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# ***Model Mining Development Agreement*** ***A work in progress***

**Saturday, April 24, 2010**  
**Civil Society Consultations**  
**Mount Pleasant Room**  
**Grand Hotel, Toronto, Canada**

## **Discussion Topic: Tenure Provisions**



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# Introduction

- Rights and Obligations of Company
- Rights and Obligations of Government
- Rights of Community (to be dealt with in last presentation today)
- Various terms used for property grant: permit, concession, license, lease



# Form of Tenure?

- Many jurisdictions provide for exploration (research) license, followed by exploitation (mining) license
- Are there examples of “unified” tenure – exploration and production – that can be used? e.g. where Company can go from one stage to another without exercise of Government discretion



# Exploration (Research) Permit

- Is it exclusive?
- Rights to surface?
- Specify minerals?
- Delineation of area: metes and bounds; GPS?
- Term
- If Ore Deposit extends beyond property limit: Rights to contiguous areas?



# Exploration (Research) Permit

- Can Rights be granted that are in addition to or inconsistent with Mining legislation?
- Compliance with environmental and other legislation; onus on Company to apply for various operational permits
- annual exploration or assessment work requirements; failure to comply will result in loss of rights
- Should Government be involved in approving exploration programmes?



# Exploration (Research) Permit

- Right to reduce size of license without penalty; should relinquishment of portions of license be mandatory?
- Extension or Renewal rights
- Obligations on Surrender of license
- Rectification or relief from forfeiture rights



# Grant of Mining License

- The grant of the Mining License should be exclusive to the Company
- What triggers the grant of the Mining License?
  - Automatic if compliance with assessment work and other requirements in the Exploration License?
  - Certification that a commercially viable ore body exists?





# Grant of Mining License cont'd

- What triggers the grant of the Mining License?
  - Submission of a Feasibility Study? Alternatives and concerns:
    - Government could avoid commercial risk and obtain guarantees to protect it against damages (failure to properly account for production, failure to reclaim after mining, etc.).
    - Company does not want Government in the position of assessing whether the feasibility study is sufficient to allow development to occur; Government may deny License and proceed on its own or grant to a third party; must be parameters setting out Government's discretion
    - Should be subject to international mining standards



# Grant of Mining License cont'd

- Should the FS include an Environmental Impact Assessment; Environmental Management Plan; Social Action Plan; Skills and Technology Development Plan?
- What about incidental rights?
  - Access to watercourses
  - Construction materials
  - Tailings areas



# John Williams Observation

Distinguish Tenure Rights from Operating Rights:

- Tenure: ensure that obligation to maintain tenure rights is limited, objective and straight-forward – if a Company complies it maintains the right to the property



# John Williams cont'd

## Operating Rights:

- Company may have to jump through more hoops -- more explanations, reviews, transparency – commercial viability of the deposit, feasibility studies, community obligations, etc.

(JW advised gov'ts – there is a tendency for them to want to regulate everything as a condition to the tenure rights – which doesn't offer any security to the Company)



# Land and Facilities

- Exclusive rights within the license area to minerals?
- Rights to surface?
  - What about private lands within license area?
  - Should Government play role in negotiations?
  - Relocation/compensation costs for occupants?



# Assignment Rights

- Assignment rights in Property? In shares of Operating Company? Is consent of Government required? Should capacity tests be applied to the transferee?
- What about Change of Control exceptions?



# Encumbrance Rights

- Should it extend to more than just the Property?
- Government may want the right to consent? Is that commercially reasonable?
- Government may want Lender to agree to terms in Agreement.



# Reclamation/Closure Obligations

- Should this be part of Tenure Obligations or part of separate Environmental Obligations?
- Governments may want ongoing reclamation obligations tied to renewal of licenses.





# Conclusions

- Our goal is to draft tenure provisions that are:
  - Comprehensive
  - Adaptable and user-friendly to Companies and Governments
  - Helpful in negotiations
- Each project, each jurisdiction will have different requirements and parameters





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