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Due Diligence in Civil Law Countries

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SUMMARY

The legal differences between common law jurisdictions and civil law jurisdictions (such as those in South America) result in some significant differences in the way due diligence can be conducted. These differences result from the nature of mineral rights, the way they are acquired, transferred and registered, and the enforcement mechanisms and remedies that are available to the parties. Further, significant differences between federal, provincial and municipal jurisdictions on issues such as surface-owner rights, title management, water rights and environment present challenging practical issues that a foreign practitioner dealing in such jurisdictions will face.

The globalisation of certain standards as to financing and collateral should not mislead the foreign practitioner into seeking to apply the principles with which they feel comfortable in their own legal systems.

This paper will explain the practicalities that should be taken into account when conducting due diligence in South American civil law jurisdictions, including practical guidance by way of do's and dont's.

INTRODUCTION

Due diligence has been defined as: "Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by an absolute standard, but depending on the relative facts of the special case."[1]

Particularly referred to mining transactions, due diligence may be understood as the process of investigation, research and analysis conducted in advance of and in preparation for an investment, to identify, interpret and assess, potential legal issues, risks and problems related to mining properties the client is considering investing in, be it by means of acquisition, financing, operation, development or the like.

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1 *Black's Law Dictionary* (West Publishing Co).

Legal due diligence is a widely used term perceived as meaning the same for different professionals in different jurisdictions. In practice, however, the similarities may be less real than expected.

This paper aims at calling the attention of international practitioners to the different practical implications that the term due diligence, although perceived as having the same meaning, may have in regions with differing legal systems; and even among countries expected to have similar legal systems that are applied differently in practice.

Due diligence processes and check-lists tend to be misleadingly similar in many mining ventures, legal systems and jurisdictions, but beware: they may look similar and even have a similar feel, but they might not be or mean exactly the same; moreover, irrespective of how similar they appear to be, make sure the result for your client does not end up being different.

Although due diligence is customarily conducted by professionals as diverse as lawyers, accountants, engineers, geologists, and the like, the scope of this paper will be narrowed to the one conducted by lawyers and related to mining properties. Even within the legal realm, we will not cover, and will assume as already conducted, the corporate due diligence necessary in case of the acquisition, for example, of a mining property as an asset of a legal entity.

CIVIL LAW AND COMMON LAW JURISDICTIONS

Legal Organisation in Civil Law Jurisdictions

Civil law systems, as compared to common law systems, may be initially defined as those in which the rights and obligations are primarily set forth in written bodies of legislation such as codes, laws and regulations. Jurisprudence is considered also a legal source, but not as significant as in common law systems.

In the specific case of mining law, the applicable legislation in civil law countries tends to be outlined in the *Mining Code*, the applicable mining laws and the related regulations, all to be interpreted within the basic principles of the applicable constitution. In those civil law jurisdictions that are organised as federal countries, attention must also be given to the legislation enacted by the different jurisdictions the country is divided into, such as provinces, states, districts, counties and municipalities.

In Argentina, for example, a federal country with provinces and municipalities, there is a federal *Mining Code*. At the federal level, there are also laws passed by the federal congress such as the *Mining Investments Law*, there are decrees enacted by the President in compliance with the constitutional mandate of applying and regulating federal laws, as well as regulations issued by the Secretariat of Mines and other federal authorities.

At the provincial level, there are laws passed by each provincial legislature such as provincial codes and laws of mining procedure, there are also decrees enacted by the provincial governors, and regulations issued by the provincial authorities as diverse as provincial secretaries of mines, notaries of mines, mining administrative judges, and other provincial authorities. At the municipal level, there are resolutions, edicts and similar pieces of legislation passed or enacted by municipal legislative bodies and executive end enforcement authorities.

Practical Implications

In addition to the different legal and political systems, there are of course important cultural differences between common law and civil law countries. It is well beyond the scope of this paper to analyse the extent to which the cultural differences influence the political and legal differences and vice versa, but it is essential to at least be aware of their existence.

It is also important to bear in mind that, as there are differences among common law countries, the legal systems prevailing in different civil law jurisdictions are not identical among themselves either. The aforementioned differences between common law and civil law jurisdictions impact, among others, on the nature of the mineral rights, and the way such mineral rights are acquired, transferred and registered.

Mineral Rights under Civil Law

Most civil law mining legal systems come from the so-called "regalist system". This is, in brief, an application of the jura regalia or royal rights according to which the kings and queens by virtue of their prerogatives granted rights to their subjects or to foreigners. In fact, that is the source where the term regalías (royalties) derives from.

Currently in many civil law jurisdictions, the mining rights are "granted" by the sovereign –nowadays seldom a king or queen but rather an elected government – by means of concessions. It is worth noting that although the term "concession" refers to something being granted by the sovereign and not to a contractual relationship, we will see later in this paper that some of the features of a mining right are of contractual nature, including obligations that the mining right owner has to comply with and the authority may enforce.

The origin of the ways in which mineral rights are dealt with in Latin America brings in a particular insight when analysing what an important influence gold, silver and other valuable minerals had on the sponsorship decisions by the Spanish crown in relation to Colombus' travels to the New World. Even before the discovery of the Americas, under the Alcalá Ordinances of Spain, no person was allowed to look for gold, silver or any other minerals without the prior permission granted by the crown.[2] These principles would in due course be applied in the Spanish Americas. This

[2] *Ordenanzas de Alcalá*, 1348.

system for the award of mineral rights has effects not only on the mining property itself but also, as will be addressed below, on the surface owners' rights.

Limitations on the transfer of mining rights may come from a myriad of sources. Special attention should be paid to limitations related to the owner, to the property, to the buyer, those deriving from contractual obligations, those imposed by applicable legislation, and those relative to the need of consents from third parties, among others.

The Owner

The due diligence includes topics such as who is the owner of record, who is the ultimate beneficial owner and so on. A well-conducted due diligence must go a step behind the property being analysed, and address the owner. As pointed out above, this paper will not cover, and will assume as already conducted, the necessary corporate due diligence where the owner of the mining rights is a legal entity.

When it comes to individuals, additional local matters are important to take into account, such as civil rights, restrictions on the ability to dispose of rights in specific cases including those involving minors, mentally handicapped, estates, and married individuals.

It is of the outmost importance to investigate any potential restrictions on the ability of the owner of the mining rights to enter into agreements. This includes limitations that might not be as usual under common law. In Argentina, for example, the disposal of rights the transfer of which must be registered (such as, for example, mining rights) that are owned by married individuals, require the joint signature of the owner and the spouse under Art 1277 of the *Civil Code*. This may lead to many practical consequences, including but not limited to the ones related to the availability and willingness of the spouse to sign.

As a cultural matter, if during a due diligence a reluctance is perceived on the part of the owner to provide personal information, or even if certain information provided by the owner as to the mining property is not one hundred percent accurate, this should not immediately be linked to obscure intentions, before confirming that such is the case. In remote areas or when dealing with people not accustomed to legal matters or to the correct ways of securing title, a reference to "my mining property" without entering into the details of legal defects may stem out of ignorance more than out of an intention to mislead or cheat. In these cases it is advisable not to rub it in their face, but rather to continue with the due diligence and:

(a) determine what the exact title problems are;
(b) consider what the owner may do in terms of setting the mining title straight; in small cities, locals may have faster access to information and to the decision making authorities;
(c) assess how the mining title would look after the appropriate corrective measures have been taken; and
(d) try to envisage what may be salvaged of the transaction initially sought.

Whatever the case, it is good to be aware that the person offering you a certain mining right might be very optimistic, but we lawyers must be realistic.

The Mining Property Title

A due diligence on mining property in a civil law country may not, at first sight, differ too much from of the kind of information that one would look for in a common law jurisdiction. Basically, the job is to make sure that the mining rights the transaction is about to be entered upon on are the ones our client is referring to. In this matter, adequate research on the mining title is of the essence. Title research, however, might not be the same – or even close to – what you are accustomed to in your home jurisdiction, and this is not just about language.

Title registration systems vary from country to country and sometimes from jurisdiction to jurisdiction within the same country. Since, as the saying goes, "when in Rome do as the Romans do", it is imperative that you adjust your due diligence to the local title registration system, since the reverse will seldom occur.

The use of modern database technology is not yet widely used in mining title management in many jurisdictions. There are jurisdictions in which computerised title management systems are rarely used. Moreover, some jurisdictions still use paper dockets comprised of documents that are bound with a thread and a needle. The mining title is such paper docket, so be prepared to get used to it.

As if it were not enough to get accustomed to form, let's get into the matter of the content of such dockets. Sometimes, the information available to determine the extent of the mining rights is far from optimal, to say the least. The older the mining rights, the higher the chances of that are, and the more and sharper research will be necessary. Some of the situations that may occur will be referred to below.

Overlapping rights

When mining rights derive from paper dockets, and since they sometimes tend to be lengthy dockets, overlapping mining rights are not unheard of. Obviously, the papers in the docket are written and bound by real people, and registry employees may be overburdened with paperwork, they may unwillingly go wrong from time to time and, most importantly, as time goes by different people sit in the same position which makes it harder to keep a common memory as to how a certain mining right came to happen. As a result of the above, mistakes may happen.

Unclear or old maps

Similar, mistakes may happen when mining dockets contain hand-drawn original maps on paper. Computer drawn maps are available in many jurisdictions but not always. If the maps are unclear or old, the problems grow exponentially.

Uncertain limits

In some mining dockets, references are made to rivers, creeks, mountains, hills and other geographic criteria rather than to modern technology based measurements. Also references may be found to roads or other constructions and,

different to geographic points of reference, the former may change faster in terms of human time measurements. It is important to ask whether the names of such rivers and mountains have changed over time, or whether different indigenous or local peoples have named the same creek or hill differently, because that can happen too.

Also ask for how long any given man-made milestone has been there, and under what name. Ascertaining the time when a certain entry was made in the mining docket, or the background of the person who made such entry, may be a valuable help in determining more accurately what the reference was made to in geographical terms.

As a rule of thumb, it may be safely argued that the more remote the location where the mineral deposits are, the higher the chances that registry, certificate, provincial and even international limits and geographical data may be uncertain.

Courses of action

If any or all of the above happens, it is advisable not to fight against reality, but to make the best out of it. Although registry employees might be doing their best, the end result may not be good enough for you. It is anyway advisable to offer them help rather than denigration. The difficult circumstances under which they do their jobs should be used not as criticism but as a compliment of how many hardships they have to overcome to put your docket where it is.

Registering your mining and mining-related rights in public registries and the publication of transactions in official gazettes or local newspapers may be useful in terms of enforcement vis-à-vis third parties, even when this is not mandatory. This is so because, since civil law jurisdictions tend to grant importance to the "good faith principle", registration and publication may help in terms of gathering evidence. If a third party tries to establish a certain right in bad faith, it would be easier to challenge that party by showing it is suspicious that they did not know or should have reasonably known your claim, once you have registered or published it.

Another useful tool is the analysis of the mining docket to see how claimants for rights previously granted or purportedly granted on similar grounds fared in previous cases. This may give some insight on how well you might do.

The surface owner

Under the civil law mining regimes, the owner of the land does not necessarily enjoy rights extending above and below, or from heaven to hell as has been sometimes said. By the same token, a mineral concession to a miner does not per se include rights on the surface land. Thus, under civil law systems, the miner and the surface owner have differing rights, sometimes overlapping, sometimes opposed to one another. At the same time, as the use of the surface land is paramount to the development and exploitation of a mineral deposit, an adequate due diligence must include the nature and extension of the landowner's rights.

Regarding surface owners, once again, cultural differences come into play. In some cases, it is found with dismay that although from a legal standpoint landowners do not per se own mining rights, they behave as if they did, with the potential negative practical implications this may have. It is important to ascertain and act upon the extent of this negative impact, sooner rather than later.

Under most civil law legal systems, the owner of mineral rights may acquire certain rights to use the surface, such as mining easements rights on the land above their mineral rights. In some cases, the miner may even request the acquisition of the surface. The mining easements require adequate compensation from the miner and the extent and monetary value of such compensation may be determined in different ways:

(a) set forth directly, or indirectly through guidelines, in the applicable regulations;
(b) be left to negotiation between the land owner and the miner, and
(c) if the land owner and the miner are not able to reach an agreement, the value and other conditions of the compensation may be left to administrative or judicial decision.

No matter how well the mining easements may be regulated, in practice it is not uncommon to find that the emotional and ancestral attachment to the land is differently felt in foreign countries. Current surface owners, whose family has been using the land for unrestricted farming and cattle breeding for many generations, may know nothing – and sometimes might not want to know anything – about easements under the applicable codes or regulations.

The enforcement of mining easements may become tricky in practice, even more so in remote and unpopulated areas. Whatever the case, the use of force is rarely a good idea. In addition to the legal and practical issues involved, newspaper headlines referring to the use of force "by a large multinational against a poor and illiterate local resident" may create undesirable relationship problems more often than not. In this regard, it is always a good idea to seek advice on how to adequately deal with the locals, as will be seen below.

If the owner of the mining rights decides to acquire the surface land, which is not uncommon in order to avoid easement negotiations, the related issue of the ownership of land by foreign individuals or legal entities comes into focus.

There are, in some civil law jurisdictions, regulations applicable to the ownership of land by foreigners. The restrictions tend to be more common when it comes to the foreign ownership in sensitive regions, such as the land close to international boundaries. In Argentina, for example, foreigners who want to own land within a certain distance of the international borders (called frontier zone lands) need to comply with a registration of their intended acquisition. This registration, however, is not applicable in the case of foreign individuals or legal entities that apply for mining rights in those areas.

A related matter is the one of the exploitation of mineral rights located underneath land with archaeological or anthropological value, or posing special social problems because of their location in relation to historical sites or

population centres. Although the legislation in this regard tends to significantly differ from country to country, it may be safely stated that the greater the influence of the indigenous culture in the historical and political development of the country, the more stringent the rules applicable to mining in such areas. This important issue will be addressed again below.

Use of Mining Rights

The due diligence should not be limited to the past (how the mining rights have been acquired by the legal entity or individual with whom we are dealing) or the present (what the mining rights currently are according to the mining docket), but also include the future: how will our client secure acquisition of such rights and more importantly enjoy undisturbed use of such rights in the manner that prompted the acquisition of them. We want to make sure that after the transaction is closed our client will be in a position no worse than the one being sought or, in other words, the position will not be one where – had the client known – it would not have sought the transaction.

Dealing with the locals

Due diligence in foreign jurisdictions increases the need for awareness of the institutions, legal or other, that are alien to our own. Concepts that are widely known and used in civil law jurisdictions may not be so in others. The concept of escrow, for example, is in principle alien to the Latin American legal culture, although it is being adopted.

Analysing the mining rights, and the other related items included in a due diligence, from one's own legal system perspective, may inadvertently lead to misjudgments. In a due diligence, the local legal institutions must be initially interpreted in accordance with the local law and customs, and only later translated for understanding and comparison to the foreign institutions.

If the transaction ends up happening, the due diligence will be just the beginning of the relationship with the local community. Even at this early stage, offering tokens and gestures of appreciation to the local customs and culture are a good investment that might take you a long way.

Information on the social and indigenous groups should also be included in a due diligence. Customs and beliefs of many kinds coexist in a country, and they may vary from region to region. There is the example of an indigenous group that worships mother earth and prefers that females (including professionals) not be allowed in underground galleries because they consider that if a female enters into mother earth's womb, she might get jealous and tremble, causing earthquakes. Traditions such as this one must be identified to be able to adequately deal with them.

A due diligence is not complete without the analysis including potentially anti-mining or similar groups. Real or perceived rivalries such as environment vs mining, farming vs mining, tourism vs mining and so on should be especially

taken into account. The due diligence must anticipate potential practical problems, since no one wants to acquire a mineral deposit and later find practical difficulties in developing and exploiting it. It is important to determine in advance the chances of insurmountable problems to being perceived as a good corporate citizen. In this regard, being pragmatic and finding out what the locals perceive and want is of the essence.

Informing and educating the locals as to the potential mining project, although it may be considered not strictly part of a due diligence, is seldom a useless investment. Failing to understand what the locals need is missing an opportunity to let them become the main promoters of the mining project, and this begins with a due diligence. On the contrary, it is frequently said that the lack of information sometimes leads the uninformed person to assume the worst.

As to timing issues, obviously the way people value time may vary from country to country, from province to province, and from city to city. In any event, one thing is for sure, the approach to timing issues of someone from a civil law country will be different than the one from an Anglo-Saxon/common law culture. In order for a due diligence to be realistic, it is important to allow for flexible timetables and to educate locals and common law colleagues and team mates alike about potential timing issues.

Even within the same country, it is possible to find differences as to timing. For example, federal or big city non-mining authorities may not be accustomed to dealing with mining related matters, in the same way that provincial or local city officers may not be accustomed to international-standard timing needs and deadlines. In fact, the stranger the culture of the local jurisdiction, the higher the need to allow for creative, broad, flexible, and long-term oriented due diligence.

Relationship with governmental authorities

As noted above, mining projects in civil law countries tend to imply relationships with different layers of government, including federal, provincial/state and municipal authorities. In this regard, and without analysing in depth the myriad of legislation applicable, there are sometimes differing and even conflicting formalities and standards required at different government levels. In such cases, for the avoidance of doubt, it is prudent to be prepared to analyse not just one of the requirements or standards, but to plan to comply with the highest of them.

A special issue when dealing with government, because of its impact on the economics of a mining project, is the one of government take and, especially, royalties. Government take may appear under different forms and, especially in a federal government, special attention must be placed on the analysis of local fees or service charges.

As discussed above, in most civil law mining legal systems royalties have their historical roots in the fact that it was for the sovereign, by virtue of their prerogatives, to grant mineral rights by means of concessions. Of paramount importance are the limitations imposed on royalties and the incentives applicable to a certain mining

property. These limitations may derive from general legislation or from a specific act of government applicable to a project in particular. In this regard, and especially in federal countries, special attention should be paid to the constitutional powers of the specific government (federal, provincial or municipal) to grant, modify and terminate incentives and royalties.

Diverse practical implications may arise in this regard. For example, the federal government may attempt to limit the royalties as a matter of federal policy to boost private investment, while a local government in desperate need of their share of the royalties may try to curtail the practical application of such royalty limitations. The latter could be done, among other ways, by means of local interpretations of the mine pit value, acceptable deductions and so on. Conversely, a local government may offer incentives in addition to those granted by higher authorities (federal or provincial) as a means to attract projects with the potential to create direct and indirect jobs in the area where the mineral deposits are located.

Whatever the case, it is advisable to confirm the interpretation of the applicable federal, provincial and local authorities in practical matters such as the extent of royalty caps, mine pit value, acceptable deductions towards royalty payments and taxes. The granting of a mining concession marks not the end of the relationship with the governmental authorities but, to the contrary, the beginning. Such relationship includes:

(a) compliance with the obligations inherent in the mining concession, the ones specifically included in the concession grant, as well as the ones set forth in any applicable legislation;
(b) potential contractual relationships with government related entities, such as utilities, governmental entities holding surface rights above the mineral deposits, state-owned companies holding mining rights in adjacent areas etc; and
(c) governmental enforcement authorities on issues as diverse as environment, tax and labour.

One sensitive issue when dealing with governments is the one of corruption. A lot has been said about the subject matter, and it goes well beyond the scope of this paper to address corruption. The practical implications of this matter, however, should not be underestimated in a due diligence. One of those practical implications, for example, becomes important when a mining company requests any exemptions from an authority. In such cases it is advisable to pay attention to form as well as to matter, and to perception as well as to reality. For example, any request for exemptions should be made in such a way that it does not expose the granting authority to the risk of being unfairly charged by the public, the media, or opposing political groups, of having done so illegally or for obscure reasons.

Other Due Diligence Items

Labour matters

Although it is hard to generalise, civil law jurisdictions tend to be perceived as somehow inclined towards the protection of employees and workers' unions. In

this regard, for example, longer statutes of limitations when it comes to labour claims for wages or for accidents should be expected.

Related matters worth analysing include the existence of preferential rights enjoyed by the social security authorities, for the collection of their outstanding dues, on the mining project proceeds.

In the labour due diligence, it is advisable to pay special attention to the availability of qualified personnel. It is also important to adequately assess potential restrictions or deterrents (legal, social or cultural) to employing foreign workers or workers from other regions in the same country.

In addition to complying with all the applicable labour and social security laws and regulations, good practical advice is to consider all necessary measures to avoid alienating the local work force, since it is always the case that for any one potential employee in the mining project, there are many relatives and friends that, as citizens, may impact on public opinion.

Infrastructure and permits in general

It is often the case that mineral deposits tend not to be in downtown Melbourne or Manhattan. On the contrary, and sometimes for the best, they are located in remote areas, far from the large cities. This implies that the infrastructure necessary for the exploitation of such mineral deposits, especially the large ones, is rarely already in place but needs to be built. Thus arises the need to analyse in depth all sorts of permits, licences and the like, as well as zoning, and related applicable laws and regulations.

The permits necessary to include in a due diligence include those necessary to build and operate roads, water supply, sewage systems, energy supply systems, communications, explosives use, airports, ports, housing, security, and many others, especially the environment-related ones. In this regard, it is widely perceived that civil law systems, for historical and cultural reasons, may tend to be more regulatory when it comes to permits in general.

The matters a due diligence has to address necessarily change depending on whether the target is a new project, an existing active project, or a project that has abandoned. Once again the differences between federal, province/state and municipal governments come to play in a due diligence. It is important to determine not only who has the authority to issue the applicable regulations but also who has the power to interpret and enforce them. As a practical matter, it is advisable to be aware of the potential need for inter-jurisdictional permits.

If a mining project – in addition to creating jobs and revenues locally – is expected to bring as a by-product infrastructure that is not available locally (such as phones, fresh water, sewage systems, and health) this may be used to increase the chances of speeding up the issue of necessary licences and permits. To put it differently, it is possible to turn weakness into strength, and the lack of infrastructure may help to:

(a) expedite the granting of the necessary permits by the local government, and
(b) obtain the cooperation of the local government if and when the necessary permits must be issued by higher authorities (federal or provincial/state, as the case may be).

Contractual matters

As mining projects require a large number of contracts with vendors, providers, and the like, due diligence must include the analysis of such agreements. This paper assumes knowledge of most contractual matters involved in a mining project. It is worth noting, however, that a practical rule of thumb predicts that civil law judges and authorities may be more restrictive when imposing fines or damages. Bearing this in mind it may be advisable when analysing contractual damages clauses, including liquidated damages, as well as confidentiality and non-compete covenants, not to take them at face value.

Foreign investment and foreign exchange regulations

A due diligence is not complete without adequate analysis of potentially applicable foreign investment regulations and foreign exchange restrictions. Foreign investment regulations may include a wide variety of requirements that may range from the simplest and basic ones, to very strict and difficult ones to comply with, as follows:

(a) registration of the investment for statistics purposes;
(b) the filing of an application without which the investment is valid and permitted but does not enjoy certain protections that are afforded to registered foreign investment;
(c) the requirement that a full description of the intended foreign investment, and sometimes supporting documentation, be filed for approval, without which the investment may not be made.

Foreign exchange restrictions may impose outright prohibitions or special requirements to:

(a) bring foreign currency into the country where the mining project is located; or
(b) repatriate the investment back to the country of origin.

These may include filing of affidavits and documentation, waiting periods, differential exchange rates and so on.

Related to the above, the analysis and interpretation of treaties for the protection of bilateral investments, if any, becomes extremely valuable. In doing so, special attention must be placed on the constitutional hierarchy afforded to such treaties. In some jurisdictions, treaties entered into with foreign countries enjoy standing in the legal hierarchy that may even overcome the federal constitution. On the contrary, there are jurisdictions where the constitution and even the local laws prevail over treaties entered into with foreign countries. Determining what the case is may become extremely valuable to structure the potential transaction.

Litigation

Any due diligence includes existing or potential litigation. In civil law jurisdictions, it is advisable to check carefully if there are more judicial and administrative jurisdictions (federal, provincial and municipal) than in your own legal system.

Regarding applicable law, some jurisdictions impose limitations on the ability to enter into agreements governed by foreign law and/or subject to foreign jurisdictions. For example, some civil law jurisdictions apply the so-called "point of contact" rule, whereby foreign law may govern an agreement or a foreign judge may rule over a certain matter, only insofar as there is a point of contact with the jurisdiction of the intended foreign governing law or judge. In this regard, for example, some countries reserve certain matters to local jurisdiction and/or local law, including mining and real estate.

Due diligence should also comprise the rules applicable to the execution of judgments and arbitral awards. This includes the execution of foreign judgments, as well as the execution of judgments from different jurisdictions within the same country. The analysis may be enlarged to include potential localised behaviour-related issues and regional rivalries.

CONCLUSION

This paper does not, of course, purport to have analysed or even listed all of the issues that need to be taken into account when conducting mining due diligence in civil law jurisdictions. The subject matter is so rich and vast that many more could be included. Moreover, the content of a due diligence is dynamic by nature, and evolves as the legislation, the legal practice and the mining business evolve.

The globalisation of many standards as to how mining-related businesses are conducted should not mislead the practitioner into seeking to apply to foreign jurisdictions certain principles with which they feel comfortable in their own legal systems. Being aware of the existence of differences in conducting due diligence in a civil law jurisdiction may be thus considered as just a starting point, but no less than an excellent starting point.

If after reading this paper you find yourself having more questions than the ones you had before, the author will be proud of a job well done.

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