



Simplifying Risk Management for Outbound Investment Opportunities in Africa

Seminar held 18 June 2025, Perth

KEY TAKEAWAYS FROM THE SEMINAR

We set out in this note the key points discussed by our panellists: [Jon Greenaway](#) (Control Risks, WA Market Director), [Susanna Taylor](#) (Litigation Capital Management, Head of Investments), and [Cameron Sim](#) (Partner, Peter & Kim).

Our panel explored the complex issues that may arise in outbound investments into Africa. These investments often entail substantial long-term capital investment, complex regulatory frameworks, social challenges, and sensitive political issues. Combined, these factors create the perfect storm when disputes are brewing. Our panel explored how to simplify risk management, and manage disputes when they arise, during the following investment phases.

PHASE ONE: PRE-INVESTMENT DILIGENCE, PLANNING, AND SET-UP

- Consider potential political, regulatory, social, security, and infrastructure risks.
- Engage, where appropriate, with local governments and communities.
- Safeguard investments by using a corporate structure which maximizes legal protection under investment treaties. These protections are critically important for offshore mining projects. Restructuring to take advantage of treaty protections should take place before a dispute with the host state of the investment is on the horizon.
- Include appropriate dispute resolution and governing law provisions in agreements with local partners to protect against local court litigation (such as agreements for international arbitration and reputable governing laws). Failure to negotiate these provisions is leaving money on the negotiating table.

PHASE TWO: POLITICAL CHANGES AND DISPUTES ARISING

- Watch quiet local changes (such as changes to regulatory or tax regimes) even more closely than the loud ones (such as political rhetoric). There has been a shift away from direct expropriation of investments to more subtle and insidious methods of harm and indirect expropriation.



- Continue ongoing engagement with central and regional governments.
- Adopt external and internal communication strategies to manage any disputes.
- Collect and preserve evidence for potential use in proceedings.
- Consider use of a trigger letter to notify the host state of potential investment treaty claims (where appropriate investment structuring has been implemented).
- Investigate the possibility of litigation funding for potential subsequent proceedings.

PHASE THREE: DISPUTE RESOLUTION PROCEEDINGS

- Careful planning and effective strategy in Phases One and Two will reduce the risk of litigation, ultimately saving time, money, and potential security risks.
- Where litigation is inevitable, consider whether parallel commercial and investment claims are desirable. Commercial claims may be pursued under agreements with local partners. Investment claims may be pursued under investment treaties. Coordination between parallel proceedings is vital.
- Where needed or desirable, seek litigation funding to support the pursuit of claims.
- Where a local partner commences local court proceedings in violation of an international arbitration agreement, consider scope for injunctive relief (including emergency relief) to restrain those proceedings.
- Consider security risks to local personnel, especially prior to the commencement of proceedings.

PHASE FOUR: AWARD AND ENFORCEMENT

- There are several recent examples of investors obtaining investment treaty awards in the mining sector. In some of these cases, the investor had litigation funding.
- Settlement often remains an attractive option during proceedings or following the tribunal's award. This remains a possibility even where the claim is funded (subject to the terms of the funder's agreement).
- Issues of sovereign immunity arise when enforcing an award against the assets of a state. Generally, only commercial (and not sovereign) assets may be targeted.



CONTACT US

Please do not hesitate to contact a member of our team should you have any questions.



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