
MINING SECTOR UPDATE

AUSTRALIA AND PAPUA NEW GUINEA

SEPTEMBER 2017

INSIGHTS AND TRENDS
FOR THE LEADING EDGE
OF THE MINING INDUSTRY

INTRODUCTION

Welcome to the September 2017 edition of the Mining Sector Update from Corrs Chambers Westgarth. Published each month, this briefing keeps you up-to-date with recent mining deals, market rumours, potential opportunities and relevant regulatory updates.

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RECENT ANNOUNCEMENTS

ADANI SET TO START WORKS IN OCTOBER

Adani has announced its **Carmichael** coal mine, located in Central Queensland, has received Final Investment Decision approval. The **\$16.5 billion** project is set to commence in October this year with first coal scheduled for **March 2020**.

Following multiple setbacks, including a number of court challenges and questions around project financing, the company recently opened its regional headquarters in **Townsville** where it will oversee the project's operations. As well as announcing final investment approval, Adani has also announced the award of a number of major contracts for works related to the mine and associated rail and port infrastructure.

When announcing the project approval Adani Chairman, Gautum Adani stated "*This is an historic day for Adani, an historic day for regional Queensland and an historic day for Indian investment in Australia*". The **Queensland Resources Council** has welcomed the announcement, emphasising the benefits that the

Carmichael coal mine development will bring to regional Queensland.

GLENCORE ANNOUNCES SALE PROCESS FOR ROLLESTON

Glencore has launched a sale process seeking buyers for its **Rolleston** thermal coal mine in Queensland's **Bowen Basin**. Glencore, which owns 75% of the mine, is undertaking the sale process with its joint venture partners, **Itochu** and **Sumitomo**.

Rolleston is located approximately 150 kilometres southeast of **Emerald** and produced **13.3 million tonnes** of saleable coal in 2016. The mine ships its coal through the **Wiggins Island Coal Export Terminal**, which may be seen as a negative by potential buyers. Glencore is the biggest customer at Wiggins Island and has long term contractual take or pay obligations.

The proposed sale is the latest in a number of coal related M&A sales processes by Rio Tinto, Anglo, Vale, Wesfarmers and others which have met with varying degrees of success.



Glencore has stated that it will only sell the Rolleston mine if it can do a deal that delivers value for shareholders.

BHP REPORTS INCREASED PROFITS

Global miner **BHP**, which has been the subject of much investor and media hype over the past few months, has reported a near **\$8.5 billion** net profit. The profit increase is the result of stronger commodity prices and strong performance of the iron ore division. BHP acknowledged some of the commodity price rebound can be attributed to the move towards more efficient steel mills resulting in a premium on the price paid for high quality coal. BHP also announced plans to divest its **US shale business**, which is set to re-shape the balance sheet following criticism from shareholders. It is also undertaking a board re-shuffle as a result of similar criticisms.

SOUTH32 ASSUMES POSITION OF STRENGTH

Perth-based miner South32 has affirmed its strong cash position on the back of higher commodity prices. The company has outperformed investor expectations and has indicated it will return cash to shareholders and focus on internal growth opportunities rather than

look to M&A options. Despite the positive earnings result, the **Appin** metallurgical coal mine, located in **NSW**, remains a problem with normal operations only recently restored following extended safety issues.

OZ MINERALS ANNOUNCES GO-AHEAD ON CARRAPATEENA

ASX-listed Oz Minerals has approved the development of the **Carrapateena project**. In a presentation released to the market Oz Minerals stated that Board approval has been received for the Greenfield copper and gold development which has an NPV of approximately \$910 million. The project is located north of **Adelaide** near Oz Minerals' successful Prominent Hill mine, with construction scheduled to commence in Q2 2018 and a completion date sometime in Q4 2018.

Two ASX-listed companies, **Spitfire Materials Limited** and **Aphrodite Gold Limited**, have announced their intention to merge and form a diversified Australian gold development company. Their portfolios include assets across Western Australia, Northern Territory and Queensland, including the **Aphrodite Gold Project** north of Kalgoorlie and the **Alice River**

Gold Project west of Cooktown. The companies' respective Boards believe the merger will generate significant value for both groups of shareholders.

Canadian based multi-asset mineral resource company **RNC Minerals** announced on 14 August 2017 that it will not exercise its option to purchase ASX-listed **Westgold Resources'** South Kalgoorlie Operations ("SKO"). RNC had been offered an \$80 million purchase price as part of a toll processing and purchase option agreement. Under the agreement, which will continue until 30 June 2018, RNC has access to 50% of SKO's plant capacity, which is located 30km from its Beta Hunt Mine.

Yancoal has been given the green light to proceed with a capital raising needed to fund its **\$2.7 billion** acquisition of the **Rio Tinto Coal & Allied business**. The Takeovers Panel rejected an attempt by shareholders to block the funding following the announcement of the deal.



MARKET RUMOURS AND OPPORTUNITIES

The Australian has reported that ASX-listed **Newcrest Mining Limited** has enlisted **Treadstone Resource Partners** as its financial advisor to assist in the sale of the **Bonikro goldmine** in Cote d'Ivoire. Newcrest is reportedly seeking US\$150 million for the deal, with potential buyers including ASX-listed **Endeavour Mining** and Canadian based **Iamgold Corporation**.

Enable Advisory reports that **Baosteel** and **Aurizon** owned **Aquila Resources** is looking for buyers for its **Talwood** coking coal project. **Talwood** is located approximately 35km north of Moranbah in Queensland's

Bowen Basin, and is adjacent to a number of existing operations. The resource is reported to be capable of supporting a 4.4Mtpa mining operation.

REGULATORY UPDATES

CHINESE GOVERNMENT ENCOURAGES OVERSEAS INVESTMENT IN ENERGY AND RESOURCES

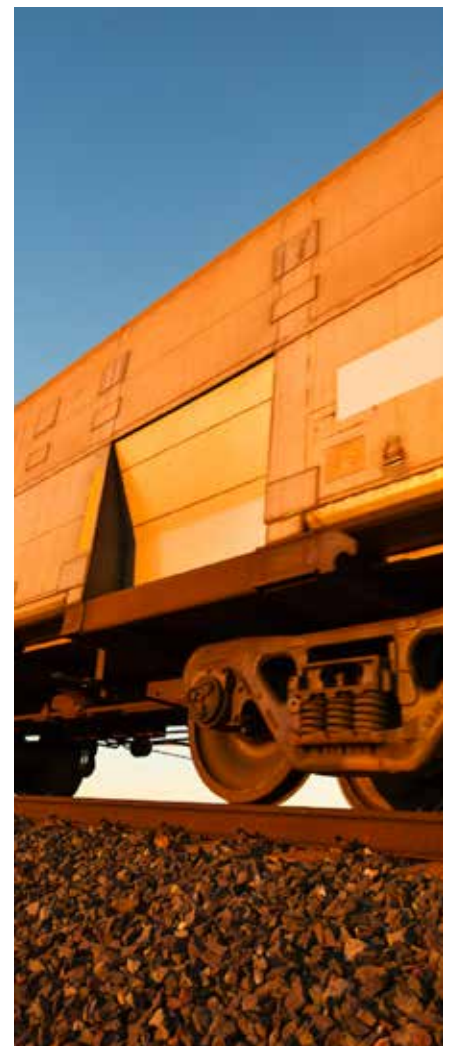
The Chinese Government has recently published its regulatory policies for overseas direct investment. The policies come as the Chinese Government looks to tighten the outbound flow of capital investment in certain areas whilst encouraging overseas investment in others.

Importantly, the policy measures state that overseas investment is **encouraged** where such investment would supplement China's shortage of energy and resources including in **oil, gas** and **minerals**.

Conversely, overseas investment in **real-estate** is **restricted** as is the establishment of generalist overseas investment funds not linked to a planned or existing project.



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COAL WORKERS' PNEUMOCONIOSIS BILL PASSES QUEENSLAND PARLIAMENT

The Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Bill 2017 (Bill) has passed through Queensland Parliament. The Bill amends the *Industrial Relations Act 2016*, the *Workers' Compensation and Rehabilitation Act 2003*, the *Workers' Compensation and Rehabilitation Regulation 2014*, the *Work Health and Safety Act 2011* and other instruments.

The Bill is in response to the re-emergence of the "black lung" disease which is linked to exposure to coal dust at a number of Queensland mines.

Policy objectives of the Bill include:

- *Introducing a medical examination for retired or former coal workers who are concerned they may have Coal Workers Pneumoconiosis (CWP).*
- *Introducing an additional lump sum compensation entitlement for workers with CWP.*
- *Ensuring that a worker with CWP who experiences disease progression can "re-open" their claim and access further benefits under the workers' compensation scheme.*

The Act is awaiting assent.



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100% FIFO BANNED ON LARGE QUEENSLAND PROJECTS

The Queensland Parliament has passed the Strong and Sustainable Resource Communities Bill 2016 which limits the use of fly-in, fly-out (FIFO) workforces. [The Bill was first introduced to Parliament in November 2016](#) and was recently passed with a number of amendments.

The Bill legislates against the use of 100 percent FIFO workforces on resource projects located near regional communities whilst also prohibiting discrimination against locals during a project's recruitment process. The anti-discrimination measures will ensure that recruitment processes are focussed on recruiting from local and regional communities as well as workers who will live in a regional community. The legislation was originally set to apply to resource projects within 100km of a "nearby regional community" however following a committee review that distance has been increased to 125km. The Minister for State Development Dr Anthony Lynham stated:

"The requirements affect large resource projects with 100 or more workers and an environmental authority within a 125 kilometre radius of a regional community with at least 200 residents – numbers reached after widespread community consultation."

The Bill also gives the Coordinator General a number of additional powers to ensure compliance of large resource projects with the legislation.

The Queensland Resources Council was critical of the proposed changes stating that the additional legislative burden would increase costs on companies.



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QUEENSLAND BANS UNDERGROUND COAL GASIFICATION

The Strong and Sustainable Resource Communities Bill 2016 also amends the *Mineral Resources Act 1989* introducing a new Chapter 12 Part 4A which imposes a moratorium relating to "mineral (f)".

Mineral (f) is a product that may be extracted or produced by an **underground gasification process** for coal or oil shale.

The ban was first announced in April 2016, however it has only recently been given legislative effect. The initial ban was a response to challenges faced with a number of pilot underground gasification projects in Queensland.

Following the legislative change, the Minister was quoted as stating:

"Issues associated with two of the three trial projects and the uncertainty about commercial scale operations, have highlighted significant risks with this industry which are just not acceptable."



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OTHER NEWS

HIGH COURT ENFORCES STRICT COMPLIANCE WITH MINING ACT

On 17 August 2017 the High Court delivered judgment in the case of ***Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30** in which the Court has adopted a strict approach to interpreting compliance with statutory procedures for the application and granting of mining leases. The case concerned the validity of mining lease applications made and granted under the *Mining Act 1978* (WA) in 2011.

The Respondents lodged applications for mining leases on the pastoral property of mining magnate Andrew Forrest. Some months later, a mineralisation report was lodged in relation to the application. The mining leases were subsequently granted.

Under the Mining Act an application for a mining lease “shall be accompanied by a mining proposal or a mineralisation report”.

The Court held that the failure to lodge the mineralisation report contemporaneously with the application invalidated the Minister’s grant of the leases because the lodgement of the report was a pre-condition to the Warden’s jurisdiction to make a recommendation to the Minister that the mining leases be granted.

The decision of the High Court was based on the following:

- The relevant provisions of the Mining Act imposed essential preliminaries to the exercise of the Minister’s power to grant a mining lease;
- There is authority which establishes that, where the executive is granted, by statute, power over the exploitation of state resources, the regime will be interpreted as requiring strict compliance for the exercise of that power to be valid;
- There is public interest in ensuring that the executive is not able to allow non-compliance with legislative regimes;
- The Minister’s power to grant a lease where the applicant has not complied with the statutory requirements does not allow the Minister to make a grant where the Warden has failed to comply with the same requirements;
- The indefeasibility provision in the Mining Act (which was relied on by the Supreme Court) only applies to “informalities and irregularities”. The failure of the Warden to adhere to the legislative requirements was not an informality or irregularity;
- Requiring strict compliance with the Mining Act would improve administrative efficiency by reducing the number of incomplete applications.

The decision casts doubt over the ability of the Minister to grant mining tenements despite any irregularities or issues in the application process, and may have wide ranging impacts on the validity of previous grants. Given the potential impacts of the decision the WA Government may look to provide further legislative security to industry participants.



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