
MINING SECTOR UPDATE

SEPTEMBER 2019

INTRODUCTION

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

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IN THIS EDITION

This month we look at:

- The Productivity Commission's review of resources regulation
- ASIC updating its guidance on climate change related disclosure
- Papua New Guinea's accession to the New York Convention
- Why we seek sanctuary in gold

The joint venture company will pay US\$25 million to part-fund Stage 2 of the project

RECENT ANNOUNCEMENTS

Northern Star makes takeover offer for Echo Resources

On 26 August 2019, ASX listed **Echo Resources Limited**, an Australian gold exploration company, and ASX listed **Northern Star Resources Limited**, an Australian gold producer, announced that they have entered into a Bid Implementation Agreement. Under the Agreement, Northern Star will offer to acquire all issued and outstanding ordinary shares in Echo Resources pursuant to an off-market takeover bid (**Offer**).

Under the terms of the Offer, each shareholder of Echo Resources will receive a cash offer of A\$0.33 for every share held.

The Directors of Echo Resources have unanimously recommended that shareholders accept the Offer in the absence of a superior proposal.

Northern Star held a 21.7% interest in Echo Resources as at the date of the announcement. Echo Resources' focus is on the Yandal Gold Project, which is located in the Yandal greenstone gold belt in Western Australia.

You can read the full announcement [here](#).

Pilbara Minerals executes terms sheet with POSCO for lithium chemicals downstream joint venture

On 27 August 2019, ASX listed **Pilbara Minerals Limited**, an Australian lithium producer, announced it has executed a term sheet with South Korean steel manufacturing conglomerate **POSCO**, to form an incorporated joint venture for the development and operation of a 40ktpa lithium hydroxide and carbonate chemical conversion facility in South Korea.

Pilbara Minerals will hold an initial 21% interest in the joint venture, with an option to increase by a further 9% at any time up to six months after the commencement of commercial production from the facility. The initial 21% investment will be funded mainly through a A\$79.6 million convertible bond agreement with POSCO.

The existing offtake agreement for spodumene concentrate from the Pilgangoora Lithium-Tantalum project (**Pilgangoora Project**) will also be assigned to the joint venture company and increased to 315ktpa for the lesser of 20 years and the life of the Pilgangoora Project. With the expanded offtake position, the joint venture company will make a US\$25 million pre-payment to Pilbara Minerals to partly fund the Stage 2 expansion of the Pilgangoora Project. The Pilgangoora Project is one of the world's premier lithium development projects and is located in the Pilbara region in Western Australia.

Execution of final agreements and board approvals are expected to take place in the December quarter of 2019.

You can read the full announcement [here](#).

EDF Trading Australia to be acquired by Whitehaven Coal

On 22 August 2019, ASX listed **Whitehaven Coal Limited**, an Australian thermal and metallurgical coal producer, announced that it has agreed to acquire **EDF Trading Australia Pty Limited**, which holds a 7.5% interest in the Whitehaven-operated Narrabri Mine located in NSW's Gunnedah Basin, for a total of US\$72 million.

Subject to the other joint venture partners not exercising their pre-emptive rights, Whitehaven will hold a 77.5% interest in the Narrabri Mine after completion.

US\$17 million is payable on completion and the remaining US\$55 million is payable over five years.

You can read the full announcement [here](#).

South32 enters into exclusive negotiations to sell South Africa Energy Coal to Seriti Resources

On 22 August 2019, ASX listed **South32 Limited**, a diversified Australian mining and metals company, announced that it has entered into exclusive negotiations with **Seriti Resources Holdings Proprietary Limited**, a South Africa-based miner, to sell its **South Africa Energy Coal** company.

The announcement stated that Seriti made an indicative offer to acquire South Africa Energy Coal which included a modest up-front cash payment with a deferred payment mechanism. In efforts to improve South Africa Energy Coal's competitiveness, South32 approved a 4.3 billion South African rand investment to extend the life of one of its coal mining operations, Klipspruit Colliery, by at least 20 years, and has invested US\$377 million across FY18 and FY19.

South32 expects to provide a further update to the market in the December 2019 half year.

You can read the full announcement [here](#).

Whitehaven will hold a 77.5% interest in the Narrabri Mine after completion



RECENT ANNOUNCEMENTS

Parker Range
Iron Ore Project
to sell for A\$20m
plus royalties

Cazaly Resources' Parker Range Iron Ore Project to be sold to Mineral Resources

On 21 August 2019, ASX listed **Cazaly Resources Limited** announced that it has agreed on commercial terms with ASX listed **Mineral Resources Limited** to sell the Parker Range Iron Ore Project (**Project**) for total cash consideration of A\$20 million plus a royalty stream.

On 11 June 2019, Cazaly announced that it had reached conditional agreement with **Gold Valley Iron Pty Ltd** to sell its 100% owned subsidiary, **Cazaly Iron Pty Ltd** to Gold Valley. Under this agreement, Cazaly reserved the right to terminate the initial three-month due diligence exclusivity period, should it receive another proposal or offer from a third party more favourable to Cazaly and its shareholders.

Cazaly received a conditional Heads of Agreement proposal from Mineral Resources which was considered by the Board to be more favourable to Cazaly. Cazaly terminated the exclusivity period with Gold Valley and has agreed on commercial terms with Mineral Resources for the sale of the assets comprising the Project.

Cazaly's agreement with Gold Valley remains in place with a A\$250,000 break fee payable by Cazaly on termination.

You can read the full announcement (21 August 2019) [here](#).

You can read the full announcement (11 June 2019) [here](#).

India to auction 27 coal mines to private companies

On 5 August 2019, the Indian government's Ministry of Coal announced that it will be putting 27 coal mines up for auction to private companies and allotting 15 coal mines to Central & State owned companies.

At Peak Rated Capacity, these 42 coal mines will produce approximately 70 million tonnes of coal per year.

The electronic bidding will be conducted from 10 October to 8 November 2019, with the due date to submit bids being 19 September 2019. The last date of registration for bidders and sale of tender document is 13 September 2019.

You can read the press release [here](#).

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RECENTLY COMPLETED DEALS

Duketon Mining sells Duketon Project tenements to Regis Resources

On 26 August 2019, ASX listed **Duketon Mining Limited** announced that it has entered into and completed a Tenement Sale Agreement with **Regis Resources Limited** to sell a package of gold tenements from the Duketon Project located in the North Eastern Goldfields of Western Australia for A\$25 million.

Under the terms of the Tenement Sale Agreement, Duketon will retain 100% ownership of mining licence M38/1252 and the rights to nickel over five of the sale tenements pursuant to a Nickel Rights Deed entered into between Duketon and Regis. Duketon granted Regis the gold rights over mining licence M38/1252 under a Gold Rights Deed.

You can read the full announcement [here](#).

Adventus Mining sells exploration projects in Ireland to BMEx

On 29 July 2019, Toronto-based copper miner, **Adventus Mining Corporation**, announced the completion of the transaction to sell its Lismore, Millstreet and Charleville exploration projects in Ireland to **BMEx Limited**, a privately-owned Australian exploration company, in return for shares in BMEx.

The arrangement is set out in an Investment and Cooperation Agreement signed by the parties whereby BMEx acquired all the shares of a subsidiary of Adventus. Under the terms of the agreement, if BMEx does not complete its planned IPO by 1 December 2019, BMEx will be required to issue additional shares to Adventus.

You can read the full announcement [here](#).

Duketon granted Regis the gold rights over mining licence M38/1252 under a Gold Rights Deed



MARKET RUMOURS AND OPPORTUNITIES

Newcrest Mining is reported as being willing to sell up to its entire stake

Newcrest Mining may have started sale process for stake in Gosowong mine

On 19 August 2019, the *Australian Financial Review* reported that ASX listed gold producer **Newcrest Mining Limited** has started a process to sell down its 75% stake in Indonesia's Gosowong gold and silver mine. The impetus for the sale is reported to be the Indonesian government's national ownership rules, which require Indonesian mines to be at least 51% owned by Indonesian companies.

JP Morgan is running the auction process. Newcrest Mining is reported as being willing to sell up to its entire stake.

The deal is hoped to be completed in early 2020 to give Newcrest enough time to meet its June 2020 divestment deadline.

Zhaojin International Mining signs deal with PCF Capital

On 13 August 2019, *The Australian* reported that Hong Kong-listed **Zhaojin International Mining**, the fourth-largest gold producer in China, has entered into a joint venture partnership with Western Australian advisory firm, **PCFCapital**, to provide its expertise and to conduct due diligence on acquisitions for Zhaojin.

The report states that PCF has already started compiling options for Zhaojin, who is prepared to invest upwards of A\$1 billion should the right opportunities present themselves. Zhaojin's focus is on deals with more than 600,000 ounces in annualised gold production.

On 23 August 2019, *The Australian* reported that Zhaojin is considering an acquisition of part or all of **Westgold Resources Limited**, worth A\$731 million in total.



Zhaojin is prepared to invest upwards of A\$1 billion should the right opportunities present themselves

REGULATORY UPDATES

AUSTRALIA

Review of resources sector regulation: a focus on removing burdens on investment

The Federal Government has requested the Productivity Commission undertake a 12-month review of regulation that has a material impact on business investment in the resources sector, and to highlight best practice regulation in Australia and internationally.

Already, the announcement has been warmly welcomed by members of the resources sector, such as the Hon Ian Macfarlane, Chief Executive of the Queensland Resources Council, who sees the review as a vital step in ensuring Queensland delivers on its potential to lead job creation and resource exports. Further, Stephen Galilee, CEO of the NSW Minerals Council, sees the review as a positive indication that the Federal Government is listening and taking action to address industry concerns.

Why now?

To streamline resource sector regulation...

In the terms of reference released on 6 August 2019, the Hon Josh Frydenberg identified the need to streamline resources sector regulation to meet community and environmental management expectations while avoiding unnecessary burdens on resource companies operating or seeking to operate and invest in Australia.

The Commission's work will complement the statutory review of the *Environment Protection and Biodiversity Conservation Act 1999*, due to commence in October 2019.

To protect the resources sector's contribution to national prosperity...

In a [joint media release](#) on 5 August 2019, the Hon Josh Frydenberg, Senator the Hon Matthew Canavan, and the Hon Ben Morton point to how complex layers of state and federal regulations may hinder the vital contribution of Australia's resources sector to job creation and export revenue. Senator Canavan also publically highlighted that the lengthy delays faced by Adani in securing final environmental approvals for the Carmichael Coal Mine provided impetus for the review.

The review forms part of the Government's broader regulatory reform agenda focused on addressing barriers to investments in key industries, with the aim of improving efficiency, productivity and job creation.



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REGULATORY UPDATES

The Commission has been tasked with identifying regulatory approaches and highlighting best practice regulation

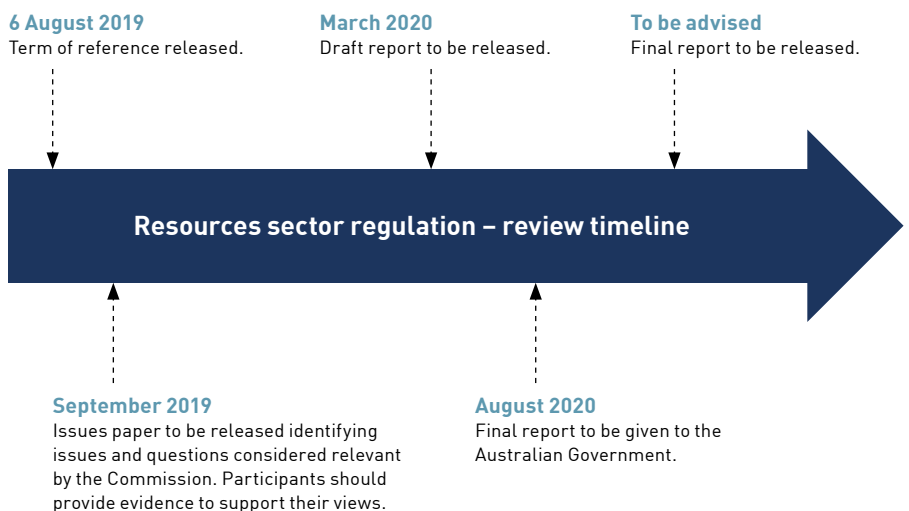
Scope of review

The Commission has been tasked with identifying regulatory approaches to the resources sector and highlighting best practice regulation across the Australian and international resources sectors. The review process will provide an opportunity for individual jurisdictions to assess their own regulatory environments.

The [terms of reference](#) provide that the Commission should identify:

- impediments to timing, nature and extent of business investment in the Australian resource sector;
- regulatory practices which have streamlined processes and reduced complexity, duplication and transparency for investors;
- environmental management and compliance arrangements that have removed unnecessary costs for business while protecting the environment;
- government involvement in the resources approvals process to expedite project approvals without compromising community or environmental standards; and
- regulatory and non-regulatory examples of effective community engagement and benefit-sharing practices.

Timeline of review



We encourage you to make a written submission or brief comment

Consultations

The Commission will consult with key interest groups, affected parties and the COAG Energy Council working groups on existing studies related to land access, community engagement and regulatory benchmarking.

The Commission's review presents an opportunity for resource sector participants to make a public submission on how current resource regulations affect your operations. We encourage you to make a written submission or brief comment [here](#).

Climate change disclosure requirements in prospectuses and annual reports

On 12 August 2019, ASIC released updated guidance which clarifies ASIC's views on the disclosure requirements for climate change-related risks and opportunities in prospectuses and listed entities' periodic reports.

Broadly, the updates amend [Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors \(RG 228\)](#), [Regulatory Guide 247 Effective Disclosure in an operating and financial review \(RG 247\)](#) and [Information Sheet 203 Impairment of non-financial assets: Material for Directors \(INFO 203\)](#) (together, the **Amendments**). The Amendments recommend including climate change risk considerations in prospectuses offering securities and in the operating and financial review (**OFR**) of a listed entity's annual report, and using indicators of climate change to calculate the impairment of assets, respectively.

The Amendments

The Amendments stem from the [Senate Economics Reference Committee Inquiry into Carbon Risk disclosures \(Senate Inquiry\)](#), released in mid-2017, and the [ASIC Climate Risk Disclosure Review Report 593 \(ASIC Report\)](#) conducted in mid-2018. ASIC's updated guidance materials embody their intended implementation of the recommendations made in the ASIC Report relating to climate risk disclosure. ASIC hopes the Amendments will assist directors and shareholders when considering the impact of climate change on the future financial performance of an entity.

RG 228

RG 228 sets out the disclosure requirements for a prospectus and has been amended to include climate change as an example of an external threat to an entity. Consistent with the previous guidance, external threats should be addressed in the industry explanation section of a prospectus. It is here that the relevance and potential impact of climate change should be considered and explained in light of the specific entity's business model.

RG 247

RG 247 only applies to listed entities and sets out guidance for effective disclosure in the OFR section of annual reports. It now specifies climate change as 'a systemic risk that could have a material impact on the future financial position, performance or prospects of entities'. It provides guidance that an OFR may need to include disclosure around climate change risks facing the business of an entity. Further, directors are encouraged to consider, where information is not already disclosed in an OFR, whether it may be appropriate to disclose additional information in other relevant reporting documents (eg sustainability reporting).

INFO 203

INFO 203 explains director responsibilities in connection with the testing of non-financial assets for impairment in financial reports and has been amended to account for climate change-related risks. Specifically, climate change is now included as a key assumption that should be identified and then considered when determining the calculations used to impair an entity's non-financial assets.



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REGULATORY UPDATES

The potential risks associated with climate change should be carefully considered

Implications of the Amendments

Whilst the Amendments have only been included in guidance materials, as is the case with other ASIC guidelines, the information outlined by ASIC in these documents will inform how ASIC will interpret and enforce the *Corporations Act*.

The Amendments and the potential risks associated with climate change should be carefully considered by entities when preparing prospectuses, listed entities when preparing annual reports, all entities when preparing financial statements, and by all entities in other circumstances when communicating their risk profile to current and potential investors. Participants in the energy and resources sector in particular should continue to consider the impact of climate change on their businesses and any associated considerations or communications that they should make to regulators and investors in light of emerging climate change risks.

What next?

ASIC has stated that over the next 12 months it will be conducting surveillance of climate change-related disclosures by relevant entities. We encourage listed and other entities, particularly those in the energy and resources sector, to be on the front foot and undertake internal reviews of existing practices and procedures to ensure they have considered and taken account of the updated ASIC guidance.

As the awareness of climate change-related risks grows amongst investors and the wider public, there is potential for the scope of this guidance to be both formalised and extended in the future.

If you have any further questions regarding these changes or how you can ensure your existing disclosure practices for climate change meet the guidelines, please contact Jeremy Horwood.



PAPUA NEW GUINEA

Pacific Pioneer: Papua New Guinea accedes to the New York Convention

On 17 July 2019, Papua New Guinea (**PNG**) became the latest nation state to accede to the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (**New York Convention** or **Convention**).

PNG joins Fiji in being the first two Pacific Islands states to accede to the New York Convention, Fiji having acceded on 27 September 2010. This development is bound to have positive flow-on impacts in the region including stimulating foreign investment.

The New York Convention

The New York Convention is regarded as the most influential treaty in the area of international trade and international commercial arbitration. With a membership of over 160 member states, it covers 80% of the countries in the world.

By acceding to or ratifying the Convention, a contracting state agrees to recognise and enforce arbitral awards made in other states in accordance with the provisions of article V of the Convention. A contracting state may declare that it will only apply the Convention to awards made in the territory of other contracting states to the Convention, on the basis of reciprocity, but PNG appears to have made no such declaration.

Being a contracting state of the Convention also means that arbitral awards made in that country's territory are capable of recognition and enforcement in all other contracting states. Exceptions to enforcement of awards are few and narrow, and focus on irregularities in the arbitration process or fundamental breaches of public policy rather than the merits of the case.

Contracting states also undertake to enforce arbitration agreements under article II of the Convention, by requiring their local courts to restrain court proceedings that contravene the parties' agreement to arbitrate. Once again, defences to enforcement are limited, for example, to cases where the arbitration agreement is invalid or where the matters pleaded in court fall outside the scope of the agreement.

There is currently no equivalent instrument for the recognition and enforcement of foreign court judgments with global effect, which means that the New York Convention has created a significant 'enforcement advantage' of arbitration over litigation.

While arbitration has many attributes, the wide recognition and enforcement of arbitral awards has long been a powerful drawcard in parties choosing it as a method of settling international commercial disputes.

Implementation of the New York Convention in PNG

While the Convention will enter into force for PNG on 15 October 2019, in accordance with the Constitution of PNG, the Convention will not form part of PNG law until it has been legislated into domestic law by the Parliament.

PNG follows the English law approach, whereby treaties must be implemented by legislation before they can have effect in domestic law. PNG will then have an opportunity to reform its current arbitration legislation, the *Arbitration Act 1951*, and possibly adopt the *1985 UNCITRAL Model Law on International Commercial Arbitration* (**the Model Law**).

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REGULATORY UPDATES

PNG courts will now enforce arbitral awards made in both contracting and non-contracting states

While the New York Convention addresses the beginning and endpoints of the arbitration process (enforcement of the agreement and the award), the Model Law provides a procedural template for the conduct of arbitrations in a state. Legislation based on the Model Law has been adopted in 80 states, including Australia.

Implications for PNG

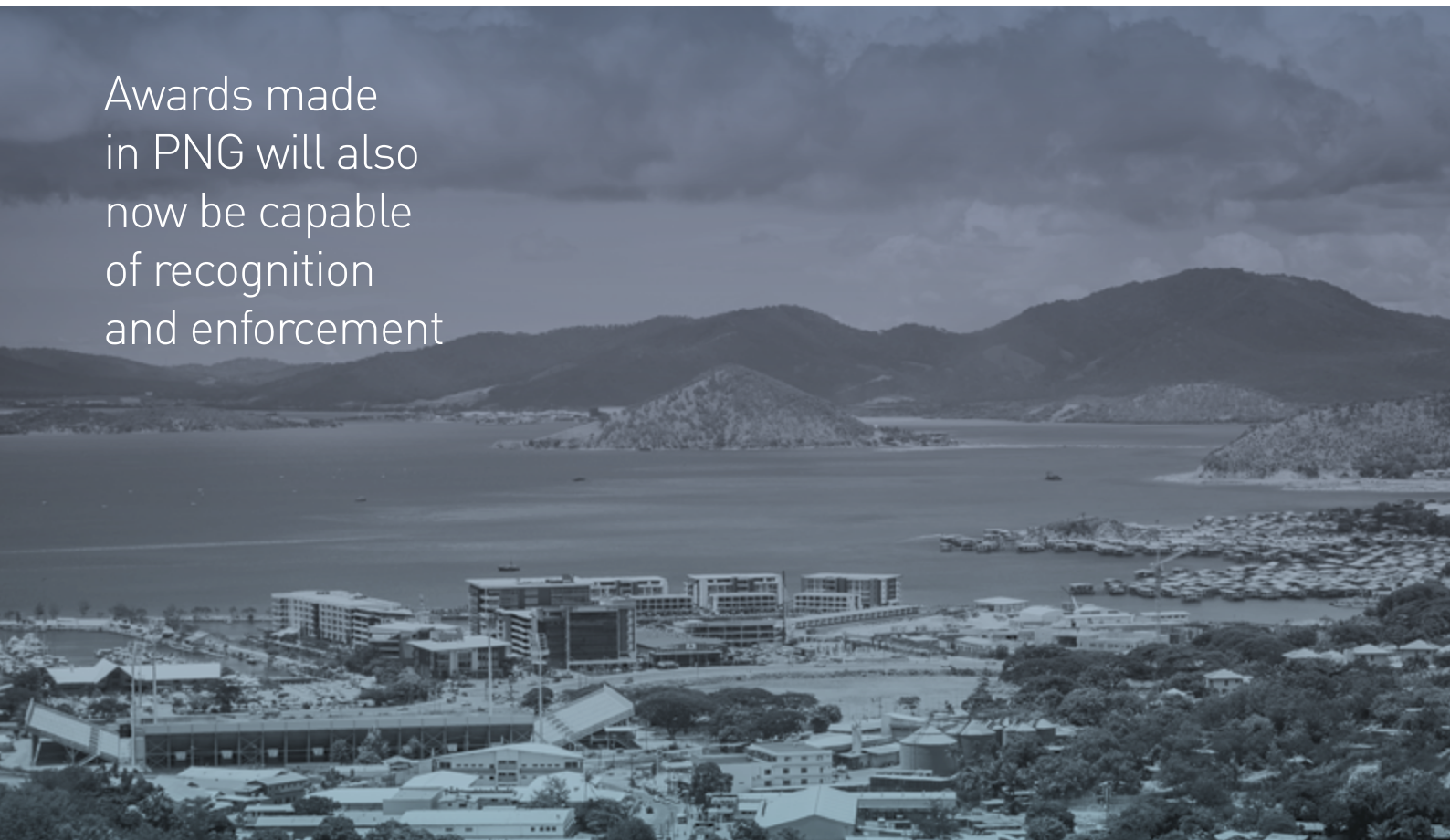
Following the accession of PNG to the Convention, PNG courts will now be required to enforce arbitral awards made in both contracting states and non-contracting states to the Convention, in accordance with the principles in article V. This is an important development as the current position with respect to enforcement of foreign awards in PNG is unclear given there is no specific legislation that addresses the issue.

Awards made in PNG will also now be capable of recognition and enforcement in other contracting states to the Convention. This change is significant as many states only recognise and enforce arbitral awards made in other contracting states.

PNG courts will also now be required to enforce arbitration agreements by staying court proceedings, in accordance with the principles in article II of the Convention. This measure is also important in enhancing the status of arbitration as under current PNG law (the *Arbitration Act 1951 s 4(2)*) a court only has a discretion to stay proceedings in favour of arbitration.

It has been common for investors in PNG (particularly those contracting with the State) to select arbitration as their preferred dispute resolution mechanism. However, PNG's accession to the New York Convention will only further enhance the attractiveness of arbitration to investors and, importantly, ensure that selection of such dispute mechanism will be honoured by the courts.

Awards made in PNG will also now be capable of recognition and enforcement



INSIGHTS

The 'crisis commodity' – why we seek sanctuary in gold

Earlier this year we heard of the birth of Nevada Gold Mines, a merger of the Nevada-based gold mining assets of Barrick Gold and Newmont Goldcorp, which trumped both Indonesia's Grasberg and Uzbekistan's Muruntau projects to create the world's largest gold mining operation. The new joint venture is anticipated to produce in excess of 113 tonnes of gold per year which, based on the average gold price in 2018, will generate more than US\$5 billion in revenue annually. And this is just one project.

In 2018, the world's top producer, China, produced in excess of 400 tonnes of gold – almost 100 tonnes more than Australia's output from 66 operating gold mines, and almost twice the volume of that produced by the United States. On a global scale, world-wide output from gold mining projects is expected to reach a record 3,107 tonnes this year.

So what is driving the demand for gold?

Historically speaking...

The discovery of gold at Sutter's Mill in Coloma, California in 1848 and at Ophir in New South Wales in 1851 kicked off the gold rush era which had people migrating from all around the world, pick and shovel in hand, in pursuit of a nugget of their very own. One example of such migration saw the birth of what we now know to be South Africa's largest city, Johannesburg, which the history books say spurred from the discovery of gold in the Witwatersrand Basin in 1886 by English miner George Walker (or was it George Harrison? Controversially, the jury is still out on this one). Over a century later, our desire for gold does not appear to have wavered.

The gold standard

In the days of the 'gold standard' the root cause of the steadfast demand for gold might have been obvious, as prominent economies including England, France and the United States held physical reserves of gold to back every dollar of currency they issued. It became evident that the link between currency and gold was a ceiling to economic stimulation and countries began abandoning the system as a means of recovering from the Great Depression of the 1930s. President Richard Nixon finally separated the US dollar from its tangible counterpart in 1971, and interestingly, the price of gold almost tripled.

To this day gold prices will typically be up when the value of the US dollar is down. Gold prices are also commonly seen to increase when confidence in the government is low. During the Great Depression the purchasing power of gold relative to cash increased significantly as people chose to hoard safety blankets of gold, consequently driving up the price. Similarly, between 1929 and 1933, shares in Homestake Mining, the largest goldminer in the US at the time, grew by 474%. Fast forward to 2012 when consumer confidence in the stock market was still in its healing phase following the Global Financial Crisis and the price of gold reached approximately US\$1900, almost doubling in value since Lehman Brothers filed for bankruptcy in 2008. It would be a fair conclusion that the cumulative effect of these events over time has cultivated the sense of safety we attach to gold.



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INSIGHTS

The increase in demand for gold occurs before levels of supply can catch up, which naturally increases its price

Cultured karats

Unlike other mined commodities, like coal, which through power generation and steel production contributes to fundamental human needs such as food, warmth and shelter, more than half the gold produced today is used solely for what are perceived by many to be luxury items, like jewellery.

Looking to the Crown Jewels bailed up in the Tower of London, it is fair to assume that the demand for large amounts of gold for jewellery and artefacts is a thing of centuries past. However, gold jewellery still does have a symbolic role to play in many religions and cultures and is often still used for its ceremonial importance or as an indication of status.

In Indian culture, for example, gold can commonly form a third of a family's wealth. This gold is often held as security to be called upon in trying times, but may also be used as working capital in business, or as collateral for improved borrowing power. As the world's largest country by population and with a growing middle class, Indian demand for gold plays a significant part in worldwide demand.

The bottom line – market forces

What it really comes down to is basic principles of economics. When inflation rises, people flock to purchase gold. The increase in demand for gold occurs before levels of supply can catch up, which naturally increases its price. This is the same reason that gold prices increase following a stock market crash – people panic.

Conversely, as stock prices rise it is common to see gold prices fall, as punters try to get in on the upswing and have less liquidity to invest in gold, despite the same levels of supply being available to the market.

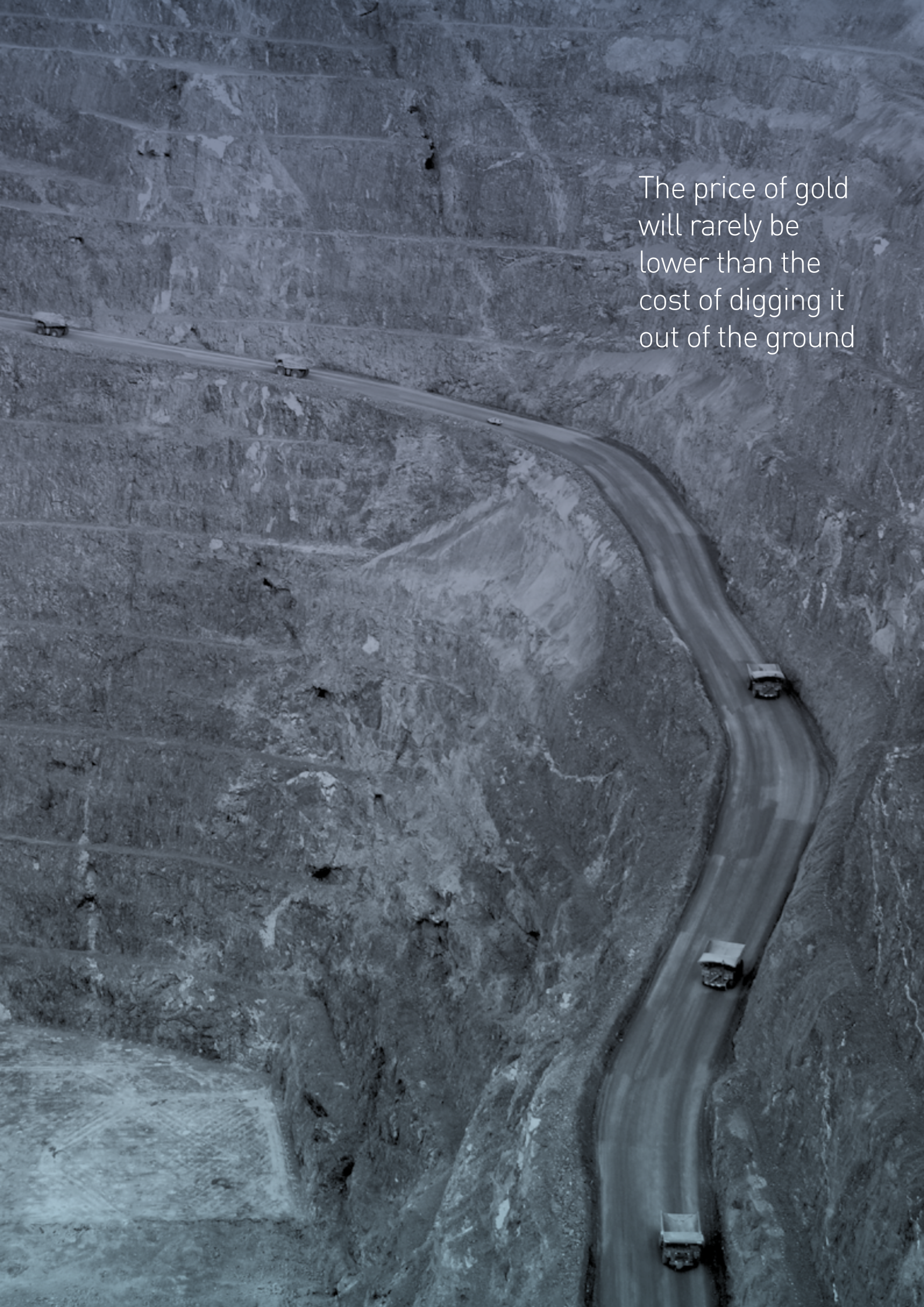
People believe, as history has shown, that investment in gold is a reliable means of hedging against inflation, but in reality it is a self-fulfilling prophecy. What has happened is that over time inflation has eroded the value of each dollar in circulation, while the value of gold has steadily increased.

To buy or not to buy?

Investment in gold can occur in a number of ways, whether by purchasing the physical product, investing in an exchange traded fund, investing in a gold miner or buying a stake in a gold mining project.

So is gold a good investment in 2019? We're lawyers, we don't know.

What we do know is that the price of gold will rarely be lower than the cost of digging it out of the ground, and in Australia's current landscape that cost is only increasing. Australia's largest gold mines are ageing, and although exploration is continuing and new discoveries are being made, our more recent discoveries haven't been as abundant as they have been in the past. Barrick and Newmont's Australian behemoth, the Super Pit, for example, is in its thirtieth year of operation. Having already produced more than 20 million ounces (567 tonnes) of gold in its lifetime, extracting gold from this site is requiring the joint venture to dig ever deeper into the ground, and into their pockets.

An aerial photograph of a massive open-pit mine. The mine is characterized by numerous horizontal terracing levels, creating a stepped appearance. A wide, winding road cuts through the center of the mine, with several large haul trucks traveling along it. The terrain is rugged and rocky, with some areas appearing lighter in color, possibly due to dust or different rock types. The overall scene conveys the scale and industrial nature of the mining operation.

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