



Mining

Changing economic conditions are often felt at the mine mouth long before they appear on the balance sheet or the boardroom table. DLA Piper is responsive to our clients' needs as they adapt to the cyclical shifts in the global commodities markets. Our innovative solutions assist them to efficiently address these challenges and opportunities.

From startup to divestment or site closure, our mining legal team can provide a complete legal solution, covering everything from day-to-day operational issues to large scale international transactions and arbitrations.

Our commodities lawyers have detailed knowledge of local regulatory environments, key project drivers and the market. We understand how the many components of a project interact with one another. Our mining team takes a holistic approach to project development, which enables us to offer a balanced assessment in the best interests of the project as a whole. We can assist you to identify, analyze, negotiate and document project structures and to maintain efficiency when the project is operational.

DLA Piper is developing innovative solutions to some of the most complex and important issues facing the mining community today. These projects, while not only important in financial terms, are also breaking new legal ground in their treatment of difficult issues such as third party access to infrastructure and state agreements and concessions.

Mining is a truly global industry and we can provide the location-based assistance as well as the experience and skills that clients in this sector require.

We offer mining and minerals support in all of the major mining regions of the world, including emerging markets in Africa, Latin America, Asia and the Middle East, as well as the more established markets in Australia, North America and Europe.

Our international reach means we have the local strength and knowledge to advise our clients on specific legal, cultural and political issues wherever they arise.

For those with projects across countries or continents, we can provide a single point of contact to help manage the delivery of legal services to all of your projects and your personnel.

Our multidisciplinary industry focus offers our clients responsive, cost-effective help. Whatever the nature of your legal requirement or business need, you can rely on our detailed knowledge, experience and understanding.

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- Mergers and Acquisitions
- Projects, Energy and Infrastructure
- Real Estate
- Environment, Health and Safety

A selection of our clients:

Miners

- Anglo American
- BC Iron
- China Coal
- Coeur Mining
- Ferrous Resources
- Fortescue Metals Group
- Newmont Mining Corporation
- Norilsk Nickel
- Rio Tinto
- Xstrata

Financiers / Investors

- Credit Suisse
- Macquarie

Operators / Buyers

- Baosteel
- Sinosteel
- Lafarge
- Mitsubishi
- Sibelco/Unimin
- Arcelor Mittal
- Tata Steel
- POSCO
- Marabani
- Sinopec

Suppliers

- POSCO E&C
- STX
- Bristow Helicopters

Government

- Government of Guinea
- State of Western Australia
- Government of Uganda
- Government of Kazakhstan

Case studies

- When the Indian Government's Department of Disinvestment and Coal India Limited (the world's largest coal miner) planned an initial public offering of shares, we were chosen following a formal government counsel selection process involving more than six international law firms. The deal raised US\$3.43 billion, making it the largest IPO in the history of Indian capital markets and the third largest IPO in the world during 2010.
- We are assisting the Australian Premium Iron Joint Venture in all aspects of the development of the West Pilbara Iron Ore Project, which involves the development of three new iron ore mines, 350km of heavy-haul railway and a new deep water port at Anketell Point.
- Our broad experience in the financing of mining operations came into play when we represented a major bank in the financing of the development, construction and operation of an iron ore concentrator facility in the USA. It was structured as a fully secured project financing and commodity hedges were an important part of the deal structure, the borrower being required to hedge against iron ore concentrate price fluctuations over a multiyear period to ensure that offtake revenues would be sufficient to cover debt service.
- A cross-border team from Paris, Perth, New York and Brussels are assisting the Government of Guinea in the review of mining rights

RELATED SECTORS

- Energy and Natural Resources

and conventions granted by the prior governments and on the renegotiation of concessions and conventions in accordance with the new Mining Code.

- We advised Lloyds Banking Group on the debt and equity restructuring of UK Coal plc (now renamed Coalfield Resources plc). An unsuccessful rescue bid would have resulted in company administration, closure of mines, the loss of 2,500 jobs and a tax payer bailout. Working closely with the Lloyds team, we helped achieve the desired outcome; the separation of the businesses of the Group into new divisions and the isolation of existing pension liabilities of £400 million.
- Following a mining failure in Indonesia, the reinsurers hired us to handle a US\$500 million claim. The case was eventually settled on very beneficial terms for the reinsurers.
- Representing the Republic of Guinea in consolidated, multi-billion dollar ICSID arbitrations brought by BSG Resources ("BSGR"), claiming expropriation of a mining concession and related rights in Guinea, in what is one of the most important and high-value mining disputes in the world.
- Acting for the Republic of Kenya in respect of an ICSID claim brought by the mining investor, Cortec. This claim is thought to be the highest value and most strategically important investment treaty claim Kenya has ever faced.

INSIGHTS

Publications

Release of exposure draft legislation for major reforms to Australia's Foreign Investment Framework

10 August 2020

Many governments around the world have been strengthening their laws relating to foreign investment. Australia is no exception to this development and has just released proposed sweeping reforms to its foreign investment regime. In this article, we provide a high level overview of the key proposed amendments and our thoughts on how some of those proposals are likely to affect foreign investment into Australia.

DLA Piper achieves a successful result in *Auctus Resources Pty Ltd v Commissioner of Taxation* [2020] FCA 1096

5 August 2020

DLA Piper's tax team has been successful in representing its client, the taxpayer, in *Auctus Resources Pty Ltd v Commissioner of Taxation* [2020] FCA 1096. The case relates to specific tax assessment and tax recovery powers of the Commissioner of Taxation relating to an R&D tax offset refund in the 2013 income year. It is also a reminder to legal practitioners to raise all grounds and contentions during the hearing. This article will explore these issues in further detail.

Australia tightens rules on foreign investment

17 June 2020

In this article we summarise the tax-related developments from early June 2020, as Australia takes a more stringent approach towards compliance procedures involving foreign investments.

Coronavirus: Changes to rules governing meetings and the execution of company documents (Australia)

7 May 2020

Certain requirements in the *Corporations Act 2001* (Cth) (**Corporations Act**) relating to shareholders meetings, and document signatures, are not compatible with public health requirements for social distancing during the coronavirus pandemic. In order to facilitate these important corporate functions during this period, on May 6, 2020 the Australian Federal Government introduced the

Corporations (Coronavirus Economic Response) Determination (No. 1) 2020.

This determination modifies the legislative requirements regarding meetings and execution of company documents. These changes come into force on 6 May 2020, and will expire after six months, on 5 November 2020.

Coronavirus: Directors' duties and making decisions in a crisis (Australia)

4 May 2020

Directors need to carefully consider the risks of the COVID-19 outbreak within their business, given its impact on the global economy. As many now face significant, and increasing, cash flow pressure, directors should carefully consider their actions in the context of the legal framework.

In this new guide we have set out the practical steps directors should be taking to protect their company and its business going forwards.

Contract analysis in a crisis: flowcharts

7 April 2020

Flowcharts providing considerations for analyzing commercial contracts in the context of the COVID-19 pandemic through a logical process flow that can serve as a practical checklist.

Cost-cutting considerations in the time of COVID-19 (Part 3 – employment issues outside the US)

7 April 2020

A deeper dive into various cost-saving measures and their viability for employers outside the US.

COVID-19 and the "essential business" designation: Practical guidance for businesses that fall in the gray area between "essential" and "non-essential"

6 April 2020

Certain frequently asked questions as well as practical guidance.

Beyond social distancing: What employers need to know to keep their workplaces safe and manage privacy obligations in the face of COVID-19

2 April 2020

Guidance from OSHA, EEO and CDC to help employers seeking to protect the health, safety and privacy of their on-site employees.

Amid COVID-19, US EPA loosens its enforcement policies on the regulated community

31 March 2020

EPA will exercise enforcement discretion in policing businesses and other regulated entities for noncompliance with certain

environmental regulations.

Coronavirus: Cybersecurity considerations for your newly remote workforce (United States)

31 March 2020

Cyber risk management involves balancing the productivity of a workforce with ensuring confidentiality, integrity and availability of the company's own systems and data, as well as that of their supply chain.

Coronavirus: DHS Response to COVID-19 - What US Employers Need to Know

29 March 2020

Key questions and answers related to the new DHS guidance.

Coronavirus: Cyber hygiene practices

25 March 2020

While the world is responding to the coronavirus disease 2019 (COVID-19), and individuals are increasingly focused on personal hygiene and social distancing, augmenting cyber hygiene efforts at home and at work are increasing in importance too.

Coronavirus: Employee furloughs, reductions-in-force and similar temporary cost-saving measures (Part 2 – Employment issues outside the US)

25 March 2020

A general overview of key employment issues to consider outside of the US in light of COVID-19.

Coronavirus: Employee furloughs, reductions-in-force and similar temporary cost-saving measures in the US - Part 1

25 March 2020

Key employment-related issues for US-based employers in relation to cost-saving measures due to COVID-19.

Coronavirus: Several state and local governments issue “shelter in place” orders (United States)

23 March 2020

Between March 17 and 22, state and local governments have promulgated at least a dozen “Stay-at-Home” / “Shelter-at-Home”-type Orders. This alert provides details on a number of state and local government orders.

High Court rules BHP entities were associates

23 March 2020

On 11 March 2020, in an unanimous and landmark decision, the High Court of Australia handed down its decision on the technical meaning of “sufficiently influenced” which is used to determine who is an “associate” under Australia's foreign income attribution rules.

The decision has significant impact for large listed groups especially with a dual-listed company (**DLC**) structure and concerns the application of the Australian Controlled Foreign Company (**CFC**) rules.

Whilst the facts and future application of this case may principally be limited to the DLC type structures, the legal analysis of the definition of “associate” impacts on wider applications as this definition is used outside of the CFC provisions including the thin capitalisation rules, the debt/equity tests and the withholding tax rules.

Coronavirus COVID-19 and a FIFO Workforce

17 March 2020

Media reports have emphasised that the Western Australian resources sector considers itself well-prepared for the threat of coronavirus COVID-19, and have measures in place to ensure any disruption to production levels is minimised. But it's important to consider what obligations employers in the mining sector have to their employees and what steps they may take to appropriately respond to the current threat.

Coronavirus COVID-19 and corporate governance (Australia)

18 February 2020

The coronavirus COVID-19 outbreak and ensuing government restrictions raise corporate governance concerns and create areas of risk across the ESG spectrum that should be considered by companies and their directors and officers.

Coronavirus COVID-19: The legal impact on force majeure events (Australia)

12 February 2020

Key considerations for parties that may wish to declare a force majeure event or dispute the declaration of a force majeure event by a counterparty in relation to coronavirus COVID-19.

Hong Kong Government introduces mandatory quarantine measures

11 February 2020

On 9 February 2020, the number of deaths due to the rapidly spreading coronavirus in Mainland China officially surpassed the figure seen during the 2002/2003 SARS epidemic.

Numerous governments have been implementing restrictions barring entry to those with recent travel history through Mainland China, including Singapore, Japan, Australia and the United States. Following pressure from public health workers, the Hong Kong Government has now followed suit and has begun a mandatory two-week quarantine for anyone arriving from Mainland China.

How to resume business amid the coronavirus outbreak (China)

11 February 2020

As reported in our previous article, China has extended its Chinese New Year holiday and work suspension period as a result of the novel coronavirus outbreak which has now infected more than 40,000 people around the world.

This is a summary of the Back to Work Day and compensation for working before Back to Work Day in key cities and provinces across China.

EU Policy & Regulatory Alert

3 February 2020

On 29 January 2020, the new European Commission has adopted its 2020 annual Work Programme, announcing 43 new concrete policy and legislative measures to be introduced over the course of the year of 2020, and thereby translating into practice the Political Guidelines of new European Commission President Ursula von der Leyen.

APAC employment issues arising out of the Coronavirus (AsiaPac)

31 January 2020

On 29 January 2020, the number of confirmed cases of the rapidly spreading coronavirus in Mainland China officially surpassed the figure seen during the 2002/2003 SARS epidemic.

Multinationals with local operations around the APAC region have been significantly affected. As staff return to the office following the Chinese New Year holiday period, businesses are now considering what they can do to minimise any risk to health and safety and support staff through this challenging period where anxiety and uncertainty is rife, whilst at the same time complying with their employment obligations and maintaining business continuity. Putting in place detailed business and contingency plans and ensuring careful communications with staff to address key topics and concerns is key, as is keeping such plans and communications under frequent review given the fluidity of the current situation.

This alert considers some of the key issues that HR and business leaders should be considering across the APAC region.

Conflict mineral reporting rules impact many public companies: *new supply chain requirements and new Form SD*

19 Sep 2012

Understanding the new reporting requirements.

EVENTS

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Planning for an Uncertain World

16 November 2020

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NEWS

DLA Piper lawyers named Acritas Stars

10 March 2020

Acritas has named over 200 DLA Piper lawyers as 2020 Acritas Stars. Now in its fourth year, Acritas Stars highlights the stand-out lawyers in private practice as nominated by clients around the world. More than 3,000 senior in-house counsel feed into the nomination process to give a comprehensive view of highly recommended lawyers across the globe.

UK Mining

From start-up, day to day operations to divestment or mine closure, DLA Piper's mining team in the UK provides a complete legal service and is a leader in the delivery of astute, industry focused advice to this specialist sector. Our team offers a cross-discipline service to clients, advising on all corporate real estate, construction, litigation, environmental, commercial, health and safety, regulatory and planning issues operators may face.

With an in-depth commercial and practical understanding of the industry, our technical excellence allows us to provide a truly unrivalled service to all of our clients. Strategically located across both traditional and emerging mining centres working closely in conjunction with our international colleagues, we provide minerals operators, banks, institutional investors, product manufacturers and investment funds with leading edge expertise, grounded in a thorough knowledge of local and international market conditions and regulations.

We understand that the economic environment, together with an ever-changing legislative framework, presents real challenges for

organisations operating in what is already a heavily regulated industry. With one of the most highly regarded mining and minerals teams in the country, we are able to offer practical and relevant advice to meet both legal and commercial requirements.

We also understand that mining is a global business and transactions and disputes increasingly have an international dimension. As well as providing local and national support, the breadth of our global practice and contact base means that we can support your business needs, wherever in the world you do business.

We continue to provide support to trade bodies in the UK and elsewhere and are associate members of the Mineral Products Association. We also produce Minerals Matters, a bi-annual publication for our client and contacts. Please contact our EMEA sector lead, Petra Billing, if you would like to receive this publication in the future.