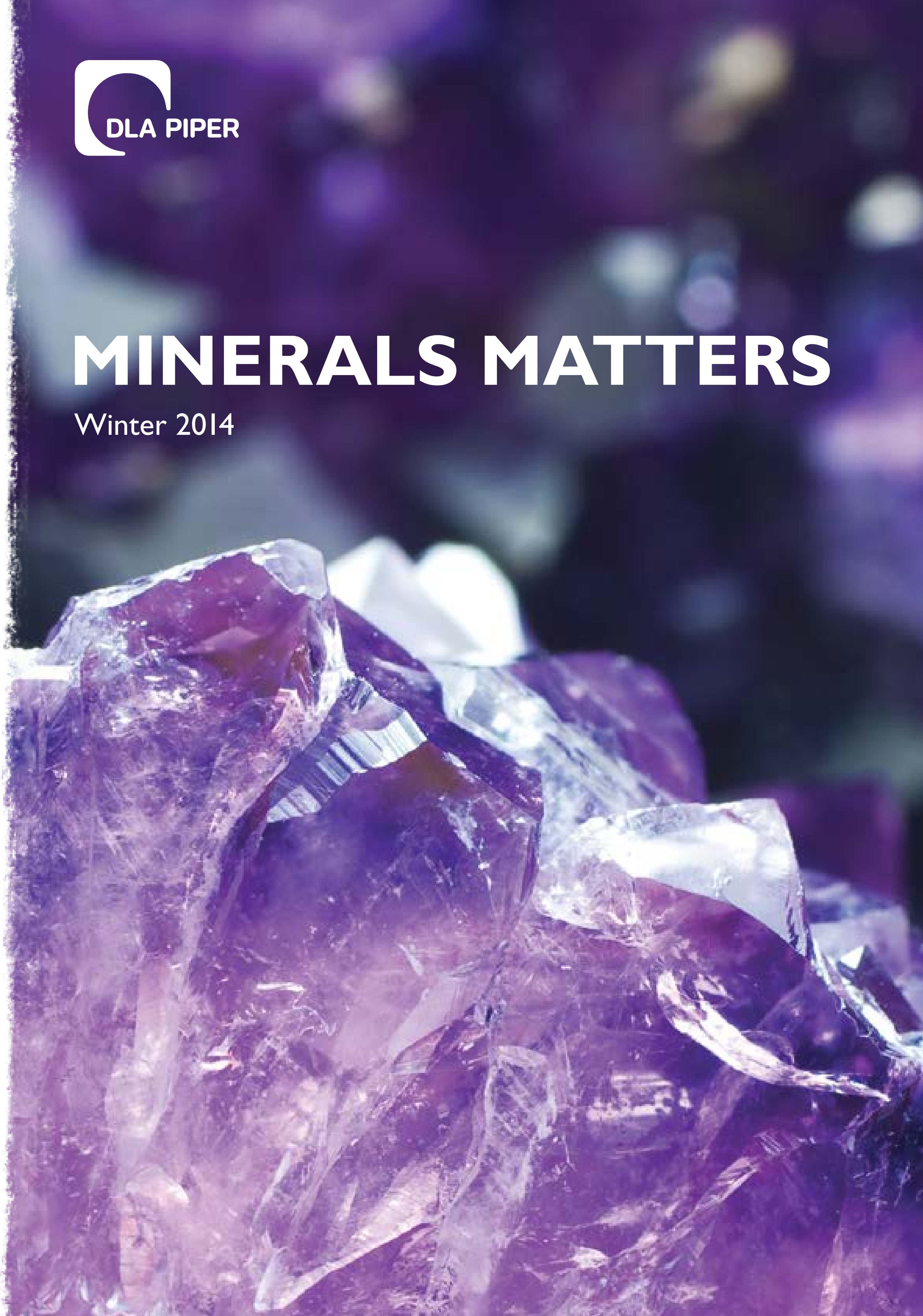
MINERALS MATTERS

Winter 2014



INTRODUCTION

Welcome to the latest edition of Minerals Matters and a slightly belated Happy New Year to you all. No doubt as you read this the holiday season seems a long time ago, but hopefully you had the opportunity to take some time away from work and enjoy a break with friends and family.

The previous twelve months were certainly a refreshing change as the UK Economy finally looks to have turned a corner and, an until now, slow and halting recovery appears to have gathered some genuine momentum. Talk is now much more positive and there is a real sense of optimism.

Fears about a triple dip recession have been replaced by debate about whether there was actually a double dip and, whilst it is far from out of the woods, the Eurozone has been relatively quiet. Consumer demand has risen and this improvement, particularly evident in the housing and commercial property markets, has done much for the mines and minerals sector. Long may it continue!

Whilst we are sure that there will be bumps in the road ahead, hopefully the improvements seen in 2013 are just the starting point and by the end of this year we will be able to say with confidence that any lingering doubts about the strength of the recovery have gone away.

This edition of Minerals Matters contains articles relating to human rights in the mining industry, data protection issues in the mining sector, the ability to remove squatters and the crack-down on bribery and corruption in the sector. We also look at mandatory carbon reporting requirements, employment tax issues and the *Europa Oil and Gas* case. As ever we hope you find this edition both interesting and informative but we are always happy to receive any comments that you have as well as requests for future articles.

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PROTECT, RESPECT AND REMEDY

HUMAN RIGHTS AND THE MINING INDUSTRY

The need to consider the impact of business operations and relationships on human rights is a growing feature of the corporate landscape. In early September the UK government published its national action plan for implementing the UN Guiding Principles on Business and Human Rights, sending a clear message to UK businesses that they must understand and manage their human rights impacts both domestically and abroad.

Over the past two decades the significance given to the protection and promotion of human rights as a part of the wider concept of corporate social responsibility has grown considerably. As guardians of international law, states have traditionally held the primary responsibility of ensuring human rights standards are observed. While businesses have for a long time addressed some human rights standards through their internal operations such as, for example, implementing occupational health and safety policies, maintaining environmental protection standards and promoting equal opportunities, their responsibility has been limited to complying with the domestic laws set down at state level. However, this "public/private" distinction is becoming increasingly blurred by a growing recognition that businesses' actions and operations can severely impact on the enjoyment of human rights of others. Increasing focus on transparency and moral accountability for corporate entities through, for example, bribery and corruption legislation, has contributed to a shift in emphasis towards businesses taking greater levels of responsibility for the adverse impacts of their own operations wherever, and with whomever, they do business.

While some voluntary codes and practices already exist to encourage businesses to comply with international human rights standards (such as the UN Global Compact), prior to 2011 there were no detailed uniform guidelines in existence which provided practical recommendations for states and businesses alike to address their human rights impacts. In June 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (**"UNGPs"**). The UNGPs set out a 'three pillar' approach with respect to businesses and human rights – the Protect, Respect, Remedy framework.

The second pillar comprises the corporate responsibility to respect human rights under which businesses should: (i) avoid causing, contributing to or being linked to adverse human rights impacts; (ii) seek to prevent or mitigate adverse human rights linked to their operations; and (iii) address such impacts when they occur.

In addition to the UNGPs there are many other multi-stakeholder initiatives and other principles relevant to the mining industry. Such principles are now driving businesses to consider their human rights impacts outside the traditional parameters of CSR and treat them as a standalone risk which can be measured and reported on, much like any other compliance issue.

Currently, none of these principles are legally binding, but they are clearly gaining traction at government level and among intergovernmental bodies and it is expected that, over time, they will become the uniform global standard for UK business.

The UNGPs state that companies should take responsibility for human rights impacts throughout their supply chain.

Industry participants should therefore carry out an appropriate level of human rights due diligence both "upstream" and "downstream". This means that they not only have to take responsibility for their own practices but investigate those of all parties that they deal with from their suppliers to their purchasers and everyone in between. Such due diligence can be wide ranging including, for example, the acquisition of land displacing indigenous people, pollution impacting on living and working conditions and all forms of discrimination.

Companies may manage the impacts of their business operations and relationships by a variety of contractual and non-contractual means.

- *General approaches*
  - Always consider human rights risks/challenges of the project/target jurisdiction.
  - Choose partners carefully – undertake due diligence, convey human rights expectations at an early stage, etc.
  - Where appropriate refer to third party standards in contracts.
- *Joint Venture Agreements*
  - Select roles and responsibilities carefully – which partner is best placed to manage human rights issues?
  - Seek financing from institutions that have a clear set of human rights standards to establish leverage over partners.
  - Stipulate operating procedures that address human rights.
- *M&A*
  - Update M&A due diligence checklists to include human rights issues.
  - A purchaser may find it difficult to price liabilities related to human rights impacts – instead, it should consider estimating the cost of bringing a target into compliance with its standards.
- *Supply Chain Contracting*
  - Communicate with human rights expectations for suppliers and service providers by developing codes of practice, standard terms and conditions and other policies.

In the field of human rights, both public and governmental opinion only seem to be moving in one direction – that is to place a greater emphasis on socially responsible business practices. Companies which adhere to the three pillar approach of the UNGPs – protect, respect and remedy – in their contractual and non-contractual business operations and relationships can gain competitive advantages going forward.

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DATA PROTECTION ISSUES
IN THE MINING AND MINERALS SECTOR

Overview

Mineral surveying, deposit analysis and estimating demand are all activities that depend on the gathering and exploitation of data and in this regard the mining and minerals sector has always had data-driven challenges. However, operators also encounter the same challenges that all multinational organisations face in relation to ensuring that HR and employee data can flow legally between jurisdictions and affiliates.

With countries such as Australia, Brazil, South Africa and Kazakhstan with high mineral reserves recently implementing (or being in the process of implementing) new data privacy laws, these challenges are only likely to increase.

This article seeks to provide a brief summary of these challenges and the ways that they can be addressed.

General considerations

First and foremost, data will inevitably need to be collected about the company's employees and those of its contractors. Data may also be collected or accumulated in many other less direct ways (for example as part of planning consultation processes). This data clearly has the potential to constitute personal data for the purposes of the EU Data Protection Directive 95/46 EC ("**EU Directive**") and also comparable legislation in other jurisdictions.

Broadly speaking the obligations under data protection legislation will affect:

- how that data is gathered;
- how it is stored, processed and what security measures are put in place to protect the individual;
- how long data is stored before being deleted; and
- where it is stored and processed, where it can be transmitted and what safeguards need to be in place.

Unfortunately, these detailed requirements can vary substantially between jurisdictions and, accordingly, deciding on a compliance strategy often requires a "risk based" approach to be taken, having understood what full compliance would look like.

HEALTH DATA

Operators may also need to process health data. Data that relates to physical or mental health conditions is likely to be *'sensitive personal data'* (at least under the EU Directive). This is likely to trigger more onerous compliance obligations as generally under the EU Directive sensitive personal data cannot be processed unless:

- the data subject gives their explicit consent;
- the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent; or
- processing is required to comply with employment law obligations.

CROSS BORDER DATA TRANSFERS

Under the EU Directive personal data is not permitted to be transferred from a country in the EEA to a country or territory outside the EEA unless that country or territory ensures an adequate level of protection for the rights and freedoms of the data subjects in relation to the processing of personal data.

It is likely that multinational operators will want to transfer some forms of personal data of EEA-based employees to third parties including outsourced service providers or to their entities/subsidiaries outside of the EEA.

Ensuring that these transfers are legally compliant can usually be achieved by adopting one of the following methods:

- the transfer is to a country deemed to have adequate data protection laws in place;
- the transfer is made to a US Safe Harbor Certified Entity;
- the transfer is made under pre-approved EU standard contractual clauses;
- the individual whose personal data is being transferred has consented to the transfer; or
- the transfer is necessary to perform or conclude a contract with the individual (in some jurisdictions this can include employment contracts).

In addition, under the EU Directive it is likely to be necessary to ensure that each entity in the group has a direct contractual relationship with any entity processing data outside of the EEA (including other group entities of affiliates) to ensure that the personal data is processed securely.

CONCLUSION

Operators should not treat these obligations lightly. The penalties for breach can be significant as, for example, the UK Data Commissioner is now able to levy fines of up to £500,000. Accordingly, awareness of what the issues are is essential, and with planning it should not be difficult to maintain compliance.

DLA Piper has produced the DLA Piper Data Protection Laws of the World Handbook. This seeks to offer a high-level snapshot of selected features of national laws as they currently stand in 63 jurisdictions across the world. It provides an overview of the features of data protection law that are often of greatest practical significance to businesses, such as international data transfer restrictions and security obligations. A link to this can be found at http://www.dlapiper.com/data-protection-laws-of-the-world-handbook-2013/ or contact Roger Gough on 0114 283 3519.

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COMMERCIAL LAND AND TRESPASSERS: FACT OR FICTION?

Upon discovering that trespassers have invaded their property, the understandable reaction of commercial landowners is one of horror – given the general perception that landowners are powerless to take any action themselves. However, is this perception fact or fiction?

The landholdings of mineral operators, particularly those sites that are vacant or those where land is easily accessible from the public highway, are common targets. Below are some common misconceptions and practical steps that landowners can take to protect their interests in the hope of avoiding expensive court action.

FACT: Trespassing on commercial property is not a criminal offence

Unfortunately, this is correct in the majority of situations – trespassing on commercial land is generally a civil matter for a landlord to resolve themselves. Whilst squatting on residential land is a criminal offence, there is no equivalent for commercial land. However, mixed-use property with a small element of residential use (either current or previous) and land that is ancillary to a residential building could still be covered by legislation, meaning that the police should be persuaded to act and assist in removing trespassers.

FICTION: The police have no powers to remove trespassers from commercial land

The police do have powers to remove trespassers from commercial land where there are six or more vehicles on the land, or if any of the trespassers have either caused physical damage or behaved in a threatening, abusive or insulting manner. The police however do not have to take action; it is effectively a discretionary power and they are not always willing to exercise their discretion and help.

FACT: Landowners can commit an offence themselves if they unlawfully remove trespassers

Landowners must act with care when seeking to remove trespassers or instructing others to do so. They should never seek to 'take the law into their own hands' and should always act within the law to remove trespassers, otherwise they may face a claim for damages for unlawful eviction or be liable for criminal conviction or a fine under the Criminal Law Act 1977.

FICTION: Landowners have no 'self-help' powers

A private landowner has the right to invoke a 'self-help' remedy by instructing certificated bailiffs to persuade the trespassers to leave the land without a court order having been obtained. Such services are expensive and because of the legal limitations on action that can be taken, this route does not necessarily give a landowner certainty in terms of recovering possession.

FICTION: A trespasser can claim damages from a landowner for any injury suffered

A landowner is only liable where there is not sufficient protection offered against known dangers. Landowners should always take reasonable care to place notices to warn people about dangers and to secure any dangerous machinery, buildings or site areas, particularly in respect of derelict or vacant property.

FACT: A landowner often needs to apply to the court for a possession order to remove trespassers

The most reliable and conclusive action that a landowner can take is to make an application to the court for possession if all else fails. There is a set procedure under the Civil Procedure Rules to allow landowners to issue expedited proceedings against trespassers and possession orders are usually granted to take effect immediately.

FICTION: If a sale or letting of land is due to complete, the presence of trespassers can considerably delay completion

In cases of particular urgency where it is essential that trespassers are removed immediately, there is an accelerated court procedure to obtain an interim possession order almost immediately after proceedings are issued and served. This procedure is more expensive, but can be highly effective in the context of a commercial transaction.

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CRACK DOWN ON BRIBERY AND CORRUPTION IN THE MINING AND METALS SECTOR

This article looks at recent trends and shifts in the regulatory market regarding foreign corrupt practices, their impact and how to navigate through the legislation.

The mining and minerals industry worldwide has to a large extent been able to operate in many undeveloped parts of the world without proper regulatory scrutiny.

Many mining concessions in developing countries were negotiated in periods of armed conflict and/or with dictatorship regimes, leaving their more democratic successors stuck with unprofitable and very one-sided contracts. These arrangements are [morally] objectionable because they have the effect of diverting wealth away from those people who need it the most.

Shadowy middlemen, so-called "grease payments" and phantom companies have been used in some cases to exploit valuable mineral resources in highly vulnerable countries, thus branding some companies operating in those regions as corrupt, non-transparent and unscrupulous. The Democratic Republic of Congo ("**DRC**"), for example, has a long history of problems regarding the mining of conflict minerals and it isn't just the extraction and smuggling of gold and "blood diamonds" that feature in the supply chains; increasingly it is involving minerals which are essential in the manufacture of a variety of consumer electronic devices such as mobile phones, laptops and MP3 players.

Global response

Increasing levels of global legislative and enforcement alignment are fundamentally changing the way the industry is obliged to operate in these regions. The sheer number of anti-bribery and corruption laws that have been adopted around the world in recent years and their extra-territorial reach stand firm against the spread of corrupt mining practices. International investors are also increasingly motivated, not least from a reputational perspective, to ensure that mining operations in undeveloped countries are operating within both national and local laws. However, not everyone around the world is willing to play by these new international rules of doing business, given the opportunity to make huge profits by exploiting some of the poorest places on the planet.

Underlining the determination of leading nations to clean up the industry, the G8 summit in June this year agreed that oil, gas and mining companies should disclose any payments they make to foreign governments. These measures were aimed at helping developing countries collect taxes from first-world companies operating in poor and remote territories. The Canadian Prime Minister, Stephen Harper, announced shortly thereafter that Canada, one of the major world players in the extractive industry worldwide, would be adopting this G8 initiative and is looking to form partnerships with Tanzania and Peru to improve transparency in the oil, gas and mining industries in those countries.

These announcements follow in the wake of major legislation in the US aimed at stamping out foreign bribery and corruption in the form of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This legislation, signed into law on 21 July 2010, requires, amongst other things, disclosures on conflict minerals and reporting on payments made to governments for exploration licences. There are provisions in that legislation which specifically mandate the US Securities and Exchange Commission to create rules relating to potential conflict minerals and there is a particular focus on the DRC. Legislative amendments were also made to require disclosure of payments relating to the acquisition of licenses for exploration.

In addition, the number of cases being pursued by the US under the Foreign Corrupt Practices Act 1977 ("**FCPA**") is on the increase and the Act is widely applicable. There is a focus on transparency which is supported by the International Council on Mining and Metals and by the [thirty seven] countries committed to supporting the Extractive Industries Transparency Initiative.

The international community is no longer prepared to stand by and do nothing.

From a UK perspective, the Bribery Act 2010 ("**2010 Act**") has been in force since July 2011 and is considered by most commentators as probably the most formidable piece of anti-corruption legislation in existence. The 2010 Act contains two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery). It also sets out two further offences which specifically address commercial bribery – an offence relating to bribery of a foreign public official to gain a business advantage and an offence of corporate liability for failing to prevent bribery on behalf of a commercial organisation. Coupled with the Proceeds of Crime Act 2002 (and the role of the National Crime Agency in dealing with suspicious activity reports), the UK is at the forefront of the anti-bribery and anti-corruption movement, particularly given it has extra-territorial reach both for UK companies operating abroad and for overseas companies with a presence in the UK.

The trend towards more transparency is expanding, with China and Russia tightening up their anti-corruption laws, and Brazil and India are set to follow suit.

However, despite all the legislative activity by governments around the world, a number of high profile global mining operators have been in the news recently for alleged corrupt practices. To avoid these risks in future, it may be that the largest international extractive players steer well clear of countries with questionable local business practices and other "regulatory barriers" to doing business which are not transparent and open for all to see.

To meet the global demand for minerals and metals, many companies are now seeking to operate in countries which present the opportunity for corrupt practices to operate. The guidance on "adequate procedures" issued by the UK Ministry of Justice is indicative of the UK's determination to eliminate bribery and corruption. Companies are expected to properly assess the risk associated with their operations, whether that be by territory, the use of agents or the sector itself, and take appropriate steps to put in place procedures designed to eliminate those risks and empower their employees and those associated with them to identify and respond appropriately when an issue arises.

Whilst there have, as yet, been no prosecutions of significance under the UK Act, its impact has been significant. Our Regulatory team regularly assists clients with the drafting and implementation of policies and procedures designed to meet the rigours of the Act. They are also increasingly assisting their transactional colleagues in the considerable scrutiny of the organisation's approach to Bribery during due diligence, conducting the periodic review of the effectiveness of such policies and assisting in the investigation of alleged infringements.

Needless to add, alleged practices of this nature, or question marks over reputation, can hand significant leverage to a buyer of a distressed business and erode value for secured lenders, creditors and investors. In some cases it might put off potential partners entirely. Robust policies and the ability to demonstrate compliance is essential in today's global market and there are few firms positioned to offer support across numerous jurisdictions to ensure consistency in approach.

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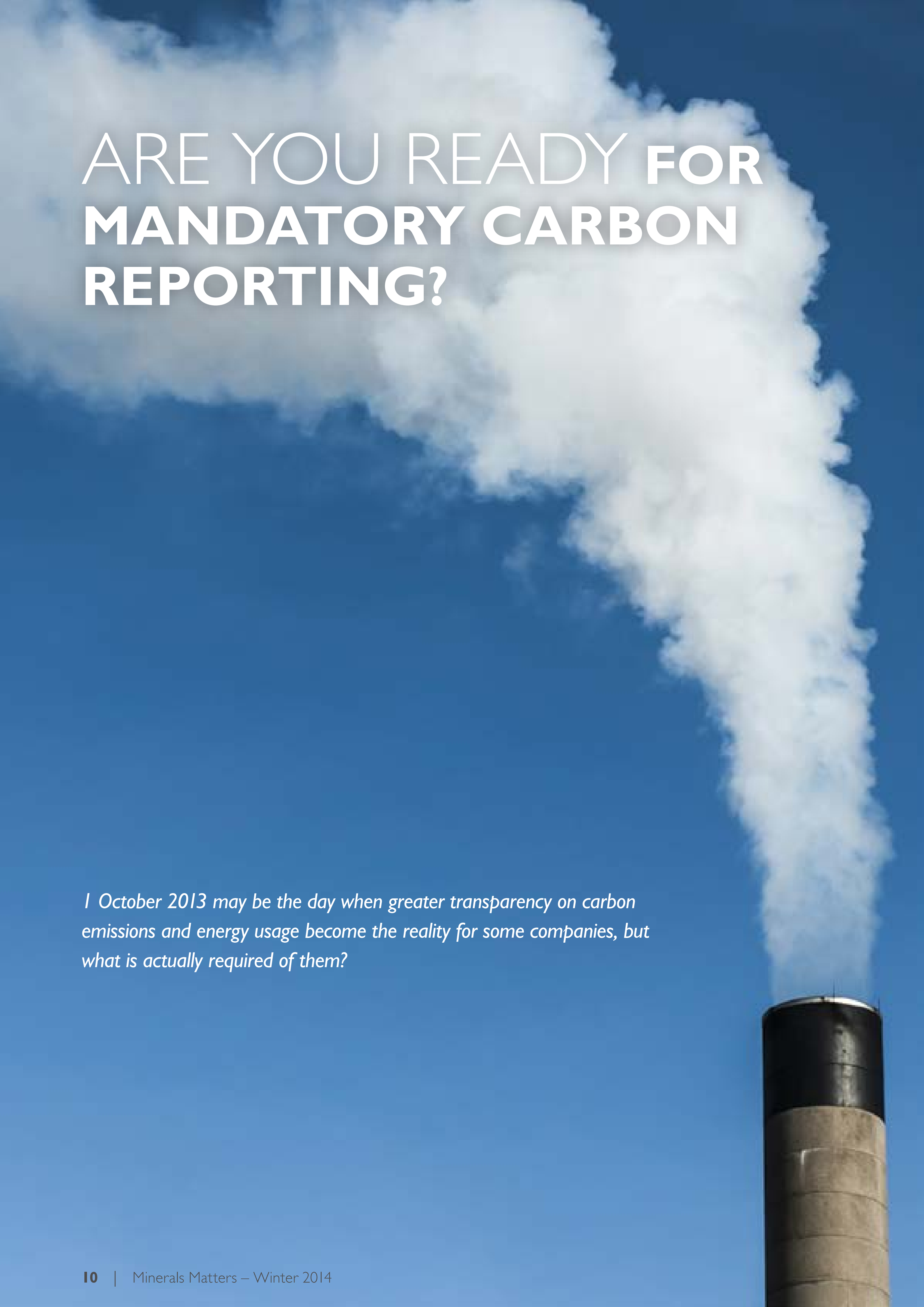

ARE YOU READY FOR MANDATORY CARBON REPORTING?

1 October 2013 may be the day when greater transparency on carbon emissions and energy usage become the reality for some companies, but what is actually required of them?

Last year the Government confirmed its intention to introduce legislation on mandatory carbon reporting for companies. The legislation has now been implemented and means that carbon reporting is required for all companies that are incorporated in the UK and whose equity share capital is listed by the UK Listing Authority or is officially listed elsewhere in the EEA or is quoted on the NASDAQ or the New York Stock Exchange.

Affected companies must calculate and report on annual emissions as part of their directors' report, and must thereafter assess progress annually. The requirement came into place for company reporting years ending on or after 30 September 2013. The table below gives more detail on timing.

COMPANY FINANCIAL YEAR	FIRST CARBON REPORTING YEAR
1 January to 31 December	1 January 2013 to 31 December 2013
1 April to 30 March	1 April 2013 to 30 March 2014
1 October to 30 September	1 October 2012 to 30 September 2013

As can be seen, a company might be required to report data on emissions that occurred before the law was introduced. The Government recognises the difficulty this could potentially create and therefore has provided some leeway to the effect that if a company does not have the information necessary to meet the regulatory requirement in the first reporting year, it must either provide an estimate based on extrapolating data that is held or by using generic data or in the report explain why it was unable to provide 12 months' data.

The greenhouse gases to be reported annually are carbon monoxide, methane, hydrofluorocarbons, nitrous oxide, perfluorocarbons and sulphur hexafluoride. These must each be reported in terms of "carbon dioxide equivalent" arising from various activities including the combustion of fuel and the operation of any facility. A separate statement in the report has to cover emissions which arise through the purchase of electricity, heat, steam or cooling.
The indirect emissions of suppliers and those that arise through the use of a company's products by consumers will not need to be included. The report will be required to state the methodology that has been used to calculate the emissions. These could include, for example, those already created by the World Resource Institute/World Business Council for Sustainable Development, ISO Standard 14064-1 or the Climate Standards Disclosure Boards Climate Change Reporting Framework.

To reduce the regulatory burden, data obtained from schemes such as Climate Change Agreements, the European Union Emissions Trading Scheme and the CRC Energy Efficiency Scheme can be used for reporting purposes as long as such use is declared within the report.

It is, however, up to the corporate entity to consider if any additional data is required to meet the reporting requirements under this new regime.

The directors' report must also set out some form of intensity ratio to compare the emissions, using an appropriate business metric or financial indicator such as sales revenue or floor space. Further, in order to allow readers the ability to consider emissions trends, from the second mandatory reporting year companies will need to repeat the previous year's report data when producing their reports.

There is no need to have the data independently verified, however the auditor of the financial statement will need to consider whether the information is consistent with the financial statements and with the knowledge acquired during the audit process.

Enforcement is the responsibility of the Conduct Committee of the Financial Reporting Council. This body is likely to rely heavily on persuasion, though it has a general reserve power to apply to the Court for a declaration of non-compliance, and an order for a new report.
The reporting requirement will be subject to review in 2015, following which a decision will be made in 2016 as to whether it should be extended to all large companies.

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EMPLOYMENT TAX ISSUES

The mining and oil extraction industries require a mobile, skilled workforce. Often individuals are engaged throughout the world through a variety of intermediaries, including employment agents. Although there is already an extensive body of statute law governing the tax treatment of intermediary arrangements, George Osborne's Autumn Statement (10 December 2013) saw the publication of draft legislation to combat further perceived tax avoidance relating to employment intermediaries. The legislation is expected to be enacted in the Finance Act 2014 and to take effect from April 2014.

Onshore Employment Intermediaries – "False Self-Employment"

Under current UK legislation, where a worker personally provides services to another person (the client) pursuant to an agency contract and is subject to a right of supervision, direction or control as to how the services are provided, the worker is treated for tax purposes as employed by the agency. The agency is obliged to account for income tax and national insurance contributions through "Pay As You Earn" in respect of the amount it pays to the worker. However, the existing legislation only applies where the worker is obliged to provide the services *personally*. If the contractual arrangements are such that he has the right to provide a substitute and not perform the services personally, the legislation does not apply. In that case, the worker will be regarded as self-employed (unless, on all the facts, he is in fact an employee of the end client).

The main consequences of self-employment treatment are that no Class 1 National Insurance contributions are due. In 2011, HMRC tried to argue that it was sufficient for the legislation to apply that the worker in fact performed the services personally even if he was not under an obligation to do so, but the tax tribunal disagreed.

It is this "loophole" which the new legislation will close. The proposed amendment to the agency legislation will remove the obligation for personal service. Instead, the requirement from 6 April 2014 will be that the worker "personally provides… services", or is "personally involved" in the provision of services to another person (the client). In addition, there will no longer be any requirement for a contract between the agency and the worker. The rules will therefore apply where the personal services condition is met and **any** third person enters into a contract with another person (the client) under or in consequence of which (1) the services are provided or (2) the client pays, or otherwise provides consideration, for the services. The requirement for the worker to be under the supervision, direction or control as to the manner in which the services are provided will remain, but the legislation will be explicit that that control can be by any person.

Personal Service Companies ("PSCs") are intermediaries in the same way as, for example, employment agencies are and are therefore in principle subject to the legislation. However, HMRC recognises in the consultation paper published on 10 December 2013 that most PSCs will not satisfy the relevant conditions and therefore that neither the existing legislation nor the new agency legislation will generally apply. Instead the "IR35" legislation (which treats certain intermediaries as making payments of income subject to PAYE and NIC to the worker they supply) will have to be considered.

In cases where there is both a PSC and an employment agency (with the employment agency making arrangements for the worker's services to be provided through the PSC) the position should be the same in principle and the legislation should not apply. This means perhaps that agencies are more likely now to favour the use of PSCs. However, not all workers will be comfortable or familiar with using a PSC and if the intermediary were to set up and operate a company on behalf of the worker, that would take the arrangement into the managed service company legislation.

Offshore Employment Intermediaries

Further changes were announced to address a perceived loss of income tax and NIC because UK legislation does not currently apply the operation of Pay As You Earn to offshore companies unless they have a "presence" in the UK. This has led to individuals (in many cases employed in the UK's offshore oil and gas industry) being employed by non-UK resident companies, with no place of business in the UK and supplying the labour of those individuals to a client (who might be onshore).

The original proposal was to impose a responsibility to account for NIC and income tax on the offshore employer, but if that offshore employer were to default, then the obligation would move to the intermediary closest to the end user of labour ("intermediary 1") or (in the absence of such an intermediary, or if it was to default itself, liability would pass to the end user). This caused some concern amongst those who would be "intermediary 1" in a chain or the end user. In response to this, HMRC have provided, in the revised proposal, for the liability to be fixed with the last intermediary before the end user. However, where there is no onshore intermediary at all the proposal is for the liability to fall on the end user.

The oil and gas industry was particularly concerned with the way in which the proposed rules would operate. This was because the chains of contracts and sub-contracts can be very complex, especially where joint operating agreements for oilfields could have made the licensee of a field both the end user and "intermediary 1". In response, HMRC have now proposed that the person responsible for operating PAYE will initially be an associated company, body or agency of the offshore employer that is based in the UK. Where there is no such employer then the oil field licensees will be responsible for PAYE, but with the offshore employer being able to apply to HMRC for a certificate (in a similar way that offshore persons liable for corporation tax can be issued with a certificate that exempts the licensee from liability to unpaid corporation tax due from that offshore person in respect of UK continental shelf profits).

The revised proposals meet many of the concerns raised in consultation, but in the case of both new proposals it is worth noting that:

- The change to the tax status of the worker should have no impact on his or her status as a matter of employment law, but any arrangements which are made to avoid the impact of the new legislation will need to take into account any implications for employment status;
- Where the legislation applies, the intermediary will have to account for PAYE and NICs. This will undoubtedly be an increased administrative burden for many intermediaries;
- The new legislation will be supported by new reporting and record keeping requirements. This will apply in addition to the record keeping requirements which currently apply to employment businesses.

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RULING GIVES LEAD TO GAS OPERATORS

The widely reported scenes surrounding energy company Cuadrilla's efforts to carry out exploratory drilling at Balcombe in West Sussex demonstrate some of the challenges associated with the development of onshore oil and gas opportunities in the UK. While Cuadrilla was only seeking to carry out exploration work by drilling a conventional oilwell, protest groups were primarily concerned with opposing the prospect of hydraulic fracturing or "fracking".

Such confusion provides a good illustration of the sensitivities associated with bringing forward any form of hydrocarbon development, whether that be exploration or production, in the current political climate. Some operators have long argued that the planning system presents further challenges, albeit rather less dramatically. However, the industry should take some encouragement from the High Court ruling in *Europa Oil and Gas Limited -v- Secretary of State for Communities and Local Government and Others* last summer.

The claimant, Europa Oil and Gas, held a petroleum exploration and development licence and wished to carry out exploratory drilling for hydrocarbons in Surrey for up to three years. The proposed site was in the metropolitan green belt and an area of outstanding natural beauty. Surrey County Council refused planning permission, against officers' advice. Europa appealed, but the inspector determined that the proposal was inappropriate development in the green belt.

Europa then brought a successful legal challenge against the inspector's decision. Mr Justice Ouseley found that the works fell within the "mineral extraction" exception to green belt restrictions in paragraph 90 of the National Planning Policy Framework (NPPF), even though only exploratory drilling was proposed. He held that the inspector had erred in law in finding that the exploration works did not comprise mineral extraction for the purposes of the NPPF, and had been wrong in starting from the position that the proposed works were inappropriate development.

The Judge concluded that the inspector's approach also undermined paragraph 144 of the NPPF. This provides that planning authorities should give great weight to the benefits of mineral extraction, including benefits to the economy, in determining planning applications. The ruling is notable not only for the clarity it brings to understanding this policy area, but also because of its relevance to more political arguments that are increasingly heard on the economic benefits projects of this type can generate.

The court's view is perhaps not surprising, based on a reading of government guidance and the Secretary of State's decisions on a number of similar recent proposals. Even so, it provides welcome clarification of important points of interest to companies looking to secure consent to carry out exploratory drilling in sensitive countryside locations, at a time of much activity in the development of both conventional and unconventional gas reserves.

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With more than 70 offices throughout Asia, Europe, the Middle East, the Americas and more recently Australia, DLA Piper is ideally positioned to help your business obtain local legal advice in the mining and minerals sector, anywhere in the world.

Whilst Minerals Matters largely focuses upon legal and regulatory topics impacting on day to day operational matters in the UK, we, together with our international colleagues, can support all of your business needs in all of the major mining regions throughout the world.

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