

# User's Guide

## **MMDA 1.0**

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MODEL MINE DEVELOPMENT AGREEMENT

*A Template for Negotiation and Drafting*

April 4, 2011

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# A USER'S GUIDE TO MMDA 1.0

## WHAT THE MMDA 1.0 IS

MMDA 1.0 is the product of almost two years of work by members of the Mining Law Committee of the International Bar Association. Despite its name, it is not an agreement, in the sense that one could print it out, insert names of parties, and sign it.

MMDA 1.0 is a collection of examples from existing mine development agreements and other materials that are designed to help negotiators and drafters by stimulating them to think about some of the difficult issues of legality, fairness, and balance presented by large foreign natural resource investment, particularly in developing countries. On one hand, MMDA 1.0 may be useful as an agenda for negotiating such an investment. On the other hand, MMDA 1.0 may be useful to the lawyers tasked with drafting an agreement for such an investment.

Good and effective agreements result when all parties understand and think clearly about the issues being negotiated. The purpose of MMDA 1.0 is therefore not to be a form agreement, but to stimulate negotiators and drafters to think clearly, and educate users about the issues. Out of that process, agreements may emerge.

MMDA 1.0 is based on the belief that mining investors, and countries, and civil society share some fundamental interests, and that all interests benefit from long term stability of investment conditions. Long-term stability comes when all interests benefit from an agreement, and when the agreement contributes to both business success and the sustainable development of the societies in which mines operate.

## **WHAT THE MMDA 1.0 IS NOT**

It is important to understand what the MMDA 1.0 is not.

### **The MMDA 1.0 is Not A Substitute for a Mining Code**

Many commentators on MMDA 1.0 have suggested that developing nations should move away from mining agreements and toward investment based on clear legal codes: mining codes, tax codes, environmental laws and other generally applicable legal dispositions that apply equally to all that come. Many of the drafters of MMDA 1.0 agree philosophically with this position.

However, agreements continue to be used in a number of jurisdictions. Indeed, some countries seem to be moving from code systems to contract arrangements.

There are also some jurisdictions where codes deal with some, but not all, of the necessary issues in a major mine development, and a contractual agreement may be needed to supplement the matters dealt with in legislation. Indeed, some commentators suggested that the expectations of what mining investment is supposed to bring to a country have increased so dramatically that many codes simply do not deal adequately with such issues as the desires of local communities, social aspects of closure, or dispute resolution, to name a few.

The MMDA 1.0 is not designed as a long-term alternative to mining codes. It is up to host countries what kind of investment regime to adopt, and for those who choose to operate through contracts, the MMDA 1.0 is designed as a tool to assist in negotiating and drafting such agreements.

### **The MMDA 1.0 Is Not an Exploration Agreement**

Development of a mining project by necessity can only occur after a mineral deposit has been identified through exploration. The right to explore for mineral resources needs to be established by some form of legal arrangements, under a mining code, under regulations of some kind, or pursuant to an agreement.

The MMDA 1.0 is not an exploration phase agreement. The MMDA 1.0 is based on the assumption that sufficient exploration has already occurred consistent with applicable local law to identify a valuable deposit of minerals, and that the project is now entering into the development stage.

It may be very useful to have some form of study and better understanding of the legal arrangements under which exploration occurs. Some commentators suggested that if those exploration arrangements are well done, the stage is set for a successful mining development agreement.

Development of an exploration agreement is beyond the scope of the MMDA project. This project has focused on the development of a mining agreement, not an exploration agreement.

### **The MMDA 1.0 Is not a Community Level Agreement**

There has been very considerable interest in community development agreements between mining companies and communities in the area of influence of mining projects. Whether these are called Community Sustainable Development Agreements, Impact and benefit Agreements or something else, they are increasingly frequent in project development.

MMDA 1.0 is focused instead on the agreement between the national government of the host country and the mining company. Some sections of MMDA 1.0 refer to community agreements, but MMDA 1.0 itself is not a community development agreement.

## **The MMDA 1.0 Is Not a Substitute for Informed Negotiation**

Many of the concerns expressed about the clarity, quality and balance of mining agreements are at bottom concerns about imbalance of resources and capacity of the parties who negotiate the agreements. To some extent, comments also suggest that negotiation of effective mining development agreements is a very complex task that requires multidisciplinary help from accountants, tax specialists, mining lawyers, geologists and perhaps others. Some developing countries have difficulty fielding such negotiating teams and there is a feeling that they are therefore disadvantaged in negotiation.<sup>1</sup>

To the extent the MMDA increases knowledge and understanding regarding mining development agreements, it may be of some modest use as a capacity building tool. But the MMDA itself does not pretend that it can redress these issues of capacity and balance.

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<sup>1</sup> See 'Stakeholders Perceptions and Suggestions' prepared by the Responsible Mining Development Initiative, World Economic Forum, and released in Jan 2011. [https://members.weforum.org/documents/ip/MM/AM11/RMDI\\_FinalReport\\_20-01-2011.pdf](https://members.weforum.org/documents/ip/MM/AM11/RMDI_FinalReport_20-01-2011.pdf)