

MMDA 1.0 COMMENT SUMMARIES

The statements below are generic summaries of hundreds of valuable MMDA comments made by individuals and organization from around the world. Where only one or very few comments were made on a given article, an article summary may not be posted below. Each comment, however, was taken into consideration and has contributed to revisions of the MMDA.

Thank you for your comments. For more information visit www.MMDAProject.org.

SUMMARY 1.0 Definitions and Interpretation

[Insufficient Comments Available for Summary]

SUMMARY 1.1 Definitions

Comments indicated that the MMDA needs to provide additional clarification on several terms, including “Days,” “Date of First Commercial Production,” “Stability Clause,” “Performance Standards,” “Local Communities,” “Production,” “Tenure,” “ICSID” (International Centre for Settlement of Investment Disputes), “Commercial Production,” and “Stability Period.” Suggestions often sought greater consistency with applicable law, as well as to increase the scope of the definition. Comments also identified a number of terms that were not included in the definition section, but were utilized in the MMDA, such as “child labor,” “forced labor,” “discrimination,” and “freedom of association,” and suggested defining these terms.

SUMMARY 1.2 Interpretation

[Insufficient Comments Available for Summary]

SUMMARY 1.3 Existing Rights

[Insufficient Comments Available for Summary]

TENURE

SUMMARY 2.0 Development of Mining Area

[Insufficient Comments Available for Summary]

SUMMARY 2.1 Term of this Agreement

Comments indicated that this article could be duplicative of provisions already prescribed by applicable mining law. A few comments noted that, while the MMDA must take care not to derogate from applicable law, it should help parties with the difficult task of filling in the gaps that mining law doesn’t typically cover.

SUMMARY 2.1.1 Grant of Mine Development Rights

Comments noted that this article would be strengthened by addition of language such as “subject to existing laws and regulations” and “under Applicable Law.” Comments also noted that this article should balance the developer’s rights with the Sovereign State’s right to protect and sustainably manage natural resources. Commentators noted that maintaining such a balance, particularly when local communities are involved in the process, will help Parties avoid political and legal issues.

SUMMARY 2.1.2 Grant of Access Rights

SUMMARY 2.2 Exclusivity

Comments noted that addition of such language as “subject to existing laws and regulations” and “under Applicable Law” would strengthen this article. Comments also noted that this article should take into consideration the rights and responsibilities of artisanal miners in the mining area.

SUMMARY 2.3 Legal Title to Minerals

[Insufficient Comments Available for Summary]

SUMMARY 2.4 Obligations Prior to Construction

Comments noted that adding the term “subject to applicable law” would strengthen this article. Comments noted that completion of a social impact assessment, and/or a human rights impact assessment, should be part of this article. Comments also noted that the MMDA should not assume that permits and documents will be approved by the State, but should outline procedures to follow when a permit or document is denied.

SUMMARY 2.4.1 Feasibility Study

Comments noted the need to include a reasonable deadline for completion of the Feasibility Study. Other comments noted the need to provide additional definition of terms in this section, such as “geographic source of impacts and benefits,” “independent 3rd party” and “Date of Commencement of Commercial Production.”

SUMMARY 2.4.2 Environmental Assessment & Environmental

Management Plan

Comments on this article called for stronger language to promote environmental protection, mitigate environmental harm, improve environmental remediation, and rectify long-term environmental impacts. Comments called for greater clarification of monitoring and reporting of environmental impacts throughout the mining project. Comments also noted the need to include local communities in the environmental management plan, including the need to make the plan publicly available in a form that is accessible to local communities.

SUMMARY 2.4.3 Social Impact Assessment and Action Plan

Comments called for greater clarification of monitoring and evaluation procedures related to the social impact assessment and action plan. Comments also noted the need to include local communities in the social impact assessment and management plan, including developing the plan in consultation with local communities, and making the plan publicly available in a form that is accessible to local communities.

SUMMARY 2.4.4 Financing Plan

[Insufficient Comments Available for Summary]

SUMMARY 2.4.5 Compliance with Law; Requested Changes by State

Comments promoted an increased time period for approval of the feasibility study and grant of the mining license, such as 90 – 120 days.

SUMMARY 2.5 Requirement to Obtain Permits

[Insufficient Comments Available for Summary]

SUMMARY 2.6 Construction

Comments suggested that the reporting scheme described in this article should involve less frequent submissions, such as semi-annually or annually, instead of quarterly.

FINANCIAL

SUMMARY 3.0 Annual Rental

Comments noted that this clause may be an unnecessary repetition of applicable law.

SUMMARY 4.0 Royalty and Other Duties

Comments requested inclusion, or at least examples, of sliding scale royalties. Other comments noted that the MMDA should include procedures for verification of reported production, to ensure accuracy in royalty payments.

SUMMARY 4.1 Calculation of Royalty

[Insufficient Comments Available for Summary]

SUMMARY 4.2 Royalty on Other Mineral Materials

[Insufficient Comments Available for Summary]

SUMMARY 4.3 Production Statement

[Insufficient Comments Available for Summary]

SUMMARY 4.4 Payment of Royalty

[Insufficient Comments Available for Summary]

SUMMARY 4.5 Disputes regarding Royalty Payments

[Insufficient Comments Available for Summary]

SUMMARY 5.0 Customs Duties and Reimbursement

Comments suggested that this article should balance the needs of the local government to collect customs duties with the needs of the company to import supplies that are not locally available. Comments also suggested that the MMDA should reflect the differences in customs considerations in the construction phase versus the exploration phase.

SUMMARY 5.1 Customs Duties

Comments noted some inconsistencies in this article related to other articles in the agreement.

SUMMARY 5.2 Reimbursement of Import Duties

Comments suggested that this article should balance the needs of the local government to collect duties with the reasonable needs of the company to import and export.

SUMMARY 6.0 Insurance

[Insufficient Comments Available for Summary]

SUMMARY 7.0 Taxation

Comments introduced strategies for capturing windfall profits and for allowing the host government to share profit by taxing capital gain.

SUMMARY 7.1 Taxation – General

Comments noted that the MMDA should list additional resources and recent publications on the difficult topic of taxation. Other comments noted that the MMDA should be a little more flexible regarding payments to non-residents, and that the MMDA should not promote tax exemption.

SUMMARY 7.2 Income Tax

[Insufficient Comments Available for Summary]

SUMMARY 7.3 Deductions in the Computation of Company Income Tax

[Insufficient Comments Available for Summary]

SUMMARY 7.4 Value-Added Taxes and Project Activities

[Insufficient Comments Available for Summary]

SUMMARY 7.5 Property Taxes

[Insufficient Comments Available for Summary]

SUMMARY 7.6 Taxes on Expatriate Employees

[Insufficient Comments Available for Summary]

SUMMARY 7.7 Taxes on Non-Resident Contractors

[Insufficient Comments Available for Summary]

SUMMARY 7.8 Withholding Tax Obligations

[Insufficient Comments Available for Summary]

SUMMARY 7.9 Provisions Relating to Other Taxes and Levies

[Insufficient Comments Available for Summary]

SUMMARY 7.10 Local Government Taxes and Levies

Comments noted that this article should not preclude a local government from passing lawful tax regulations, but should allow the company to appeal such changes, including appeal of relevant administrative procedures.

SUMMARY 8.0 Financing

[Insufficient Comments Available for Summary]

SUMMARY 8.1 Security Interest

[Insufficient Comments Available for Summary]

SUMMARY 8.2 Debt-Equity Ratio

[Insufficient Comments Available for Summary]

SUMMARY 8.3 Foreign Currency Remittance and Availability

[Insufficient Comments Available for Summary]

SUMMARY 8.4 Role of State in Financing

[Insufficient Comments Available for Summary]

SUMMARY 8.5 State Guarantees

[Insufficient Comments Available for Summary]

SUMMARY 9.0 Financial Records and Statements, Accounting Standards and Currencies

[Insufficient Comments Available for Summary]

SUMMARY 9.1 Payments and Exchange Rates

Comments suggested that the MMDA should clarify the use of foreign exchange for payments to the State. One commentator suggested that such payments should only be made to a foreign exchange account in the Central Bank.

SUMMARY 9.2 Financial Records and Financial Statements

[Insufficient Comments Available for Summary]

RIGHTS AND OBLIGATIONS

SUMMARY 10.0 Mutual Obligations

[Insufficient Comments Available for Summary]

SUMMARY 10.1 Information to Local Government

[Insufficient Comments Available for Summary]

SUMMARY 10.1 Applicability of IFC Performance Standards and Equator Principles

Many comments requested that the MMDA require Free Prior and Informed Consent of local communities prior to any mining activities. Comments included a number of potential references to relevant international standards, such as the Organization of Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, International Organization for Standardization (ISO) 26000, and the International Council on Mining and Metals (ICMM) sustainable development framework.

SUMMARY 10.3 Parties' Commitment to Protecting Human Rights

Comments called for gender equality to be a more prominent feature of this article.

SUMMARY 10.4 Prevention of Corruption

Comments suggested this article would be strengthened by requiring investors to certify that no direct or indirect bribes were made during contract formation; should a bribe be found to have influenced the contract, the contract should become invalid. Other comments suggested that the MMDA should include references to end party lists and other resources that help identify parties found guilty of bribes and other corrupt activity.

SUMMARY 10.4.1 Obligations of the Company

[Insufficient Comments Available for Summary]

SUMMARY 10.4.2 Obligations of the State

[Insufficient Comments Available for Summary]

SUMMARY 10.4.3 Other Applicable Norms

[Insufficient Comments Available for Summary]

SUMMARY 10.4.4 Understanding of the Parties

[Insufficient Comments Available for Summary]

STATE RIGHTS

SUMMARY 11.0 State Access to Project

Comments indicated that 48 hours notice prior to a health and safety inspection is unreasonable. Comments also indicated that, outside of exceptional circumstances, visits and inspections should be limited to normal business hours and should be conducted in a way that avoids unnecessary interference with the normal operations of the Company.

SUMMARY 12.0 Inspection of Books, Records and Information, Independent Audit

Comments noted that proper auditing of books and records is crucial. Comments suggested use of the more universal term “fully independent” as opposed to “not conflicted” in descriptions of audit requirements.

Comments suggested that the requirements of this article should appear with requirements related to delivery of financial statements. Comments noted that the deadline this article requires for production of annual audited financial statements should be consistent with the deadlines most international mining companies must follow for filing accounts, and should also be consistent with deadlines in other articles of this agreement. Comments also indicated that the term “investment report” must be clarified.

STATE OBLIGATIONS

SUMMARY 13.0 State Assurances and Obligations

[Insufficient Comments Available for Summary]

SUMMARY 13.1 Legislation to Approve Agreement

Comments noted that a mining agreement that goes beyond local legislation could be perceived as an insult and lead to conflict in negotiations. Other comments noted that this article refers to exploration, which should be covered in a separate exploration agreement.

SUMMARY 13.2 Tax Stabilization Clause

This is likely the most controversial clause in the MMDA. Commentators had very serious and divided concerns about the use of stabilization clauses, particularly as it may be difficult to distinguish between the stabilization of tax regimes and the stabilization of other regimes, such as those that protect the environment and promote social development. Many comments suggested that a stabilization clause is inappropriate for the MMDA or any other agreement, particularly as a starting point for negotiations. Some States, for example, no longer allow stabilization.

Other comments strongly advocated for the inclusion of a stability clause. These comments noted that investors in the mining sector require tax stability, and proof of a strong record by the State in honoring agreements related to tax stability.

Many comments suggested that, regardless of one’s position on tax stabilization, a model agreement should not assume a stabilization clause, but should leave it up to negotiating parties to decide whether such a clause is necessary. Commentators suggested that the best approach is one that helps all parties balance their economic interests.

SUMMARY 14.0 Fair and Economical Project Operation

[Insufficient Comments Available for Summary]

SUMMARY 15.0 Permits

Comments suggested this article should be revised to simply state an affirmative obligation of the State to process all applications for required consents or approvals expeditiously and to not unreasonably withhold or delay any consents or approvals. Comments noted that the article should be rephrased so that it does not imply that the State is required to grant approvals; the State should be able to deny an approval when the company is clearly not satisfying applicable requirements.

SUMMARY 16.0 Expatriates

Comments noted that disparity in the wages of expatriate hires and local hires leads to conflict and may result in violence. Many commentators advocated for a strong preference for local hires. Other comments noted that the company has the right to make its own hiring decisions; the appropriate balance between expatriates and local hires changes in various contracts. Commentators also noted that this section should be revised to allow immediate family members and other dependants of expatriates employed by the company to freely enter the country, provided that such expatriates comply with applicable law. Comments suggested this article should be combined with the article related to company hiring decisions.

Comments suggested that this article should create a partnership between the company and host country to meet staffing targets, which may require more innovative use of educational resources. Comments also suggested combining this article with other articles that relate to skills transfer and training of local staff.

SUMMARY 17.0 Infrastructure

Commentators noted that this article describes a number of State obligations that should appear in more relevant articles. Comments noted that companies should repair all road damages caused by their use of public road infrastructure, and that, to promote sustainable development, company infrastructure should be as accessible to all parties as possible.

SUMMARY 17.1 Availability of Existing Infrastructure

Comments noted that exclusive use agreements should be avoided, as they are uncompetitive and detrimental to the economy as a whole. Other comments noted that the level of access the article provides to local community members and the fee-based user agreements outlined in the article may be unrealistic.

SUMMARY 17.2 Access to Infrastructure

Comments noted that mining companies should not be responsible for infrastructure development outside the mining area because this is not the mining company's area of expertise. Other comments noted that shared use of infrastructure with the company can be dangerous and can lead to problems, such as a local communities' excessive reliance on a relatively short-term mining project. Other comments strongly advocated for infrastructure to remain accessible to all parties.

SUMMARY 18.0 State Obligations Re: Local Governments and Landowners

Comments suggested that this article should be reduced to a simple clause that says the State will ensure that agreements made between the Company and local communities, landowners and local authorities are enforced. Other comments noted that the Company should ensure that its payment to communities are transparent, so that the Company receives credit for its efforts, and also to ensure that no issues related to bribery or corruption result from such payments.

COMPANY RIGHTS

SUMMARY 19.0 Company Rights

[Insufficient Comments Available for Summary]

SUMMARY 19.1 Affiliated Company Transactions

Comments indicated that this article must give greater consideration to compliance with existing regulations, including WTO regulations, and should allow for extenuating circumstances. Other comments noted that the article should be based on generally accepted international accounting principles instead of on generally accepted accounting principles in the host country. Comments also indicated that the article must ensure that transfer pricing yields balanced returns to both the company and the state.

SUMMARY 19.2 Company Hiring Decisions

Comments indicated that this is a controversial and political topic. Comments noted that disparity in the wages of expatriate hires and local hires leads to conflict and may result in violence. Some comments called for the company to focus its efforts on local hires while others call for the article to give the company flexibility in hiring decisions. Comments called for this article to promote partnerships between the company and the host government to meet hiring targets. Other comments suggested that this article is too specific for a model agreement; that this article must be negotiated according to the particular circumstances of a given agreement.

SUMMARY 19.3 Security

Comments generally called for this article to place strong emphasis on human rights, including the Voluntary Principles on Security and Human Rights. Comments were also generally opposed to the use of private security. Commentators noted that security is a State responsibility that should remain in the hands of the State, subject to applicable law. Where the company cannot avoid use of private security, comments called for private security to be restricted by clear standards of conduct and measures that prevent detention and use of excessive force. Comments also indicated that this article should require the company to inform local communities regarding codes of conduct applicable to company security, and to ensure that these communities have a means to peacefully resolve disputes related to company security.

COMPANY OBLIGATIONS

SUMMARY 20.0 Development Obligations

Comments noted that this article should not establish minimum development expenditures; such a requirement is contrary to efficient and cost effective development. Comments also noted that this article should not include concerns that should be addressed during the exploration phase; such considerations should be covered in a separate exploration agreement.

SUMMARY 21.0 Use of Local Goods and Services

Comments noted that this article should require the company to procure local goods and services to the extent they are available. Other comments noted that this article should only require the company to procure local goods and services when price, quality, and reliability are comparable to that of other vendors. Comments also noted that this article should require the company to monitor and evaluate labor standards throughout the supply chain.

SUMMARY 22.0 Local Community Development

Comments noted that this article should provide greater detail and must be consistent with the referenced annexes. Other comments noted that this article should be less prescriptive and less detailed.

SUMMARY 22.1 Community Development Agreement

Several comments noted that the Community Development Agreement (CDA) should be in place at a much earlier date, such as the Date of Commencement of Commercial Production. Many comments also noted that the timeline for entering into CDAs should extend far beyond 30 days. Comments noted that this article should address procedures relating to breakdowns or failure in the CDA negotiation process.

SUMMARY 22.2 Relationship of This Agreement to Local Level Agreement

Comments noted that this article must be very specific about what constitutes a company breach of the CDA. Several comments strongly disagreed with a breach of the CDA resulting in breach of the mining development agreement.

SUMMARY 22.3 Local Business Development Plan

Comments suggested that this article should be combined with an article regarding Employment and Training of Local Citizens. Other comments suggested that “guaranteed employment” of local populations might be unrealistic.

SUMMARY 23.0 Community Health

Comments noted that this article should only require the company to provide health care for employees; a requirement to provide community health care is unsustainable because it promotes dependency on the company instead of state responsibility. Other comments suggested extending company responsibility for health care services beyond project employees to individuals whose health is impacted by the mining project. Several comments noted that the company's obligation regarding health care should be to work in partnership with the state to enhance the state's long-term capacity to provide health care. Comments also suggested that the terms of this article could be negotiated as part of the Community Development Agreement.

SUMMARY 24.0 Employment and Training of Local Citizens

Comments suggested that this article should be combined with an article regarding Company Hiring Decisions. Other comments noted that this article must clarify the meaning of “local” to determine when the company is required to hire individuals in the mine area vs. citizens residing anywhere within the host country.

SUMMARY 24.1 Minimum Employment Levels

[Insufficient Comments Available for Summary]

SUMMARY 24.2 Investment in Skills of Local Work Force

[Insufficient Comments Available for Summary]

SUMMARY 24.3 Labour Training and Capacity Enhancement

[Insufficient Comments Available for Summary]

SUMMARY 24.4 Management Training and Capacity Enhancement

[Insufficient Comments Available for Summary]

SUMMARY 25.0 Labour Standards

Comments suggested that this article should include references to “good industry practice” and cites to specific ILO Conventions and to the UN Convention on the Rights of the Child.

SUMMARY 25.1 Labour Standards

Several comments underscored the importance of this article and of protecting union bargaining rights. Comments suggested that this article should include references to “good industry practice” and cites to specific ILO Conventions and to the UN Convention on the Rights of the Child.

SUMMARY 25.2 Health & Safety

Comments suggested that this article should be much more detailed and could provide references to specific health and safety standards.

SUMMARY 26.0 Mining Closure/Post-Closure Obligations

Comments stressed the importance of this article and suggest adding provisions that would apply in circumstances of a temporary mine closure.

SUMMARY 26.1 Closure Plan and Closure Obligation

Commentators suggested that this article should outline a step-by-step process for mine closure, while other commentators suggest that the article should be more general. Several comments noted that the period within which the State must provide feedback on the closure plan should be lengthened.

SUMMARY 26.2 Guarantees for Closure Expenses

Comments suggested that companies should not be required to provide cash payments in advance of mine closure, as such payments may invite misuse of the reserved funds and may detract from funds available for community development.

SUMMARY 26.3 Post-Closure Monitoring

Comments suggested that many aspects of this article, such as retraining and community development, as well as sustainable biodiversity, must be dealt with much earlier in the mining project, thus should be emphasized in other articles of the mining development agreement.

SUMMARY 27.0 Rights of Citizens of the State

Comments suggested that this article should emphasize the rights of host country citizens regarding access to information, public participation, and access to justice.

SUMMARY 27.1 Company Grievance Mechanism

Comments suggested that the community aspects of the grievance mechanism described in this article should instead become part of the Community Development Agreement and related negotiations. Several comments noted that this article incorrectly refers to International Finance Corporation (IFC) Performance Standard 23 when it should refer to Article 23 of IFC Performance Standard 1. Comments also noted that any union associated with the company is likely to have its own grievance mechanism, which this article must take into account.

SUMMARY 27.2 Forum for Claims and Disputes involving Natural Citizens of the State

Comments suggested that this article should be negotiated within the Community Development Agreement (CDA) and thus should become part of the article pertaining to the CDA. Comments also suggested that arbitration is inappropriate and cost prohibitive for many host country citizens. Commentators also noted that this article should provide protection for “whistle-blowers” to avoid unjust retaliation.

OTHER TERMS & CONDITIONS

SUMMARY 28.0 Obligations of Contractors and Subcontractors

Comments suggested that this article should be revised, as it appears to apply only to subcontractors. Other comments suggested that this article is inappropriate for a model mining agreement.

SUMMARY 28.1 Applicability of Obligations to Contractors and Their Subcontractors

Commentators noted that this article should be revised to avoid any attempt to bind third parties to the mining development agreement.

SUMMARY 28.2 Applicability of Obligations to Parent Company and Affiliates

Commentators noted that this article should be revised to avoid any attempt to bind third parties to the mining development agreement.

SUMMARY 29.0 Assignment

Comments emphasized that this article must require any assignee, affiliate, or successor to accept all obligations of the assignor.

SUMMARY 29.1 Affiliated Company Assignment

[Insufficient Comments Available for Summary]

SUMMARY 29.2 Third Party Assignment

[Insufficient Comments Available for Summary]

SUMMARY 29.3 Capacity of Successors and Assigns

[Insufficient Comments Available for Summary]

SUMMARY 29.4 Release

[Insufficient Comments Available for Summary]

SUMMARY 29.5 No Assignment by State

[Insufficient Comments Available for Summary]

SUMMARY 30.0 Availability of Information

Comments emphasized the importance of transparency in general, particularly when related to matters of public concern such as health, safety, environmental protection, and transparency of government revenues and expenditures. Other comments noted the importance of protecting commercially sensitive information from company competitors, and express the need for balance in this article to protect such information.

Comments particularly emphasized the importance of referencing the Extractive Industries Transparency Initiative (EITI). Other comments suggested referencing domestic Freedom of Information Acts and Aarhus Convention disclosure requirements.

Comments noted that some of the examples included with this article directly contradict the article and should be removed.

SUMMARY 30.1 This Contract a Public Document

Comments noted that the confidentiality exception provided in subsection b conflicts with the broad transparency provided in subsection a; any confidentiality exception must be clearly defined and revised to ensure consistency with the rest of the agreement. Other comments noted that the company should only be required to make its reports and submissions to the State public, particularly the environmental management plan, social impact assessment plan, and closure plan, but that other documents, such as the feasibility study, should remain confidential.

Many comments noted that Internet publication was sufficient to meet the transparency requirement, noting that a requirement to leave documents in physical “repositories” was overly burdensome and unnecessary. Other comments noted that physical repositories would make documents more easily accessible to the public, but the documents should be in an accessible form, avoiding overuse of legalese when possible and including audio recordings when this would increase accessibility to illiterate populations.

SUMMARY 30.2 Certain Information Confidential

[Insufficient Comments Available for Summary]

SUMMARY 31.0 Force Majeure; Suspension of Operations for Market Conditions

[Insufficient Comments Available for Summary]

SUMMARY 31.1 Obligations of Party in Event of Force Majeure

[Insufficient Comments Available for Summary]

SUMMARY 31.2 Extension of Agreement

[Insufficient Comments Available for Summary]

SUMMARY 31.3 Negotiation in Event of Force Majeure

Comments noted that this article should take into consideration the company's mine closure obligations in the event that performing such obligations is precluded by force majeure.

SUMMARY 31.4 Suspension of Operations for Market Conditions

Comments suggest that this article should be strengthened, particularly to balance the host government's need to maintain revenue stability with the company's need to pursue options that may result in greater overall revenue.

SUMMARY 32.0 Cooperation, Dispute Resolution and Arbitration

Comments noted that the company must have a grievance mechanism, and that this mechanism must be transparent and accessible to the public. Other comments noted the ambiguity of "good faith," which must be clarified, and the need to establish a renegotiation period.

SUMMARY 32.1 Cooperation

Comments noted that the period of time during which parties to a dispute must identify Independent Sole Experts should extend beyond 10 days.

SUMMARY 32.2 Arbitration

Comments suggested that the International Centre for Settlement of Investment Disputes (ICSID) should not be named in this article because this would be undesirable to some States; the article should use a blank "_____" instead of a specific reference to ICSID. Some comments also suggested that this article should not require conciliation prior to arbitration.

SUMMARY 33.0 Surrender and Termination

[Insufficient Comments Available for Summary]

SUMMARY 33.1 Surrender

Comments noted that the purpose of this article is unclear.

SUMMARY 33.2 Termination by the State

Comments noted that this article should refer to specific articles in the agreement so that Parties are aware of the specific circumstances in which a right to terminate exists. Commentators also suggested that the State's right to terminate the agreement should be suspended during active negotiations or resolution of disputes between the parties.

SUMMARY 33.2.1 Termination on Certain Events

[Insufficient Comments Available for Summary]

SUMMARY 33.2.2 Termination on Breach

[Insufficient Comments Available for Summary]

SUMMARY 33.3 Termination by the Company

Commentators noted that termination by the company must be without prejudice to other rights and remedies under the agreement or under applicable law.

SUMMARY 33.4 Retention of Assets on Surrender, Expiration or Termination by the State

Commentators noted that any requirement for the company to sell assets must be subject to the rights of third parties such as suppliers and finance providers and should be based on market value. Commentators also noted that this article should be more balanced and may not be appropriate for a model agreement.

SUMMARY 33.5 Retention of Books and Records

Comments noted that it may be impractical for the company to leave all books and records in the country; the company instead should be required to provide a full copy of all records on mine closure and provide periodic record updates to the State.

SUMMARY 33.6 Access Following Expiration or Termination

[Insufficient Comments Available for Summary]

SUMMARY 33.7 Obligations Following Expiration, Surrender or Termination

Comments noted that this article should grant to the company continued rights of access and use of the mine in order to fulfill or discharge its accrued rights and obligations.

SUMMARY 34.0 Notices

[Insufficient Comments Available for Summary]

SUMMARY 34.1 General

[Insufficient Comments Available for Summary]

SUMMARY 34.2 Change of Address

[Insufficient Comments Available for Summary]

SUMMARY 34.3 Delivery Methods

Comments suggested that where notices are delivered electronically, a hard copy of the notice should also be delivered.

SUMMARY 34.4 Effective Time of Delivery

[Insufficient Comments Available for Summary]

SUMMARY 35.0 Applicable Law

Comments suggested that this article should not list specific categories of treaties, such as human rights treaties or bilateral treaties. Other comments suggested that this article should refer to the mining development agreement as an international agreement to which international law applies.

SUMMARY 36.0 Periodic Review

[Insufficient Comments Available for Summary]

SUMMARY 36.1 Modification and Review

Commentators suggested that this article should allow reviews to take place upon request of either party based on actual need for review, instead of at a fixed time interval.

SUMMARY 37.0 Ancillary Provisions

[Insufficient Comments Available for Summary]

SUMMARY 37.1 Entire Agreement

[Insufficient Comments Available for Summary]

SUMMARY 37.2 Survival of Certain Provisions

[Insufficient Comments Available for Summary]

SUMMARY 37.3 Amendment

Commentators noted that this article should recognize that a State signature alone might be insufficient to bind the State to the amendment.

SUMMARY 37.4 Severability

[Insufficient Comments Available for Summary]

SUMMARY 37.5 Limitations on Waiver

[Insufficient Comments Available for Summary]

SUMMARY 37.6 Indemnification by the Company and by the State

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.6.1 Indemnification for Breach of Agreement

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.6.2 Indemnification of the State by Company

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.7 Conflicts of Interest

Commentators noted that this article is too vague and should be covered in other articles, such as Article 12.3 (Prevention of Corruption).

SUMMARY 37.8 Governing Language

Commentators noted that a dual language agreement could lead to disputes, as articles in two different languages are not likely to have equivalent meanings.

SUMMARY 37.9 Further Acts

Commentators noted that this article should incorporate less aggressive terms, including a reasonableness requirement.

SUMMARY 37.10 Duplicate Originals

[Insufficient Comments Available for Summary]

SUMMARY 37.11 Representations and Warranties

[Insufficient Comments Available for Summary]

SUMMARY 38.0 Good Faith

Commentators noted that the meaning of “good faith” is ambiguous and may not be recognized under applicable law.

SUMMARY Annex A: Mining Area

Comments noted that references to exploration must be removed from this article and should be part of a separate exploration agreement; references to protected areas, national parks and world heritage sites are more appropriate for an exploration agreement.

SUMMARY Annex B: Community Development Agreement

Several comments noted that this annex is too specific and complex. Commentators noted that this article should encourage a community development agreement that avoids legalese and instead promotes an agreement that is easily understood by the broader community. Other commentators noted that this text should become part of the mining development agreement, particularly any articles that require payment, such as to a community development foundation, or duplicate articles in the mining development agreement, such as those related to applicable law and to assignment.

Commentators also suggested that a drafting note be added to this annex to explain that it is a list of possible obligations, all of which may not be applicable or appropriate for particular circumstances of the project or traditions in the community. Commentators also noted the need to use terms that clearly differentiate the mining development agreement from the community development agreement throughout this annex.

SUMMARY Annex C: Local Business Development Plan

Comments noted that this annex is too specific and prescriptive, and in some circumstances may be inappropriate for a negotiating document. Comments also noted that the annex should not include local content requirements, as these are already part of the mining development agreement.

For additional information see www.MMDAProject.org. Thank you for your interest!