

Lawyers launch model code

The World Initiative of Mining Lawyers (WIOML) has launched a mining code that it says could guide many countries in attracting investments, while securing fair benefits from mineral exploitation.

The mining code is an excellent guideline for countries that do not have an extensive regulatory structure in place yet. According to Andrew van Zyl, partner and principal consultant at consulting engineers and scientists practice SRK Consulting, it also provides a useful benchmark against which a country can compare its existing code.

Some of the principles underlying the model code include fair licence allocation, 'work it or lose it', the right to mine, and the social licence to operate. "Clearly, the transparent awarding of exploration licences is a key starting point for any national effort to promote mineral development. This should be done on an objective basis with free and open access — although there may be circumstances under which tendering could be considered," says Van Zyl.

Van Zyl adds that mining companies should also be given enough exploration time so there is a reasonable chance of making an economic discovery (the average period being eight years), followed by a right-to-mine that is granted on objective and discretion-free criteria.

A good mining code would ensure that exploration companies make ongoing financial commitments

if they want to maintain their exploration rights. Alternatively, they must relinquish their rights so that others may gain access. The model code also encourages the use of mechanisms for local community engagement for entrenching a company's social licence to operate, and recommends that the process for environmental approval should be facilitated through clear criteria and timeframes.

"Applying a clear and reasonable mining code will go a long way in attracting investors. It should be augmented by a culture of constructive collaboration among mining stakeholders that could gain traction while the global economy waits for commodity prices to improve," says Van Zyl.

According to Van Zyl, there is little appetite or ability right now to raise the billions of dollars needed to develop large mining projects. "But there is time to invest much smaller amounts in the vital but neglected process of forging agreement and trust between miners, governments, communities, NGOs, and other interested parties," he adds.

Van Zyl emphasised the importance of in-depth negotiation well in advance of project implementation — especially when

mining projects require complex and costly infrastructural arrangements.

"Too many projects are rushed into construction when commodity prices are buoyant, and are consequently hampered by a lack of local buy-in and insufficient clarity about each player's respective roles, responsibilities, and benefits," he says. "In many cases, the process becomes fraught with mistrust and brinkmanship, which delays or even threatens the project altogether."

Van Zyl argues for expert legal, financial, and technical input at an early stage, so that all parties can construct a common foundation of information, data, and professional opinion and deal with potential obstacles in a constructive but robust environment.

"Ideally, these discussions should take place well before a project design is finalised, and certainly before any funding is sought," he says. "Financing a project will in any event generally be easier where the champion can demonstrate co-operation and consensus among stakeholders."

This approach would also help form the groundwork for a social licence to mine, by facilitating deeper engagement with local communities, the public sector, and non-governmental interest groups. 