Legal Issues for Australian Exploration Investment

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Agenda

1. Australian Mining Acts
2. Exploration and Mining Tenements
3. Exploration Licences – key features
4. When do you need FIRB approval?
5. Native Title and Aboriginal Heritage
6. Legal Structures for Exploration Projects
7. Key Legal issues
1. Australian Mining Acts

- WA: Mining Act 1978
- NT: Mineral Titles Act 2011
- QLD: Mineral Resources Act 1989
- SA: Mining Act 1971
- NSW: Mining Act 1992
- VIC: Mineral Resources (Sustainable Development) Act 1990
## 2. Exploration and Mining Tenements

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<tr>
<th>Tenement Type</th>
<th>Purpose</th>
<th>Key features</th>
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</table>
| Prospecting/Fossicking Permit              | Small scale exploration                           | − usually limited to individuals  
− over smaller area than EL  
− drilling, excavating often not permitted or limited in scope |
| Exploration Licence                        | Exploration Activities                             | − over larger area than prospecting permit  
− drilling and excavating allowed  
− usually granted for between 3 to 6 years |
| Mineral Development/Retention Licence      | To carry our more detailed testing and feasibility studies (where mining not immediately feasible but it will be in the longer term) | − allows further drilling, sampling and testing  
− granted to the exploration licence holder  
− usually has a term up to 5 years  
− can be renewed |
| Mining Lease                               | Mining Activities                                  | − allows full scale mining activities  
− subject to strict conditions  
− terms generally up to 20 years |
3. Exploration Licences – key features

Exploration Licences:

– exclusive right to enter into and explore a specific area for specified minerals (subject to prior notice to landowner);
– can be held by 1 or more holders and transferred to new holders;
– give priority to a mining lease grant over same area;
– require any discovery to be notified to the Minister;
– are for a set term (i.e. 3 to 6 years) but can be renewed; and
– are subject to various other terms and conditions.
The Exploration Imperative

The Mining Acts require EL holders to carry out active exploration (and not “land bank” EL’s) by requiring holders to:

– submit detailed work programs when applying for an EL;
– pay annual rentals;
– meet minimum expenditure requirements (which can be up to $200,000 - $300,000 per EL); and
– relinquish part of the tenement area on each renewal (e.g. 25% of total tenement area etc).

This creates significant pressure on EL holders to explore (and to find appropriate JV partners to help with funding).
4. When do you need FIRB approval?

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<th>FIRB</th>
<th>– Foreign Investment Review Board</th>
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| Approval required for exploration if: | – EL is an interest in Australian Urban Land;  
– applicant is foreign government controlled; or  
– there is any uncertainty on whether approval required |
| Timing                      | – 30 day application period (+ 10 days for FIRB to respond) |
| Application requirements    | – Information on proposed investment  
– Copy of investment agreement  
– Background information on investor |
5. Native Title and Aboriginal Heritage

Native title is recognition of the rights and interests of indigenous Australians over land and waters. Aboriginal heritage areas and items are protected under specific State and Federal laws.

For exploration activities the key impact is generally to require EL holders:

- to enter into an Indigenous Land Use Agreement (ILUA) with native title holders before commencing exploration;
- to conduct aboriginal cultural heritage investigations (and to avoid damaging any cultural heritage).
6. Legal Structures for Exploration Projects

- Exploration Option Agreement
- Exploration/Farm In JV (unincorporated)
Exploration Option Agreement

100% Interest transfer on exploration program conclusion and option exercise

Australian Explorer

Japanese Investor

Option Agreement

Exploration Licence

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Exploration Option Agreement

**Pros**

- Simpler than JVA
- Easy exit
- Risk limited to specific tenement or program
- Limited government approvals
- Easily replicated
- No rehabilitation liabilities

**Cons**

- No direct asset ownership
- No operational control
- Need JVA on option exercise
- Government approval risk on option exercise
- Suitable only at exploration stage
Exploration Joint Venture (unincorporated)
Exploration Joint Venture (unincorporated)

**Pros**
- J-Co directly owns project assets
- Involvement in JV operations
- Direct funding to JV
- Pre-emptive rights over project assets
- Tax benefits
- JV contracts easily tailored

**Cons**
- More time to negotiate JVA
- Greater direct liability (e.g. indemnities to operator)
- More difficult to exit
- Still need development JVA on a decision to proceed
## Project documentation

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<tr>
<th>Commercial Stage</th>
<th>Legal Documents</th>
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| Exploration Stage        | - Confidentiality Agreement  
                          - Letter of Intent  
                          - MOU (HOA Offtake)  
                          - Option Agreement  
                          - Exploration/Farm In JVA |
| Feasibility Study        | - Pre-Development JVA                                                          |
| Development Stage        |                                                                                 |
|                          | **Decision to Proceed**                                                        |
|                          | - Development JVA  
                          - Cross Charges  
                          - Operating Agreement  
                          - Infrastructure Agreement  
                          - Marketing Agreement  
                          - Offtake Agreement  
                          - Project Finance Agreement |
7. Key Legal Issues

A Japanese investor will usually be the minority participant, therefore you need to have:

- clear exploration budget provisions in your agreement;
- appropriate veto requirements;
- control over amounts paid to operator;
- ability to withdraw after meeting expenditure requirements;
- clear title transfer mechanism (on earn in requirements being met);
- offtake right (if proceed to development); and
- clear decision to proceed clause (to go from exploration to mine development).