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Unearthed

December 2012

A NEWSLETTER FOR CLIENTS AND CONTACTS OF NORTON ROSE GROUP WITH AN INTEREST IN THE MINING SECTOR





INTRODUCTION

Welcome to the December 2012 edition of *Unearthed*. In this issue, we feature news about recent mining events, legal updates and articles relevant to the global mining industry. Contributed by Norton Rose members around the world, we invite you to read about recent developments affecting the mining industry, including new and proposed legislation, resource nationalism, corporate governance, anti-corruption challenges, alternative financing options and tax developments.

We are delighted to inform you that on June 1, 2013, **Norton Rose will be joining forces with leading U.S. law firm Fulbright & Jaworski L.L.P. to create Norton Rose Fulbright.** Norton Rose Fulbright will be able to offer our clients 3800 lawyers in 55 offices across the United States of America, Europe, Middle East, Asia, Australia, Canada, Africa, Latin America and Central Asia. We are now better positioned than ever to provide you with the highest quality legal services seamlessly through the world.

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Upcoming events



Women in Mining Monthly Lunch Series – Toronto, Canada - 12 December 2012

Norton Rose in Canada is sponsoring the Women in Mining Toronto monthly lunch series. The series is a lively and informal group of more than 400 women who work across the spectrum of the mining industry. They meet monthly from September to June, usually over lunch, sometimes with a speaker, sometimes just to chat on a selected topic. For more information [click here](#). ^

Trends in Natural Resources – London, U.K. – 30 January 2012

Norton Rose is hosting a breakfast briefing that will cover some of the current trends in the natural resource sector. With commodity prices moderating, dynamics in the natural resources sector have been changing with an associated impact on the ability of parties to close deals. This briefing will focus on some of the key themes driving M&A and ECM activity in the sector as well as considering some of the headline deals during 2012 together with key issues and trends during the period and what to expect in 2013. Please contact [Enrico Noronha](#) for more information. ^

Recent events



Alternative financing in equity challenged times - Toronto, Canada, 1 November 2012

Norton Rose in Canada hosted a panel discussion on the use of alternative methods of financing to bridge the equity gap in mining project financing. Norton Rose practitioners, including **Richard Lachcik** (Toronto, Canada), **Martin McCann** (London, U.K.), **Nick Adams** (London, U.K.), **Peter Wiazowski** (Montreal, Canada), **Robert Mason** (Toronto, Canada) and **Jake Howard** (London, U.K.) discussed alternative methods of financing relevant to the mining industry, including: streaming and royalty transactions, off-take financing, pre-IPO financing alternatives, commodity linked notes, debt capital markets and other methods of non-equity financing. For more information [click here](#). ▲



Our panel of experts discussed what mining companies operating in difficult jurisdictions need to know.

Global Perspectives on Mining - Toronto, Canada, 1 November 2012

Norton Rose in Canada hosted a roundtable discussion on “hot topic” issues for Canadian miners with international operations. Our panel of experts discussed what mining companies operating in difficult jurisdictions need to know about: foreign ownership restrictions, dealing with indigenous rights, rules on local processing, surface rights and illegal mining, corruption, nationalization, labour issues and legal certainty. The panel was moderated by **David McIntyre** (Toronto, Canada) and included **Glenn Faas** (Bogotá, Colombia), **Michael Joyce** (Tokyo, Japan), **Nick Merritt** (Singapore), **Wang Yi** (Beijing, China), **Anatoly Andriash** (Moscow, Russia), **Nick Dingemans** (Moscow, Russia), **Yerzhan Kumarov** (Almaty, Kazakhstan), **Charles Ancer** (Johannesburg, South Africa), **Andre Vos** (Johannesburg, South Africa) and **Avril Cole** (Toronto, Canada) shared their views on mining in various jurisdictions worldwide, including Colombia, Venezuela, Australia, Indonesia, China, Russia, Kazakhstan, South Africa and western Africa. ▲

The development of the north: What lies ahead - Toronto, Canada, 1 November 2012

Norton Rose's Canadian North and Arctic group hosted an informative luncheon discussion with special guest Tom Paddon, President & Chief Executive Officer of Baffinland Iron Mines Corporation, who provided an overview of one of Canada's most exciting proposed Arctic development projects. Baffinland Iron Mines Corporation is focused on the exploration and development of its Mary River project, located in the Qikiqtani Region of Nunavut on Baffin Island, one of the largest and richest undeveloped iron ore projects in the world and, by far, the most significant development ever planned above the Arctic Circle. Tom was joined by a panel of Norton Rose experts, including Dawn Whittaker (Toronto, Canada), Wylie Spicer (Calgary, Canada) and Richard Desgagnés (Montreal, Canada) who facilitated an interactive Q&A session focussing on sustainable Arctic development and some of the business and legal challenges ahead. For more information [click here](#). ^

China Australia Resources Investment Forum - Beijing, China, 3 November 2012

Robert Milbourne, Partner in our Brisbane office, spoke at the China Australia Resources Investment Forum in Beijing. The forum focuses on enhancing the understanding of the Australian resources industry and partnership opportunities within, through presentations from Government regarding the current legislative framework and geological hotspots. ^

mineLatinAmerica - Toronto, Canada, 7 November 2012

Norton Rose in Canada recently co-sponsored with the TSX Group a full day mineLatinAmerica conference. This full-day event featured updates by public and private mining companies on their Latin American projects as well as presentations on doing business in Latin America's mining industry by expert advisors (including an exploration overview, commodity outlook, financing in challenging times, legal framework, tax issues, etc). Richard Lachcik of Norton Rose Canada Co-Chaired this event and Ruben Eduardo Lujan from our Caracas office presented on "Mining Regulatory Framework and Legal Issues in Selected Latin American Jurisdictions". For more information [click here](#). ^

Australian Resources Conference and Trade Show – Perth, 12-14 November 2012

Robert Milbourne, Partner in our Brisbane office, presented at the Australian Resources Convention and Exhibition sponsored by the Australian Stock Exchange, Western Australian Government and the Australian Financial Review newspaper held from 12 - 14 November in Perth. Robert's presentation explored the mining opportunities in Latin America available to Australian companies. For more information [click here](#). ^

Quebec Mining Exploration Convention – Quebec City, 18-22 November 2012

Pierre-Christian Labeau (Aboriginal Law) and Jean Piette (Environmental Law) attended the Quebec Mining Exploration Convention in Quebec City and gave a presentation on the Norton Rose platform and mining practice. For more information [click here](#). ^

Recent deals



Norton Rose in Canada advised **Gran Colombia Gold Corp.** (TSX: GCM), a Canadian-based, Colombia-focused gold and silver exploration, development and production company, on its offering of US\$100 million aggregate principle amount of units. Each unit of the offering consists of one US\$1,000 face amount secured, 10% gold-linked note and 250 common share purchase warrants. The net proceeds of the offering will be used as project financing for the Pampa Verde Project at the Company's Segovia Operations in Colombia, which includes the construction of a 2,500 tpd mill, the development of a new mechanized underground mine to access new vein deposits as well as improve access to the existing mines, additional capital expenditures relating to the Pampa Verde Project and interest payments on the notes. ▲

Norton Rose's Jakarta office is advising **Killara Resources** in relation to the acquisition of three coal mines. ▲

Norton Rose Australia has advised **Industrea Limited**, an Australian mining services company, on a cash offer by US conglomerate, General Electric Company (GE) by way of scheme of arrangement. GE has offered to acquire

100% of Industrea's issued shares at A\$1.27 cash per share. The acquisition price represents a 48% premium to the previous close and implies a fully diluted value for Industrea of approximately A\$470 million. In addition, the Industrea Board has negotiated the ability to sell Industrea Mining Services (IMS) separately, in which case Industrea shareholders will be entitled to receive any net proceeds from the sale of the division above an agreed value in addition to the \$1.27 per share offered by GE. ▲

Norton Rose Australia advised **Washington H. Soul Pattinson** and Company on its bid for Exco Resources. ▲

Norton Rose in Canada acted for TSX and AIM listed gold and copper mining, exploration and development company **Rambler Metals & Mining** plc in connection with a two-stage strategic investment by Tinma International Ltd., a wholly-owned subsidiary of a China-based investor. ▲

Norton Rose advised **Weather Investments II S.à r.l.** in its \$502 million friendly all-cash acquisition of La Mancha Resources Inc., a Canadian headquartered international gold producer with four

mines in Australia and Africa. ▲

Norton Rose's London office has advised **Tizir Limited** (a joint venture between Mineral Deposits Ltd and Eramet SA) on the issuance of a US\$150 million Nordic Bond and the related intercreditor aspects in relation to future funding. The financing will be used towards the partial funding of the construction of Tizir Group's mineral sands mining facility and associated infrastructure in Senegal. ▲

Norton Rose's London office acted for **Standard Bank** in relation to cost overrun facilities being provided alongside a Nordic Bond for the Northland Group's Kaunisvaara iron ore project in Sweden. ▲

Norton Rose in Canada acted as counsel to a syndicate of underwriters led by Dundee Securities Ltd. in connection with the July 2012 private placement of \$57.5 million of 6.0% convertible unsecured subordinated debentures and the November 2012 private placement of \$69 million of 7.5% convertible unsecured subordinated debentures of **Kirkland Lake Gold Inc.**, an intermediate emerging market gold producer with properties located in the Southern Abitibi gold belt of Ontario. ▲

Legal updates, articles and briefings



IFC performance standards: A benchmark for CSR

This article originally appeared in the Canadian Mining Journal on September 1, 2012

[Michael Torrance](#)

In May 2009, the Government of Canada established the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor. It also explicitly endorsed the International Finance Corporation (IFC) Performance Standards on Environmental & Social Sustainability as a primary part of the CSR expectations for the Canadian mining industry.

[Read the article.](#) ^

Developments in Ontario's efforts to update its mining regulations and new policy directions for Quebec's mining industry

September 2012

[J.M. Madeleine Donahue](#) and [Jean Piette](#)

We last reported on proposed regulatory changes under Ontario's Mining Act in a July 2012 legal update. What is the status of these regulations? What has occurred since then and when will the regulations be issued? The short answer is that the regulations and guidance documents are still under development and the earliest the regulations may be out is November. Although the public consultation period on the six regulatory proposals posted on the Environmental Registry (Registry) in

March 2012 is closed, the Ministry of Northern Development and Mines (MNDM) is continuing to consult with First Nations on phase 2 of the Mining Act regulations, which deals extensively with relations between First Nations and the mining industry.

[Read the article.](#) ^

SEC adopts final conflict minerals and government payments rules

September 2012

[Thomas Vita](#), [Michael Dunn](#), [Ji Liu](#), [Peter Wiazowski](#) and [Andrew Bleau](#)

On August 22, 2012, the US Securities and Exchange Commission (the SEC) adopted final rules implementing

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sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) that impose new reporting requirements related to: payments made to governments by oil, gas and mining companies (the Government Payments Rules); and the use of conflict minerals by manufacturing companies (the Conflict Minerals Rules).

[Read the article.](#) ^

Mining tax - South Africa

September 2012

[Peter Surtees, Michael Dale and Andrew Wellsted](#)

A South African case, *Armgold/ Harmony Freegold Joint Venture v CSARS* (703/2011) [2012] ZASCA 152, delivered on 1 October 2012, deals with the treatment of capex when one taxpayer operates several mines, some of which make profits and others losses. In particular, it provides guidance as to the application of aspects of section 36 of the South African Income Tax Act 1962.

[Read the article.](#) ^

Mining development and numbered treaties

This article originally appeared in the *Canadian Mining Journal* on October 1, 2012

[Pierre-Christian Labeau](#)

Numbered treaties concluded in the second half of the nineteenth century cover all the Prairie provinces in Canada. They gave the aboriginal signatories the right to hunt, trap and fish throughout the territory “saving and except such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.” These directly impact mining operations in the Prairie provinces and across Canada.

[Read the article.](#) ^

Mining hard times: eight tips to survive a downturn

October 2012

[Rebecca Mohr and Robert Milbourne](#)

Following a prolonged boom, current indicators suggest there could be tough times ahead for Australia’s resources sector. The Federal Resources, Energy and Tourism Minister, Martin Ferguson is one of a growing number of insiders to suggest that the mining industry brace for

a downturn. This briefing presents eight ways for mines to proactively prepare for tougher times.

[Read the article.](#) ^

Canadian Securities Administrators note misuse of "preliminary economic assessments" in mining projects

October 2012

[Pierre R. Dagenais and Elizabeth von Engelbrechten](#)

In Staff Notice 43-307 (the Notice), the Canadian Securities Administrators (the CSA) identify a number of issues and deficiencies they have been seeing in relation to revised National Instrument 43-101 - Standards of Disclosure for Mineral Projects (NI 43-101), which came into force last year. In particular, the CSA has seen problems with the use of “preliminary economic assessment” reports (PEAs). The Notice discusses these issues, notes the CSA’s stance on each issue and describes the consequences for issuers found to have these deficiencies.

[Read the article.](#) ^

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Nordic Bonds

October 2012

[Martin McCann](#) and [Stephen Palmer](#)

The Norwegian bond market, which focuses on capital raising for both Nordic and international corporations and projects, has matured into a multi-billion dollar market offering established market practice for investors and issuers. To date, issued capital has primarily been for offshore oil and gas projects, but recently companies in the mining industry and various other sectors have been increasingly active in issuing such bonds. Norton Rose's mining team provides an overview of the processes involved and the relevant commercial considerations regarding a potential capital raising by way of a Nordic Bond issuance that project stakeholders may wish to consider in relation to their specific financing requirements.

[Read the article.](#) 

Australian Uranium Law Update: Queensland lifts its uranium mining ban

October 2012

[Jehann Mendis](#) and [Dominic Townsend](#)

On 22 October 2012, the Queensland Government announced its decision to end the 30 year ban on uranium mining. This means that Queensland uranium miners will be permitted to exploit the estimated AUD\$18 billion worth of uranium reserves located in that State.

[Read the article.](#) 

Norton Rose lawyers release IFC Performance Standards on Environmental & Social Sustainability

31 October 2012

[Michael Torrance](#), [Avril Cole](#), [Tina Costas](#), [Jocelyn Kearney](#), [Richard I. King](#), [Pierre-Christian Labeau](#), [Eleanor Martin](#), [Alexander Green](#), [Lucas Thacker](#) and [Michael Tooma](#)

A team of lawyers from leading international law firm Norton Rose has just released IFC Performance Standards on Environmental & Social Sustainability: A Guidebook, published by Lexis-Nexis. The book has contributions from lawyers in Canada, the UK, Australia and South Africa. The book is the first of its kind and provides a comprehensive and practical analysis of how the IFC Performance Standards impact investment decision making and international business operations.

[Read the press release.](#) 

OSC provides guidance for emerging market issuers

November 2012

[Andrew Grossman](#), [Janet Howard](#), [R. Craig Hoskins](#) and [Solomon Sananes](#)

On November 9, 2012, the Ontario Securities Commission (OSC) released OSC Staff Notice 51-720 – Issuer Guide for Companies Operating in Emerging Markets (the Issuer Guide). The Issuer Guide highlights key areas of risk for Canadian public companies which have significant business operations in emerging markets, sets out the expectations of OSC Staff regarding regulatory compliance and is intended to assist directors and management of

such issuers in meeting the level of standards expected in Ontario capital markets. Publication of the Issuer Guide follows a review of emerging market issuers (EMIs) undertaken by the OSC, the findings of which were published in March 2012 in OSC Staff Notice 51-719 – Emerging Markets Issuer Review (the Review). The Review identified deficiencies relating to EMIs in relation to corporate governance practices, use of complex corporate structures, related party transactions and risk management and internal controls.

[Read the article.](#) 

Mining in Indonesia - Supreme Court upholds challenge to metal ore export ban

November 2012

[Rick Beckmann](#)

The Indonesian Supreme Court has upheld an industry challenge to a government ban on the export of unprocessed metal ores. The Indonesian Nickel Association (ANI) and the Association of Indonesian City and Regional Governments brought the case against the application of certain parts of Energy and Mineral Resources Ministry Regulation No. 7 on mineral processing. Although details of the verdict are not yet public, Energy and Mineral Resources Minister Jero Wacik has been quoted by Reuters as saying that Indonesia will review its rules on the export of unprocessed metal ores following this verdict.


[Read the article.](#) 

Mining in Indonesia – Regencies Get Back Authority to Determine Mining Areas

November 2012

[Rick Beckmann](#)

The Indonesian Constitutional Court has returned the authority to determine mining areas from the central government to local governments, mostly to the regencies. The Court accepted a challenge by the Regent of East Kutai against provisions of the 2009 Mining Law which required the central government to merely “consult” with regencies over proposed mining areas. The Court found this to be unconstitutional and against the concept of regional autonomy, and declared that the authority to “determine” mining areas should rest with the regencies.

[Read the article:](#) 



The Court accepted a challenge by the Regent of East Kutai against provisions of the 2009 Mining Law which required the central government to merely “consult” with regencies over proposed mining areas.



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Norton Rose Group

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