

M&A in the North American Mining Sector

Selected Developments and Trends

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- **Leading Canadian business law firm with a significant U.S. law capability through our New York office**
- **300 Toronto- and New York–based legal professionals**
- **Top-ranked cross-border and international experience, having worked on many groundbreaking and innovative international matters**
 - > mergers and acquisitions
 - > public and private financings
 - > stock exchange listings
 - > cross-border and international investment structures
 - > corporate reorganizations

Our experience

- Advised on some of the most significant Canada-related mining and metals deals in recent years, including the following:

Hindalco Industries
US\$6 billion



Acquisition of Novelis by Hindalco and related financing transactions

Global deal counsel to Hindalco

Gerdau Ameristeel
US\$4.22 billion



Acquisition of Chaparral Steel by Gerdau and related financing transactions

Canadian and U.S. counsel to Gerdau on various aspects of the transactions

Mitsubishi Corporation
US\$2.5 billion



Investment in, and project financing of, the Antamina copper project in Peru

Counsel to Mitsubishi Corporation

Algoma Steel
C\$1.85 billion



Sale of Algoma to India's Essar Global

Canadian and U.S. counsel to Algoma Steel


Sherritt International
C\$1.6 billion



Acquisition of Dynatec

Counsel to Sherritt International

OAO Severstal
C\$900 million



Acquisition of PBS Coals

Counsel to OAO Severstal

- **Our specialties include**

- > mergers and acquisitions
- > corporate and capital markets
- > project finance
- > project development
- > shareholder arrangements
- > environmental, health and safety
- > tax
- > competition and foreign investment review
- > climate change
- > aboriginal matters
- > litigation and dispute resolution

- **Representative clients**

- > Aleris International
- > Barrick Gold
- > Brookfield Asset Management (formerly Brascan)
- > Cameco
- > Centerra Gold
- > Diamet Minerals
- > Dundee Precious Metals
- > Dynatec
- > ENRC plc
- > Essar Steel Algoma
- > Gerdau Ameristeel
- > Glencore
- > Goldcorp
- > Hindalco Industries
- > Inmet
- > Mitsubishi
- > Namibian Minerals
- > Novelis
- > Pallinghurst
- > Placer Dome
- > Royal Utilities Income Fund
- > Severstal
- > Sherritt International
- > Trelleborg AB
- > Western Mining

Major Factors Affecting the Mining Industry Generally

- **Credit crunch and resulting restricted access to capital**
- **Collapse in base metal prices and demand for commodities**
- **General economic and investment climate uncertainty**
- **Increased M&A activity by emerging markets players**

- **Significant drop in overall M&A activity levels**
- **Megadeals not being completed – BHP/Rio Tinto and Xstrata/Lonmin**
- **Increased valuation gap between senior and development-stage companies**
- **Mining companies of all sizes that need access to financing are generating significant M&A opportunities**

Example # 1: Strategic PIPE Financings

- **Driven by producers needing access to capital and customers seeking to secure a strategic source of supply**
 - > for Canadian-listed companies, these transactions have been done through private placements permitted under TSX rules
 - > an acquisition from treasury resulting in a less than 20% equity interest can be completed quickly and efficiently without shareholder approval
 - > equity investments have often been accompanied by ongoing preferential access to production and/or direct interests in underlying assets
 - > equity investments may also serve as a toehold for future acquisitions of control

Example # 1: Strategic PIPE Financings...cont'd

Selected transactions include

- **Japanese consortium (including Tokyo Electric Power and Toshiba) acquisition of a 19.9% interest in Uranium One for approximately C\$270 million**
 - > includes a long-term off-take agreement providing the consortium the right to acquire up to 20% of Uranium One's available production, for which Uranium One has marketing rights
 - > strategic relationship agreement provides a first right of co-investment to the consortium in respect of new uranium assets and projects
- **Wuhan Iron and Steel Corporation (WISCO) acquisition of a 19.9% interest in Consolidated Thompson Iron Mines for approximately C\$240 million**
 - > includes a 25% interest in Bloom Lake mine and long-term off-take rights
- **Korea Electric Power's acquisition of a 19.9% interest in Denison Mines for approximately C\$75 million**
 - > includes an off-take agreement to purchase 20% of Denison's uranium output

Example #2: Acquisition of Control Through PIPE Financings

- **Driven by producers' acute need for access to capital and investors' desire for controlling interest**
 - > these transactions involve the acquisition of a majority controlling interest in an issuer through a private placement of securities from treasury
 - TSX financial hardship exemption – deals can be done without the normal requirement for shareholder approval for transactions materially affecting control
 - > issuer's board must conclude and pass resolution to the effect that the issuer is in serious financial difficulty and the private placement is designed to improve the situation

Example #2: Acquisition of Control Through PIPE Financings...*cont'd*

- > TSX has recently indicated a heightened standard of review of these situations, including
 - the requirement to provide detailed information regarding the necessity for the private placement, the alternatives considered, the manner in which the private placement is expected to address the financial hardship and why shareholder approval is not being sought
- > such private placements are also exempt from the Canadian takeover bid rules because issuance from treasury

Example #2: Acquisition of Control Through PIPE Financings...*cont'd*

Selected transactions include

- **Pallinghurst Resources' acquisition of a controlling interest in Platmin pursuant to a US\$175 million private placement**
- **Severstal's acquisition of a controlling interest in High River Gold pursuant to a C\$56 million private placement**
- **Glencore's acquisition of a controlling interest in Katanga pursuant to a US\$265 million private placement**

**Pallinghurst
Resources
US\$175 million**

**PALLINGHURST
RESOURCES**

Private placement
investment to acquire a
controlling interest in
Platmin Limited

Counsel to Pallinghurst
Consortium

**OA0 Severstal
C\$56 million**

Severstal

Private placement
investment to acquire a
controlling interest in
High River Gold

Counsel to Severstal

Example #3: Strategic Combinations

- **Selected transaction: HudBay's proposed combination with Lundin**
 - > designed to match Lundin's acute financing needs and diverse mineral portfolio with HudBay's significant cash reserves and comparatively narrow geographic and mineral focus
 - > structured as a share exchange transaction whereby HudBay would acquire Lundin with newly issued shares that would almost double HudBay's existing float
 - > HudBay issuance was intended to be exempt from approval by its shareholders due to a TSX rule exemption for the issuance of shares to acquire another public company

Example #3: Strategic Combinations

...cont'd

- > exemption was successfully challenged by shareholders; OSC ruled that HudBay shareholders must have a right to vote on the acquisition in order to preserve the integrity of the marketplace
- > transaction was subsequently abandoned due to the level of opposition of HudBay shareholders

Postscript:

- > SRM and other investors succeeded in their proxy contest to replace HudBay's board
- > TSX has proposed to revise the public company acquisition exemption to limit dilutive issuances to 50% of an issuer's float unless shareholder approval is obtained

Example #4: Larger Players Who Are Overextended

- **Teck Cominco: has run into difficulties refinancing its bridge loans in connection with its C\$14 billion acquisition of Fording Coal last summer**
 - > it has been engaged in a process of asset sales to raise money
 - > also engaged in debt restructuring with its lending group and reported to be considering issuing additional equity
- **Xstrata: has run into difficulties resulting from its heavy debt burden**
 - > recently completed a US\$6 billion rights offering at a major discount to its trading price
- **Rio Tinto: has run into difficulties resulting in part from its acquisition of Alcan**
 - > in the process of completing a \$19.5 billion investment from Chinalco, including sale of a direct stake in key assets
 - > has also sold significant South American and other assets to Vale

- **Starting several years ago, we have seen a trend of emerging markets players making significant acquisitions in the North American mining and metals sector, including**
 - > **India:** Hindalco's US\$6 billion acquisition of Novelis
Essar's C\$1.85 billion acquisition of Algoma Steel
 - > **Brazil:** Vale's C\$17 billion acquisition of Inco
 - > **Russia:** Severstal's C\$900 million acquisition of PBS Coals (together with a number of significant steel company acquisitions in the United States)
 - > **China:** China Minmetals and Jiangxi Copper's US\$410 million acquisition of Northern Peru Copper
Chinalco's US\$779 million acquisition of Peru Copper

Involvement of Emerging Markets Players in North America...cont'd

- **This trend is continuing, even in the current M&A downturn**
 - > **China:** Chinalco's pending US\$19.5 billion investment in Rio Tinto
WISCO's C\$240 million investment in Consolidated Thompson Iron Mines
 - > **Russia:** Severstal's C\$56 million acquisition of control of High River Gold
 - > **India:** Vedanta/Sterlite's proposed acquisition of ASARCO and reports of Vedanta/Sterlite accumulating an almost 10% toehold in HudBay

Key Issues Faced When Dealing with These New Acquirors

- **Canadian and U.S. foreign investment regulations**
- **Home country issues/regulatory approvals**

- **Approval required for acquisitions of control of a Canadian business by a non-Canadian when the assets of the Canadian business exceed C\$312 million (to be increased shortly to C\$600 million enterprise value)**
- **Investors must demonstrate that the investment is of “net benefit” to Canada**
- **Binding undertakings of the investor to the Canadian government are generally required; undertakings cover matters such as continuation of employment levels, minimum R&D levels and maintenance of a Canadian head office**
- **Special rules apply to acquisitions by “state-owned entities”**
- **New national security test applicable for all acquisitions**

- **FINSA allows for the prohibition of any acquisition of a U.S. business that is determined to be a threat to U.S. national security**
- **National security is a potentially broad concept that includes homeland security and critical infrastructure, including major energy assets and critical technologies, in addition to the traditional defense sectors**
- **Presumption that a second-stage inquiry is necessary when the acquiror is a foreign government–controlled entity**
- **Consider advance consultations with the applicable regulatory body (CFIUS)**
- **Review has become more politicized than in the past**

Home Country Issues/Regulatory Approvals

- **Regulatory and political considerations in acquirors' home jurisdiction may be key focus points**
- **Examples include**
 - > home country regulatory approvals; in the case of China, a variety of domestic approvals are generally required for a Chinese company to complete an acquisition of a foreign company; consider how the domestic approval process meshes with the North American M&A process
 - > exchange control requirements; how does acquiror get purchase-price consideration out of the country
 - > enforceability of acquisition agreement in the acquiror's home jurisdiction in case of breach



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