

# **Minerals Contract Negotiation**

## **Negotiation Process and Strategies**

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**March 13, 2013**

# Minerals Contract Negotiation

## General Purpose of Negotiation

To provide an opportunity for the Parties to identify and finalize how specific issues will be addressed , ensure clarity of mutual understanding, and to secure optimal benefit from the Minerals Contract.

# Minerals Contract Negotiation

## Optimal Objective of Negotiation

To provide both Parties with ***a fair deal*** that balances both interests and provides predictability but is sufficiently flexible to adopt to reasonably changed circumstances during the life of the contract for mutual benefit.

# Minerals Contract Negotiation

## Whom Should/Does Conduct the Negotiation

Technical Specialists (Both Parties)	On behalf of Company	On behalf of Government
Mining, Tax Lawyers	Company mgmt (not usually the mine management)  In-house and outside advisors	Ministry of Mines
Mineral Economist		Ministry of Finance
Engineer, Geologist		Ministry of Foreign Affairs
Environmental		State Mine Company
Social responsibility		Outside advisors

# Minerals Contract Negotiation

## Whom Should/Does Conduct the Negotiation

*Depth of understanding is essential*

Participant	Potential Pro	Potential Con
<b>Government Official</b>	“In the loop”	Political objectives
<b>Local Government</b>	Local “buy-in”	Seeking communal identify more than profitable ops
<b>Technocrats</b>	Specific technical capacity	Narrow focus on specific topics
<b>Unions</b>	Mine worker collaboration	Not always same interest as Company
<b>Foreign Experts</b>	Experienced expertise, lessons learned	Lack familiarity with local nuances

# Minerals Contract Negotiation

## Choosing a Negotiation Venue

Location	Pro	Con
<b>Multiple Venues</b>	Both Parties in same circumstance	Scheduling, changing participants
<b>Host Country</b>	Can promote familiarity	Can give Company control; other Party less responsive.
<b>Company Offices</b>	Can promote familiarity	As above.
<b>Neutral Venue</b>	No preferential feeling	Lack of familiarity

# Minerals Contract Negotiation

## Illustrative Negotiation Strategies

Strategy	Description
<b>Knowledge-based</b>	<i>Homework done; good due diligence</i>
<b>Skills-based</b>	<i>Emphasis on operational details</i>
<b>Rapid-results approach</b>	<i>“Now or never” attitude</i>
<b>Patient-approach</b>	<i>“Better safe than sorry” attitude</i>
<b>Defensive-approach</b>	<i>“You are lucky to be here” attitude</i>
<b>Combined approach</b>	<i>Finding a functional balance</i>

# Minerals Contract Negotiation

## Guiding the Negotiation

1. Draft Minerals Contract terms
2. Existing Codes of Practice
3. Existing legal and regulatory framework in host country (mining, business, tax, land, environment)
4. Existing policies (social, fiscal, environmental)
5. International standards/practice
  - a. Equator Principles
  - b. Corporate Social Responsibility
  - c. Public-Private Partnerships



# Minerals Contract Negotiation

## Preparation for Negotiation

1. *Due diligence* is everything – who is the Party?
2. *Geo-science data* – close technical review
3. *Harmonization* of laws with contract provisions
4. *Past experience/lessons learned*
5. *National vs. Provincial vs. Local priorities*
6. *Current and expected market* for this mineral
7. *Beyond the mine*, other development priorities for Government/company.

## Minerals Contract Negotiation

### Illustrative Minerals Contract Negotiation Process

- Step 1** Government prepares model contract and ancillary contracts
- Step 2** Company reviews/comments on contracts
- Step 3** Parties agree to negotiation schedule
- Step 4** Formal negotiation minutes/recorded
- Step 5** If necessary, may suspend; safeguard docs
- Step 6** Government/Company approvals must be received *prior* to final signing
- Step 7** Once formally closed may not reopen

# Minerals Contract Negotiation

## Illustrative Minerals Contract Negotiation Points

1. Export	vs.	No Export
2. Mining	vs.	Mining & Processing
3. State Equity	vs.	No State Equity
4. Premium payments	vs.	Higher Royalty
5. Payments now	vs.	Payments later
6. Local procurement	vs.	Any procurement
7. Public infrastructure	vs.	Privately financed
8. CDA	vs.	CSR

# Minerals Contract Negotiation

## Illustrative Minerals Contract Negotiation Points

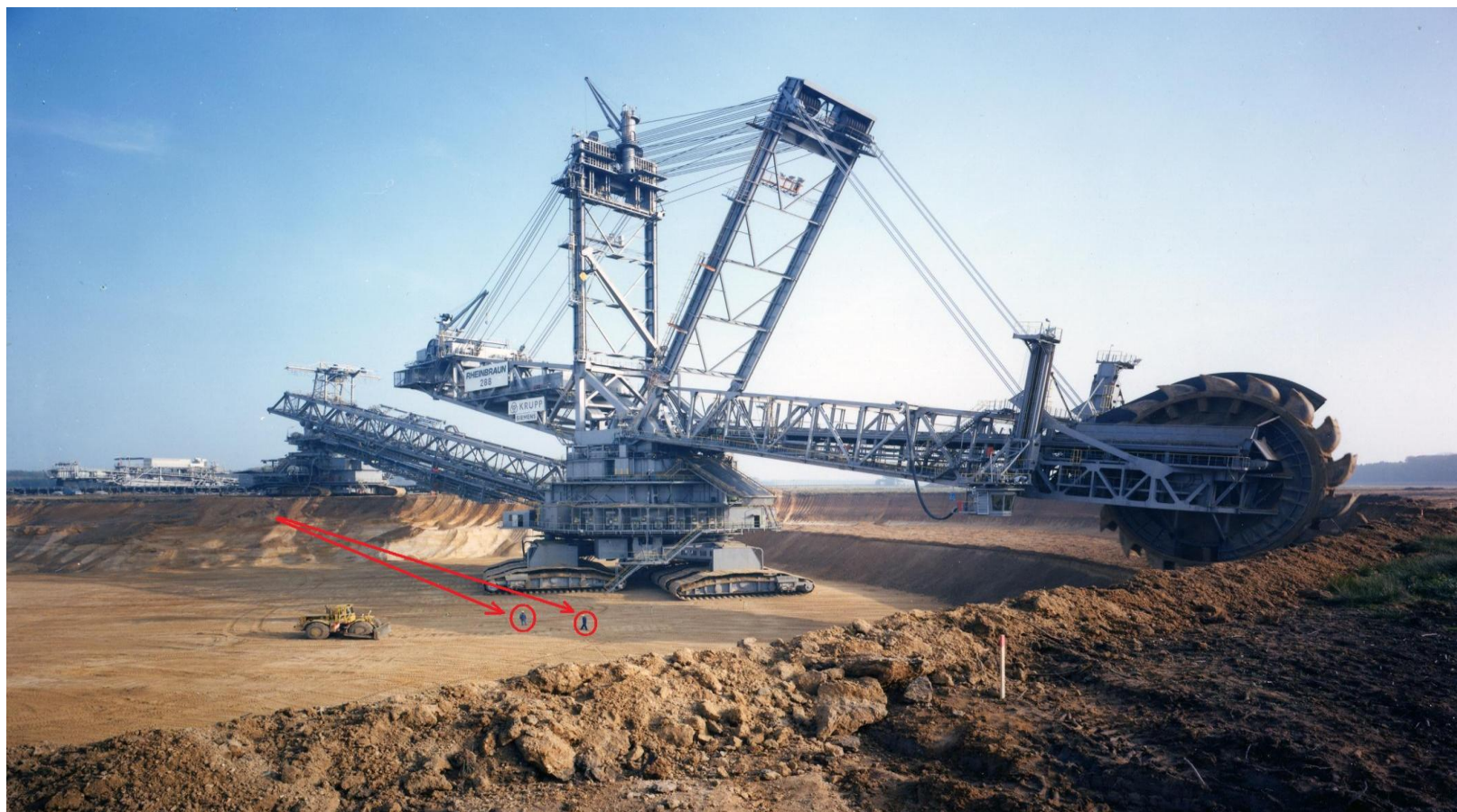
9. Compliance with EITI	vs.	General reporting
10. Mineral Resource fund	vs.	Not Company matter
11. Third party access	vs.	For cost + profit
12. Right to transfer	vs.	Transfer tax
13. Use of local law	vs.	International arb.
14. Environmental Studies	vs.	Screening reports
15. Social impact assessmt	vs.	Local authorities role
16. Consultation/media	vs.	Confidential

## **Minerals Contract Negotiation**

### **Minerals Contract Negotiation**

**Mutual Understanding is Essential....**

## Minerals Contract Negotiation: what the Company is thinking.....





## Minerals Contract Negotiation: .....what Government is thinking!



## Minerals Contract Negotiation

**Always have a Plan B!**

Thank you.

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