

Negotiation of Development Agreements

AAMIG Sundowner – Perth, Western Australia



L A W Y E R S

SYDNEY
MELBOURNE
PERTH

Michael Blakiston
Partner, Gilbert + Tobin
Non Executive Director, Sundance Resources Ltd

23 October 2014

Project characteristics

- + Downstream processing potential
- + Hazardous operation, process or product
- + Impact on local communities or environment
- + Infrastructure requirements
- + Labour requirement
- + Local participation
- + Potential contribution to GDP
- + Type of proposed mining operation



Country of operations

- + Culture
- + Economic drivers
- + History
- + Legal system
- + Political influences
- + Precedent
- + Religion
- + Role of Civil Society and other Non Government Organisations
- + Sophistication
- + Stability



Project Model

Intelligence gathering

Know your counterpart

Requirements to develop the Project

Transnational Mining Companies' Decision Factors* at the Exploration and Mining Investment Stage

Ranking		
<i>Exploration Stage</i>	<i>Mine Stage</i>	<i>Decision Criteria Based on:</i>
1	n/a	Geological potential for target mineral
n/a	3	Measure of profitability
2	1	Security of tenure
3	2	Ability to repatriate profits
4	9	Consistency and constancy of mineral policies
5	7	Company has management control
6	11	Mineral ownership
7	6	Realistic foreign exchange regulations
8	4	Stability of exploration/mining terms

Requirements to develop the Project

Transnational Mining Companies' Decision Factors* at the Exploration and Mining Investment Stage

Ranking		
<i>Exploration Stage</i>	<i>Mine Stage</i>	<i>Decision Criteria Based on:</i>
9	5	Ability to predetermine tax liability
10	8	Ability to predetermine environmental obligations
11	10	Stability of fiscal regime

*Out of a choice of 60 possible factors

n/a – not applicable

Source: derived from a survey of 39 transnational mining companies. J Otto, "A Global Survey of Mineral Company Investment Preferences" and "Criteria for Assessing Mineral Investment Conditions," *Mineral Investment Conditions in Selected Countries of the Asia-Pacific Region*, United Nations ST/ESCAP/1197, 1992, pp 6-34, 330-342

Structuring issues

- + Ability to monetise
- + Black Empowerment
- + Financeability
- + Government participation
- + Sovereign risk
- + Tax efficiency
- + Treaty access



Timeline

- + Documentation
- + Project development

Capacity

- + External capacity
 - financial
 - legal
 - technical
- + Internal capacity

Political support

- + Head of State
- + Level of general support
- + Project champion

Map issues ahead of any Engagement

- + Giveaways
- + Good to have
- + Must have

Mechanics of negotiation

- + Agenda/preparation
 - briefing papers
 - site visits
- + Cultural sensitivity
- + Financial support
- + Language
- + Lead negotiator
- + Local delivery and receipt
- + Local support
- + Location of negotiations
- + Maps and diagrams
- + Managing disagreement
- + Negotiating team
- + Record of proceedings
- + Regular communication
- + Regular engagement
- + Side meetings

Key drivers

- + Corporate Social Responsibility
- + Employment
- + Environment
- + Fiscal take
- + Level of general support
- + Local participation

Managing expectations

- + Board
- + Community/Civil Society
- + Government
- + Head of State
- + Investors

Domestic political / community buy-in

Transparency

Public announcements

- + approval
- + audience
- + competitors

Line in the sand

Excellent Resource – 50 pieces of advice to an official who is engaged in the negotiation of mining contracts. A Handbook by Fabien Nkot and published by International Mining for Development Centre.

Questions

GILBERT
TOBIN

LAWYERS

