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The Model Mineral Development Agreement

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Community Issues

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Backward Linkages

- The mining project **as a purchaser of goods and services** can create income and employment opportunities, and foster development of local businesses.
- Experience teaches that **realizing the full potential of this opportunity requires conscious outreach** and a ‘business incubator’ function – training and support.
- “Buy local” requirements are fairly common, as is some kind of ‘support system’ – what is reasonable to expect in this regard?



Forward Linkages

- The mining project **as a seller of goods and services** can create income and employment opportunities, and allow local businesses to try to develop more of the value chain.
- Example: the provisions in the Mongolia contract about the mine making concentrates available if the government supports development of a smelter.
- What are the objectives in this area and what is reasonable?



SEIA

- Usually required under national law. Required by Equator Principles where they apply.
- If it is going to be effective, it needs to be done under some recognized system of standards.
- Is the answer a contractual provision requiring compliance with IFC Performance Standard 1, which can be deleted where not needed?



CDA

- A contract between national government and company is not enough. There needs to be something addressing the aspirations of the local community for development.
- See Regional Development Authority provisions in Mongolia contract.
- Is a 'three party contract' sometimes appropriate?
- Or a clause stating that "there shall be one or more Community Development Agreements addressing the following issues," and providing that breach of the CDA is a breach of the investment agreement?
- How do we get away from the company as a surrogate government?



Relocation and Resettlement

- There is probably no more difficult issue, nor any that is more clearly linked to conflict and project failure.
- In some situations, cash compensation is a recipe for failure.
- Limiting assistance to people with recognized land titles can also be a serious problem.
- Lack of recognized standard on how to do relocation and resettlement is a real problem for contract drafting.
- Is there an alternative to requiring compliance with IFC Performance Standard 5 as a contract term?



Labor and Working Conditions

- Lack of recognized standard on labor and working conditions is a real problem for contract drafting.
- Is there an alternative to requiring compliance with IFC Performance Standard 2 as a contract term?



SPECIAL CONCERNS OF INDIGENOUS AND TRIBAL PEOPLES

- A very difficult area to know how to approach in a contract.
- Provide for compliance with the standards in IFC Performance Standard 7?



BIOLOGICAL DIVERSITY

- A very difficult area to know how to approach in a contract.
- Provide for compliance with the standards in IFC Performance Standard 7?



MINE CLOSURE PLANNING

- What can usefully be said about this in an agreement”?
- Is one source of guidance the ICMM Toolkit on Integrated Mine Closure Planning?



GRIEVANCE MECHANISMS

- There is a new IFC requirement for the establishment of project level grievance mechanisms
- There are no established ways do deal with it.
- Widely recognized as desirable.
- What is anything do we say?



DISPUTE RESOLUTION MECHANISMS

- Company has international arbitration as a remedy.
- Government has administrative measures and its own court system as a forum.
- *What is the forum available to a local farmer whose chickens have been run over by a truck, if this is an area of weak governance and few functional institutions?*



THIRD PARTY RIGHTS

1. Do third parties ever have rights to enforce the investment agreement?

