

New trends for financing mining projects

Joint session with the Project Finance Subcommittee.

Session Co-Chairs

Jaap Koster *Clifford Chance LLP, Amsterdam, the Netherlands*

Ignacio J Randle *Estudio Randle, Buenos Aires, Argentina;*
Vice-Chair, Mining Law Committee; Council Member, Energy,
Environment, Natural Resources and Infrastructure Law Section
(SEERIL)

The international financial crisis and the ups and downs of commodities prices pose yet another challenge to the financing of natural resources projects. At the same time, the continuing availability of raw materials is paramount to keep the business activity on track, and even bolster economic growth. This need applies to the mining exploration, construction, and production phases alike. This panel will analyse the implications of the current international financial situation for the mining industry and the services ancillary to it. The speakers will also explore alternatives available for the financing of resources projects in different parts of the world.

Speakers

John D Crothers *Gide Loyrette Nouel, Paris, France; Special*
Projects Officer, Water Law Committee; Council Member, Energy,
Environment, Natural Resources and Infrastructure Law Section
(SEERIL)

Carmen Diges *McMillan LLP, Toronto, Ontario, Canada*

Ignacio J Randle

Andrew Stephenson *Clayton Utz, Sydney, New South Wales,*
Australia

WEDNESDAY 1500 – 1800

Brussels, 4th Floor, Left

Indigenous mining agreements

Joint session with the Indigenous Peoples Committee.

Session Co-Chairs

Florencia Heredia

Luis Carlos Rodrigo *Rodrigo Elias & Medrano, Lima, Peru; Senior*
Vice-Chair, Mining Law Committee

Mining activities often occur in areas which are inhabited by indigenous communities. In recent times there have been considerable developments in the relationship between mining companies and such communities in the many different jurisdictions where minerals are extracted.

The panel will mainly address the topic of the agreements that can be entered into in order to govern such relationships and determine rights and obligations of each party. Particular focus will be made on the judicial interpretation and approaches to these agreements as well as determine the overall process for decision-making in their construction.

Speakers

Sebastian Donoso *Antofagasta Minerals SA, Santiago, Chile*

Neal J Smitheman *Fasken Martineau, Toronto, Ontario, Canada*

John Southalan *Centre for Energy, Petroleum and Mineral Law &*
Policy, University of Dundee, Dundee, Scotland

THURSDAY 1500 – 1800

Toronto, Lower Level -4

A DINNER will be held for committee members and guests.

See page 143 for details.

THURSDAY 2130

Oil and Gas Law

Chair

Luis Alberto Erize Abeledo Gottheil *Abogados SC, Buenos Aires,*
Argentina

Financing oil and gas projects in Africa

Joint session with the African Regional Forum. See page 47 for details.

MONDAY 1000 – 1300

Brussels, 4th Floor, Left

Liability of the grantor of the permits, concessions, PSAs or similar. The Acts of State and the emergency theory. Reasonableness, timing and other tests

Session Chair

Luis Alberto Erize

Oil-producing countries have an unquestionable title on their own natural resources. Eminent domain is the source of legitimacy for establishing royalties, or more generally, the government take, even when such resources are exploited by private companies under a variety of contracts, permits or concessions. However, based on issues such as market information and bargaining power imbalances, security of supply, strategic interests and other considerations, sovereigns express their dissatisfaction with their counterparts when markets are high. Their response takes various forms, including renegotiation, taxation, price regulations, environment regulations and other methods. Thus, restrictions are imposed on otherwise acquired rights of oil and gas producers under several theories and justifications, including actions labelled as the enforcement of the contract terms and commitments. The relationship between grantor and producer is strained, and investments and development in these fields suffer, leading to a vicious circle which sometimes includes discrimination. These subjects will be discussed in this session, as well as recent examples, in order to define trends, common problems and paths of negotiation. We will also look at public emergency and state of necessity, especially in the present uncertain atmosphere of recession and strong variations in international prices.

Speakers

Manuel Abdala *LEGG Economics Finance, Washington DC, USA*

Ramiro Guevara *Guevara y Gutiérrez SC Nuestra Señorade, La Paz,*
Bolivia; Membership Officer, Oil & Gas Law Committee

Fernando Mantilla-Serrano *Shearman & Sterling LLP, Paris, France*

Bertrand Montembault *Herbert Smith LLP, Paris, France*

Miguel Rivero Betancourt *Hoet Peláez Castillo & Duque, Caracas,*
Venezuela

Pablo Spiller *LEGG Economics Finance, Emeruville, California, USA*

Paul Stevens *Chatham House, London, England*

WEDNESDAY 1500 – 1800

S.Prensa, 1st Floor, Right

General principles on joint operating agreements rights and obligations

Session Co-Chairs

Brian Bradshaw *Fulbright & Jaworski LLP, Houston, Texas, USA;*

Vice-Chair, Oil and Gas Law Committee

Jean André Diaz *Total SA, Paris, France; Corporate Counsel Forum*

Liaison Officer, Oil and Gas Law Committee; Council Member,
Energy, Environment, Natural Resources and Infrastructure Law
Section (SEERIL)

In this session, we will discuss many examples of conflicts and solutions under the standard and not-so-standard agreement forms. All of the following subjects need to be revisited to better

understand the increasingly complex world of oil and gas exploration and production:

- shift of contractual risk;
- change of circumstances;
- the extent of liability of the operator and limits to the exclusion of liability;
- the sometimes subtle differences in the wording of otherwise classic clauses;
- the basics for the smooth development of a relationship between joint interest participants;
- non-consent and sole risk operations;
- default and the way out solutions;
- confidentiality;
- lifting and gas balancing provisions;
- assignment of interest;
- the pooling of production capacity;
- third party access to facilities;
- voting passmarks;
- work program approvals and AFEs; and
- relationship with the grantor of the concession and the authorities in general.

Speakers

Andrew Derman *Thompson & Knight LLP, Dallas, Texas, USA*

Elisabeth Eljuri *Macleod Dixon, Caracas, Venezuela*

José Roberto Faveret *OGX Petroleo e Gas Participacoes SA, Rio de Janeiro, Brazil*

Timothy Martin *University of Dundee, Dundee, Scotland*

Michael Polkinghorne *White & Case LLP, Paris, France*

Paul Stockley *Bond Pearce LLP, London, England; Publications Officer, Oil and Gas Law Committee*

THURSDAY 1000 – 1300

Santo Domingo, Lower Level -2, Right

From A to Z: the oil and gas project: legal and contractual steps that enable a prospect to become a production field

Session Chair

Michael Dulaney *Johnson Winter & Slattery, Perth, Western Australia, Australia; Senior Vice-Chair, Oil and Gas Law Committee*

Before taking these decisions, a massive amount of information is necessary, which includes a careful listing of problems to be solved, timing to be defined, and risks to be assessed. This starts with the bidding process, the legal certainty assuring title, permits, licenses and authorisations, and antitrust controls before and afterward. One must consider not only the current status of regulations but also what comes next, including start-up, service contracts, and choice of participating interest holders in the JOA. Other issues that must be examined include:

- financing and exchange rules;
- what to do before setting a foot in place;
- royalties, taxes and duties;
- service agreements;
- insurance cover;
- infrastructure and construction contracts;
- stand-by letters of credit and other guaranties;
- contract models and variations;
- environmental law constraints, management and reporting;
- access to markets and pipelines;
- crisis management;
- environmental responsibility;
- contingency plans;
- hiring and firing, and labour disputes;
- relinquishment, demobilisation, decommissioning of facilities; termination and preparation for war;
- exit rules and monetisation of the investment.

This session will look at all of these current issues, and participants will discuss how they dealt with these various elements, in order to present the audience with practical solutions.

Speakers

Carlos Albarracin *Chadbourne & Parke LLP, New York, USA*

Danielle Beggs *Denton Wilde Sapte, London, England*

Martin Byrnes *Siverstone Group, London, England*

Toby Hewitt *Herbert Smith LLP, Singapore*

Melina Llodra *Lalive, Geneva, Switzerland*

FRIDAY 1000 – 1300

Bratislava, 4th Floor, Right

Power Law

Co-Chairs

Linda Evans *Clayton Utz, Sydney, New South Wales, Australia*

Richard M Farmer *Fulbright & Jaworski LLP, New York, USA*

Nuclear power projects

Joint session with the International Construction Projects Committee. See page 70 for details.

MONDAY 1500 – 1800

Berlin, 1st Floor, Left

The impact of climate change legislation on the power industry

Joint session with the Trade and Customs Law Committee.

Session Chair

Linda Evans

The session will cover how climate change legislation and treaties will affect the power industry in Asia, Europe, Latin America and North America over the next five years. The session will be a practical session focussing on what advice clients need now, and what sort of advice might we be expecting to provide to clients five years from now.

Speakers

Les Lo Baugh *Fulbright & Jaworski LLP, Los Angeles, California, USA*

Juan Francisco Mackenna *Carey Cia Ltda Abogados, Santiago, Chile; Website Officer, Power Law Committee*

Shardul S Shroff *Amarchand Mangaldas & Suresh A Shroff & Co, New Delhi, India*

Paul Q Watchman *Quayle Watchman Consulting, Cobham, England*

THURSDAY 1000 – 1115

Novotel A, The Novotel Hotel

WTO trade rules and climate change goals – implementation, inconsistency and conflict

Joint session with the Trade and Customs Law Committee. See page 56 for details.

THURSDAY 1145 – 1300

Novotel A, The Novotel Hotel