machinery or equipment into Canada. In general, goods can be imported to Canada from most countries so long as certain requirements are met, such as payment of customs duties and taxes. Both residents and non-residents who wish to import goods into Canada must register with and obtain an importer number from the Canada Border Services Agency. However, there are licensing controls in place with respect to US imports of certain equipment and technologies used for drilling and processing.

Standard conditions and agreements

32 Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

Equipment suppliers in Canada typically have their own forms of equipment-supply agreements that they will propose to purchasers. Purchasers can then negotiate the terms of these agreements with the equipment suppliers. Any disputes arising from equipment-supply agreements are usually resolved by arbitration.

Mineral restrictions

33 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Most provinces do not require the processing of extracted minerals to occur within the jurisdiction of extraction. However, pursuant to section 91 of Ontario's Mining Act, in Ontario the treatment and refinement of ores and minerals must be completed within Canada unless an exemption is obtained and Newfoundland and Labrador require in jurisdiction processing, unless exempted. Other jurisdictions allow governments to, at their discretion, make orders specifying that the processing of extracted minerals must occur within the extracting jurisdiction. In addition, some provinces will try to negotiate local processing requirements as part of the approval process.

Canada has sanction and export control measures in place that restrict, and in some cases prohibit, the sale or transfer of certain minerals and mining equipment goods, technology and services to certain countries and designated entities. Syria, Iran, and the Russian Federation are among the countries subject to such restrictions.

Import of funds restrictions

34 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

There are no restrictions imposed in Canada on the import or export of funds, and Canada does not have any domestic use or export performance requirements.

ENVIRONMENT

Principal applicable environmental laws

35 What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The mining industry in Canada is subject to both federal and provincial environmental laws. Municipalities have also become more involved in environmental regulation, and as such, municipal by-laws or permitting requirements within a municipal jurisdiction may also need to be considered prior to commencing a mining project.

The federal government has jurisdiction over environmental matters of an international or interprovincial concern, as well as fisheries, navigable waters, and any dealings with federal lands, which includes First Nation reserves and national parks. Several federal entities regulate environmental aspects of the mining industry, including (1) Fisheries and Oceans Canada, (2) Crown-Indigenous Relations and Northern Affairs Canada, (3) Environment and Climate Change Canada, (4) Natural Resources Canada and (5) Transport Canada. Certain mining projects may be subject to a federal environmental impact assessment under the Impact Assessment Act (2019) (IAA) which came into force in on June 21, 2019 and replaced the Canadian Environmental Assessment Act. The IAA is primarily administered by the new Canadian regulator, the Impact Assessment Agency of Canada, which replaced the Canadian Environmental Assessment Agency at the time of the coming into force of the IAA. Depending on the nature of the project, the Canadian Energy Regulator (which replaced the National Energy Board) and Canadian Nuclear Safety Commission may also be in charge of the assessment.

The provinces and territories, with the exception of Nunavut, are generally responsible for environmental matters within their own boundaries. Each province and territory has adopted laws and by-laws regulating, among other things, the extraction and transformation of natural resources, the discharge of mine effluent, atmospheric emissions, waste management, and other environmental impacts. Provinces and territories have also adopted requirements relating to mine closure and reclamation, which are administered by provincial or territorial ministries. Most provinces and territories require an environmental impact assessment to be completed prior to commencing operations. Whether a provincial or federal environmental impact assessment will be required depends on the size and type of project, what kind of approvals are required, and the significance of the potential environmental and socio-economic impacts of the project. Following the environmental assessment, regulators may impose conditions or restrictions on projects to mitigate its environmental impacts.

Mining activities are also subject to land use plans that apply to the area. Recently, the Ontario government issued a moratorium on new mines located in designated areas of the Far North of Ontario, which created an additional regulatory requirement of community-based land use plans. The community-based land use plans apply in at least 50 per cent of the Far North's boreal forest area and will be developed by First Nations and neighbouring communities working alongside the Ministry of Natural Resources. Opening new mines, as well as certain mining activities, require a community-based land use plan in place prior to commencing activities.

Environmental review and permitting process

36 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

In Canada, environmental review and permitting processes for mining projects come from federal, provincial and territorial governments. The type and size of the project will determine the types of approvals required and whether the project is subject to an environmental assessment under federal or provincial laws. To avoid duplicate environmental assessment processes at both the federal and provincial level, the federal government has entered into cooperation agreements with eight provinces and territories (all except for New Brunswick, Nova Scotia, Prince Edward Island, Northwest Territories and Nunavut) in situations where one project is subject to both federal and provincial assessments. When a proposed project is subject to an environmental assessment in any jurisdiction, the project can not proceed until the assessment is complete and the project has been approved.

The federal environmental impact assessment process is provided under the IAA. The IAA came into force on 21 June 2019, replacing the previous Canadian Environmental Assessment Act. This new legislation includes a broader assessment of a projects impacts and has added several new factors to be assessed. A project will be subject to an assessment under the federal IAA if it is considered a 'designated project' under the IAA either by being identified as such in the Project List within the Physical Activities Regulations or by Ministerial designation. The Project List describes projects that have the most potential for adverse environmental affects in areas of federal jurisdiction. Major

projects within the mining sector can be found on the Project List, and as such, most major mining operations in Canada are subject to an impact assessment under the IAA.

If a project is subject to an assessment under the IAA, then the process consists of five stages: (1) a planning stage, where the public and indigenous peoples are able to provide information and participate in planning the assessment; (2) the proponent of the project must submit an impact statement to the Agency; (3) the impact assessment process, which considers the potential environmental, health, social and economic impacts of the proposed project, as well as potential impacts on indigenous rights, before preparing an impact assessment report; (4) a decision is made based off of the report and whether the project's impacts are in the public interest, and conditions are established for approved projects; and (5) the Agency will oversee compliance following the project's approval. The impact assessment may be conducted either by the Agency or a by review panel of independent experts appointed by the Minister. The timeframe for impact assessments by the Agency is up to 300 days, while the timeframe for assessments by a review panel is up to 600 days. Additionally, the timeframe for the planning stage is up to 180 days. Meaningful public and indigenous consultation and transparency are key components throughout the impact assessment process.

In addition to impact assessments, mining operations must obtain relevant environmental permits. Each province has developed its own environmental permitting regime, and often several different permits are required under different statutes and by different ministries. Examples of permits that may be required include the discharge of waste and waste management, air emissions, use of water, storage of mine tailings, and mine closure plans, among others. Mining operations may also require permits that are provided for in several federal statutes in addition to the IAA, such as the Fisheries Act, the Canadian Navigable Waters Act, or the Explosives Act.

Sustainability

37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

The Mining Association of Canada's Towards Sustainable Mining (TSM) Initiative supports mining companies in managing environmental and social risks through its globally recognised sustainability programme in responsible mining. The focus of TSM is on accountability, transparency, and credibility. TSM members commit to a set of guiding principles, and the TSM programme evaluates, independently validates, and publicly reports on eight critical aspects of its members social and environmental performance against 30 different performance indicators. These TSM progress reports are completed annually and are all publicly available. The eight TSM assessment protocols are (1) indigenous and community relationships, (2) safety and health, (3) crisis management and communications planning, (4) preventing child and forced labour, (5) biodiversity conversation management, (6) tailings management, (7) water stewardship and (8) energy use and greenhouse gas emissions management. TSM has allowed mining companies to transform their environmental and social commitments into action, while providing transparency and community outreach.

Closure and remediation process

38 | What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

The closure and remediation process for a mining project in Canada is subject to obligations imposed by provinces and territories. As a first step, a mine closure plan will need to be prepared and filed with the applicable province or territory. The mine closure plan should provide an estimate of closure costs as well as financial guarantee that these costs will be covered. The proper method to calculate closure costs and the acceptable forms of financial guarantee will depend on the province or territory.

Restrictions on building tailings or waste dams

39 | What are the restrictions for building tailings or waste dams?

Tailings and waste dams are primarily regulated under provincial and territorial legislation. Alberta, British Columbia, and Quebec have adopted regulations specifically focused on dam safety, whereas other provinces have regulated dams through water management regulations.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

40 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Mining activities are subject to health and safety laws specific to the mining industry, in addition to general health and safety laws. Provincial governments are primarily responsible for health and safety regulations, which are administered by worker's compensation commissions or boards specific to each province. These provincial commissions or boards also provide insurance to injured workers.

Both federal and provincial governments can enact labour and employment laws. Despite some variance between jurisdictions, most laws related to basic labour and employment matters are consistent across Canada. Employment laws regulate, among other things: labour (employer/union) relations, human rights, worker's compensation, health insurance, privacy, occupational health and safety and minimum employment standards.

Management and recycling of mining waste

41 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

The entity that originally mined the minerals typically retains the right to mining waste products. In some situations, the owner of the property where the mining waste is located may hold the rights to the mining waste product. Ultimately, rights to mining waste will depend on the contractual relationship between the parties as well as applicable legislation. Processing of any mining waste products are subject to approvals under provincial legislation. In some cases, approval from the Federal Transportation of Dangerous Goods Act is also required.

Use of domestic and foreign employees

42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The mining industry is subject to rules related to foreign employees, as well as business visitors. Foreign employees must apply for a work permit before working in Canada. Before a work permit is issued, the Ministry of Employment and Social Development Canada will conduct a labour market impact assessment as part of the federally governed Temporary Foreign Worker Program. The assessment is to ensure that Canadians are not being deprived of work opportunities as a result

of employing the foreign workers. There are some exemptions to this assessment, such as the NAFTA professionals' exemption and the intra-company transfer exemption. When a decision is being made concerning Quebec, then Quebec Immigration will be involved in the decision-making process.

With respect to business visitors, if business visitors are not from a visa-exempt country, then they must apply for a temporary resident visa, which can be done abroad at a Canadian embassy or consulate. If business visitors are from a visa-exempt country then they will only be required to request an Electronic Travel Authorization.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

43 What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Community engagement is a crucial component of both the approval process for a mining project as well as its ongoing operations. Engagement with Indigenous communities is often an essential requirement when regulators are approving projects. CSR requirements can be found throughout Canadian federal and provincial laws, particularly with respect environmental regulations as most mining projects will be subject to an environmental assessment. The types of impacts that are considered during an environmental assessment has recently been expanded under the IAA. Assessments under the IAA will consider whether the effects of the project are in the public interest. In order to determine whether projects are in the public interest, the assessment will consider (1) the project's purpose, (2) whether the project contributes to sustainability, (3) the project's impact on Indigenous peoples, (4) community knowledge of the project and (5) any other matter that is relevant to consider.

Rights of aboriginal, indigenous or disadvantaged peoples

44 How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

One significant aspect concerning Indigenous peoples and the exercise of mining rights in Canada is the duty to consult affected Indigenous peoples. Under section 35 of Canada's Constitution Act, 1982, the Crown has a duty to consult, and where appropriate, accommodate Indigenous peoples when taking actions that may have an impact on the rights of Indigenous peoples. The duty to consult is triggered when the Crown has knowledge of a potential existence of an Indigenous right or title and engages in conduct that could adversely affect the Indigenous right. The duty to consult is often triggered by the exercise of mining rights, since any exercise of mining rights normally involves a Crown licence or permit and a significant portion of Canada is subject to Indigenous rights or title, consequently the duty to consult will be engaged by the licensing or permitting process.

Although the duty to consult is imposed on the Crown, and not private parties, in practise it is often the parties proposing the mining project or activity that carry out much of the consultation process, especially since the Crown is able to delegate some or all of the consultation procedures to the party proposing the project. However, the project proponents must work closely with the Crown throughout this process. The consultation process should be meaningful and transparent and allow concerns of affected Indigenous peoples to be heard and considered. When appropriate, concerns may need to be addressed through accommodation of the Indigenous rights, which could involve remedial or mitigation measures in order to prevent or reduce impacts. Often a single Crown decision to approve a mining project will impact several different Indigenous groups with overlapping claims. In such a situation, it is crucial that all impacted Indigenous groups are identified and consulted. Failure to meaningfully consult with all affected Indigenous groups may cause project delays, as licences or permits may be challenged or delayed. Inadequate consultation may also attract community protests, issues with investor relations, and in some cases litigation.

In 2016, the federal government adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), committing to its full implementation. On 3 December 2020, Bill C-15 was introduced as a means to adopt UNDRIP commitments and provide a framework for its implementation. Once passed by Parliament, the new legislation will require the Canadian government, in consultation and cooperation with Indigenous Peoples, to: (1) take all measures necessary to ensure the laws of Canada are consistent with UNDRIP, (2) prepare and implement an action plan to achieve UNDRIP's objectives and (3) table an annual report on progress to align the laws of Canada and the action plan. Once Bill C-15 becomes law, there is potential that the new legislation will significantly impact the mining industry with respect to Indigenous rights.

International law

45 What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Canada recently created an independent Canadian Ombudsperson for Responsible Enterprise (CORE) to investigate, report on, and make recommendations on remedies for allegations of human rights abuses in connection with Canadian corporate activities abroad. On 8 April 2019, Sheri Meyerhoffer was appointed as Canada's first CORE and the Order in Council 2019-1323 established CORE's mandate. CORE also assists with resolving disputes that occur between Canadian companies and the communities that are impacted by Canadian companies' corporate activities. If there is evidence of criminal activity, then CORE may refer these matters to the applicable law enforcement authorities.

Additionally, Canada has adopted several international conventions related to corporate social responsibility, including the OECD Guidelines for Multinational Enterprises (1976), the UN Voluntary Principles on Security and Human Rights (2000), the UN Guiding Principles on Business and Human Rights (2011), and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011). These international conventions provide guidelines for assessing mining operations both in Canada and abroad with a view to enhancing companies corporate social responsibility.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

46 Describe any local legislation governing anti-bribery and corrupt practices.

The Corruption of Foreign Public Officials Act (CFPOA) prohibits bribes to foreign public officials made to obtain or retain an advantage in the course of business. This general offence under the CFPOA is broad and does not require bribery to be direct. The federal government adopted the CFPOA in order to implement its obligations under the UN Convention against Corruption and is Canada's main legislation governing anti-bribery and corrupt practises, other than the Quebec Anti-Corruption Act. The CFPOA applies when a transaction, or an attempted transaction, either is committed in whole or in part within Canada, or has a 'real and substantial' connection to Canada. Additionally, the CFPOA applies to all Canadians regardless of their location, as well as permanent residents who return to Canada after committing a CFPOA offence.

The Criminal Code governs domestic bribery and corruption and prohibits various forms of corruption such as bribery of several types of officials, breach of trust by a public officer, government fraud and corrupt practises with respect to accounting and record-keeping.

Offences under both the CFPOA and the Criminal Code are police matters investigated and enforced by the RCMP and are not subject to a separate regulatory body. Violations of CFPOA and the Criminal Code could result significant fines or up to 14 years of jail time. The Criminal Code also allows for deferred prosecution agreements for bribery offences if certain conditions have been met and the deferred prosecution agreement would be in the public interest.

Foreign legislation

47 Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

In addition to domestic laws, mining companies in Canada must be aware of certain foreign legislation governing anti-bribery and foreign corrupt practises. Notably, the US Foreign Corrupt Practises Act (FCPA) and the UK Bribery Act (UKBA) target corruption and bribery internationally. The FCPA prohibits bribes to foreign officials in order to further business deals and applies to foreign corporations and individuals while they are in the US, in addition to US corporations and citizens. The UKBA prohibits bribing, being bribed, including bribing a public foreign official, and failure to prevent bribery by persons associated with relevant commercial organisations. Similar to the FCPA, the UKBA applies to any corporation or associated person that carries on business or part of a business in the UK, regardless of the residence or place of incorporation of the person or corporation.

Disclosure of payments by resource companies

48 Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

Canada is a supporting country of the EITI. In 2015, the Canadian government adopted ESTMA, which plays a role similar to that of the EITI. Under the ESTMA, Canadian extractive issuers and certain privately held companies are required to publicly report on payments made to both Canadian and foreign governments, as well as any corporation that has been created for the purposes of performing government duties or functions, including indigenous governments and corporations created to perform the functions of indigenous governments. Payments must be reported within 150 days following the end of the reporting entities financial year if the payment totals at least C$100,000 in at least one of the following categories: (1) taxes, (2) royalties, (3) fees, (4) production entitlements, (5) bonuses, (6) dividends or (7) infrastructure improvement payments. Reports are made public on Natural Resources Canada's website.

Quebec has also adopted the Act respecting transparency measures in the mining, oil and gas industries that provides for similar reporting requirements.

FOREIGN INVESTMENT

Foreign ownership restrictions

49 Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

An investment in the Canadian mining industry may require approval under the Investment Canada Act (ICA). While the ICA does not set out foreign ownership restrictions specific to the mining industry, it requires review and approval of certain investments made in Canada by foreign nationals. For instance, review and approval from the federal government is required under the ICA in foreign acquisitions of control of Canadian businesses that are above certain monetary thresholds. The review is meant to assess whether the investment is considered a 'net benefit to Canada.' The applicable monetary threshold depends on whether a trade agreement exists between the foreign entity's country and Canada. The monetary thresholds are adjusted annually based on nominal GDP growth and have been lowered for 2021. At the time of writing the thresholds are: (1) C$1.565 billion in enterprise value for trade agreement investors; (2) C$1.043 billion in enterprise value for WTO investors; (3) C$415 million in asset value for WTO state-owned enterprises; and (4) C$5 million in asset value for a non-WTO investor in a direct transaction and C$50 million in asset value for an indirect investment. The federal government issued a Policy Statement on Foreign Investment Review and COVID-19 in April 2020. Under this policy statement, certain foreign investments will be reviewed with enhanced scrutiny under the ICA so long as the economy is impacted by the covid-19 pandemic.

In addition to the standard net benefit review, the Investment Canada Act contains a national security review regime that allows the government to review transactions that it believes may be injurious to national security. A national security review can be ordered in respect of any investment by a non-Canadian, regardless of whether the investment is otherwise subject to the Investment Canada Act. On 24 March 2021, the Government of Canada released updated *Guidelines on the National Security Review of Investments* which sets out a non-exhaustive list of criteria that the government will consider when assessing the potential national security risk raised by a proposed foreign investment. Of key relevance for foreign companies seeking to invest in the Canadian mining sector is that these guidelines now include the impact of an investment on critical minerals and their related supply chains as a factor that will be considered in assessing potential national security risk. The Canadian *Critical Minerals List* was issued in early-March 2021.

In addition to the potential application of the Investment Canada Act, Canada has foreign ownership restrictions with respect to uranium mining. Canada's Non-Resident Ownership Policy in the Uranium Mining Sector provides that any uranium-producing mining property must be at least 51 per cent Canadian resident owned. There are exemptions to this policy however, including when the mining project is *de facto* controlled by Canada or if a Canadian partner cannot be found.

Other than the restrictions described above, foreign entities are generally permitted to hold mineral rights or ownership in Canadian mining companies either directly or through Canadian subsidiaries.

INTERNATIONAL TREATIES

Applicable international treaties

50 What international treaties apply to the mining industry or an investment in the mining industry?

Canada has signed onto many foreign investment promotion and protection agreements, plurilateral agreements, and World Trade Organization Agreements. Included among such agreements are the Canada United States Mexico Agreement between Canada, the US, and Mexico (which

replaced the North American Free Trade Agreement, effective 1 July 2020); the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, a free trade agreement between Canada and 10 other countries in the Asia-Pacific; the Canadian-European Union Comprehensive Economic Trade Agreement; and the Canada-UK Trade Continuity Agreement. These agreements generally protect investments, including those in the mining industry, by requiring national treatment of foreign investments. Provisions restricting the repatriation of funds and prohibiting expropriation without compensation are also typically in place as a means to protect investments.

UPDATE AND TRENDS

Recent developments

51 What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

On 3 December 2020, Bill C-15 was introduced as a means to adopt Canada's commitment to UNDRIP and to provide a framework for UNDRIP's implementation. Once passed by Parliament, this legislation could impact how the mining industry engages with indigenous peoples. The new legislation would require the Canadian government, in consultation and cooperation with Indigenous Peoples, to: (1) take all measures necessary to ensure the laws of Canada are consistent with UNDRIP, (2) prepare and implement an action plan to achieve UNDRIP's objectives and (3) table an annual report on progress to align the laws of Canada and the action plan. British Columbia has already demonstrated its commitment to UNDRIP by enacting the Declaration of the Rights of Indigenous Peoples Act in November 2019.

Other potential changes coming to the Canadian mining industry include possible amendments to the federal flow-through share programme, extending the time period for incurring expenditures, electronic online staking in many provinces and territories and the possibility of new mining regulatory regimes for both the Northwest Territories and Nunavut.

Coronavirus

52 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Both the federal and provincial governments have taken steps to mitigate the impacts of covid-19 on the Canadian mining industry. Notably, the mining industry has been classified as an 'essential service' in several provinces, which allows mining exploration and operations to continue so long as health and safety measures are being complied with. Certain provinces have also extended deadlines for claim maintenance measures related to mineral claims.

The Mining Association of Canada (MAC) has established a COVID-19 working group to provide a forum for sharing best practises to protect employees and communities and any challenges or successes with respect to their implementation. MAC has also created several difference resources that outline current industry practises for managing the risk of covid-19 at mine sites and to assist companies in making informed decisions on covid-19 risk reduction measures. For instance, best practises in the workplace include (1) clear communication from management to employees, (2) frequent training sessions on new policies and procedures, including personal protection equipment and physical distancing and (3) screening, testing and quarantine measures. Mining companies are also advised to stay up to date with any international, national and regional public health guidelines regarding covid-19 measures.

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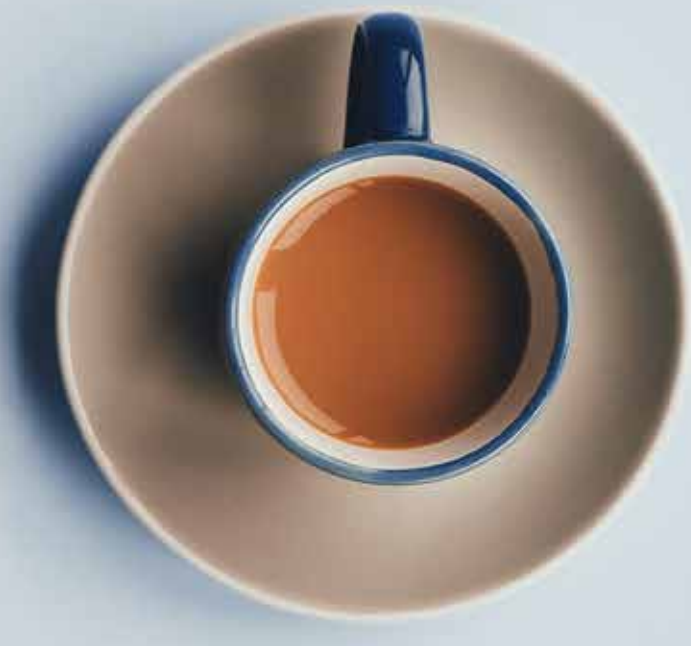

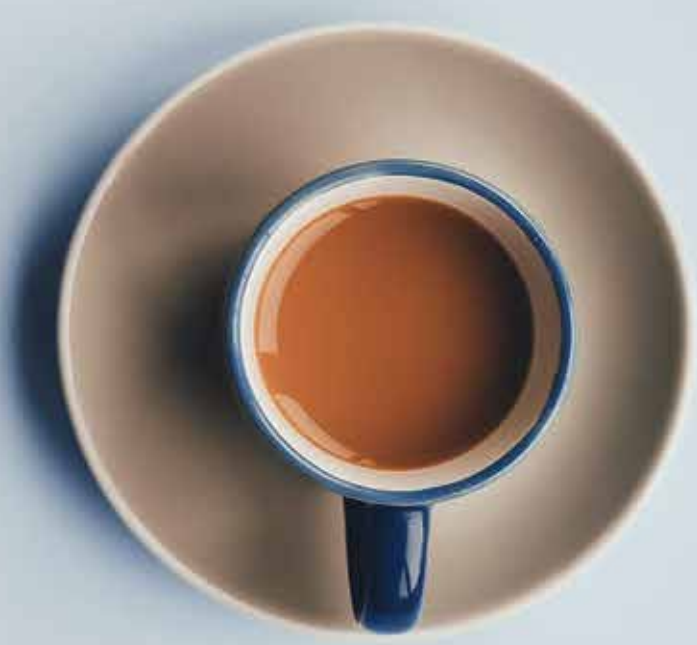

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