

MEMORANDUM

To: Mandalay Resources Corporation

Date: July 13, 2017

From: Fasken Martineau DuMoulin LLP

File/Matter No.: 303868.00001

Client: Mandalay Resources Corporation

Re: Reclamation Surety Bond Research

Introduction

A review of mining legislation across Canada shows that surety bonds are widely acceptable as a form of security to provide the financial assurance required by governments as a key component of mine closure plans. Reclamation Surety Bonds are a three-party agreement where a surety company, typically a well-capitalized financial institution, promises to perform obligations of the bonded party or pay on-demand the agreed sum of money to the beneficiary if the bonded party (mine) fails to perform its obligations pursuant to the closure plan. Reclamation Surety Bonds are designed to be a reliable and readily accessible form of security, and as such very similarly to a bank Letter of Credit.

A summary of Canadian mining legislation relevant to surety bonds follows.

Alberta

In Alberta, pursuant to section 21 of the Conservation and Reclamation Regulation, Alberta Regulation 115/1993 security must be in one or more of the following forms as required by the director:

- (a) cash;
- (b) cheques and other similar negotiable instruments payable to the President of Treasury Board and Minister of Finance;
- (c) Government guaranteed bonds, debentures, term deposits, certificates of deposit, trust certificates or investment certificates assigned to the President of Treasury Board and Minister of Finance;
- (d) irrevocable letters of credit, irrevocable letters of guarantee, performance bonds or surety bonds in a form acceptable to the director;
- (d.1) qualifying environmental trusts within the meaning of subsection 248(1) of the Income Tax Act (Canada); or
- (e) any other form that is acceptable to the director.

British Columbia

In British Columbia, pursuant to section 10(4) of the *Mining Act*, RSBC 1996, c 293, the Chief Inspector of Mines may, as a condition of issuing a permit under subsection (3), require that the owner, agent, manager or permittee give security in the amount and form, and subject to conditions, specified by the Chief Inspector of Mines:

- (a) for mine reclamation, and
- (b) to provide for protection of, and mitigation of damage to, watercourses and cultural heritage resources affected by the mine.

This security is held until the Chief Inspector of Mines is satisfied that all reclamation requirements for the operation have been fulfilled. According to the Government of British Columbia website,¹ the accepted forms of security list includes:

- (a) guaranteed investment certificates held under a safekeeping agreement (only for financial securities less than \$25,000);
- (b) cash and cash equivalents;
- (c) irrevocable standby letters of credit; or
- (d) reclamation surety bonds.

The “Securities” webpage includes a link to a surety bond template.²

Manitoba

In Manitoba, pursuant to section 111(2)(b) of the *Mines and Minerals Act*, CCSM c M162, a mineral lessee shall not commence or recommence mining until the security filed with the closure plan for performance of rehabilitation is delivered to the Director of Mines and is accepted by the director as sufficient security for purposes of the closure plan.

The Mine Closure Guidelines³ provide direction on financial assurance acceptable to the Director of Mines relating to mine closure rehabilitation costs. In connection with a mine closure plan, financial assurance must be in one of the following forms:

- (a) a cheque made payable to the "Minister of Finance of Manitoba" with the funds to be held in trust for the proponent;

¹ <http://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining/permitting/reclamation-closure/securities>

² http://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/reclamation-and-closure/reclamation_surety_bond_form_2015.pdf

³ <http://www.gov.mb.ca/iem/mines/acts/financialassurance.html>

- (b) bonds issued by the Province of Manitoba (the “**Province**”) or another Canadian province, by Canada or by a Canadian municipality;
- (c) a guaranteed investment certificate or term deposit certificate, in Canadian dollars, issued to the Province by a bank, savings and credit union or trust company. The certificate must have a 12-month minimum term and be automatically renewable until the closure plan is completed;
- (d) an irrevocable, unconditional letter of credit issued to the Province by a bank, savings or credit union or trust company;
- (e) a security or guarantee policy issued to the Province by a company legally authorized to do so;
- (f) a security provided by a third party to the Province in a form acceptable to the Director of Mines;
- (g) security interests in unencumbered assets, goods, documents of title, securities, chattel papers, instruments, moneys, intangibles or interests that arise from assignment of accounts including a pledge of assets;
- (h) any other form of security or any other guarantee or protection that is acceptable to the Director of Mines;
- (i) any combination of things mentioned in clauses (a) to (h).

New Brunswick

In New Brunswick, pursuant to section 111.1 of the *Mining Act*, SNB 1985, c M-14.1, the Minister of Energy and Resource Development may at any time require security in the forms and amounts the Minister of Energy and Resource Development considers appropriate.

The Guide to the Mine Approval Process in New Brunswick⁴ published by the Minerals and Petroleum Development Branch of the Department of Natural Resources states that the forms of security acceptable to the Minister of Natural Resources are:

- (a) a deposit of money;
- (b) a negotiable bond signed over to the Province;
- (c) an irrevocable letter of credit from an acceptable lending institution;
- (d) a bond from an insurance company; or

⁴ http://www2.gnb.ca/content/dam/gnb/Departments/en/pdf/Minerals-Minerales/Guide_Mine_Approval-e.pdf

- (e) another form of security acceptable to the Minister of Natural Resources.

Newfoundland and Labrador

In Newfoundland and Labrador, pursuant to section 10(3) of the *Mining Act*, SNL 1999, c M-15.1, the financial assurance required as part of a rehabilitation and closure plan shall be in a form acceptable to the minister, including:

- (a) cash;
 - (b) a letter of credit from a bank named in Schedule I of the Bank Act (Canada);
 - (c) a bond;
 - (d) an annual contribution to a financial assurance fund established for the project; or
 - (e) another form of security acceptable to the minister.
2. Northwest Territories
 3. Pursuant to Section 12(3) of the Mackenzie Valley Federal Areas Waters Regulations, SOR/93-303, security must be in the form of:
 4. (a) a promissory note guaranteed by a bank in Canada and payable to the Receiver General;
 5. (b) a certified cheque drawn on a bank in Canada and payable to the Receiver General;
 6. (c) [Repealed, SOR/2016-130, s. 9]
 7. (d) an irrevocable letter of credit from a bank in Canada; or
 8. (e) cash.
 9. According to the Mine Site Reclamation Policy for the Northwest Territories (the “NWT Policy”) released by the DIAND, the Mackenzie Valley Land and Water Board has the jurisdiction to determine the amount of security in water licences and land-use permits, while the Minister of the DIAND has the power to determine the form of security provided under these instruments.
 10. The Nunavut Policy and the NWT Policy are virtually identical and are intended to cover mining properties which might straddle the Northwest Territories-Nunavut border.

Northwest Territories

Pursuant to Section 12(3) of the Mackenzie Valley Federal Areas Waters Regulations, SOR/93-303, security must be in the form of:

- (a) a promissory note guaranteed by a bank in Canada and payable to the Receiver General;
- (b) a certified cheque drawn on a bank in Canada and payable to the Receiver General;
- (c) [Repealed, SOR/2016-130, s. 9]
- (d) an irrevocable letter of credit from a bank in Canada; or
- (e) cash.

According to the Mine Site Reclamation Policy for the Northwest Territories (the “NWT Policy”) released by the DIAND, the Mackenzie Valley Land and Water Board has the jurisdiction to determine the amount of security in water licences and land-use permits, while the Minister of the DIAND has the power to determine the form of security provided under these instruments.

The Nunavut Policy and the NWT Policy are virtually identical and are intended to cover mining properties which might straddle the Northwest Territories-Nunavut border.

Nova Scotia

In Nova Scotia, pursuant to section 15(1) of the *Mineral Resources Act*, 1990, c 18, s 1 (the “MRA”), notwithstanding anything in the MRA, the Minister of Natural Resources may require cash, security or negotiable bonds for any purpose consistent with the proper administration of the MRA. Pursuant to section 97(1) of the MRA, the application for a lease, non-mineral registration, an excavation registration or letter of authorization:

- (a) shall post cash, a negotiable bond or other security, in the case of an application for a lease, non-mineral registration or letter of authorization; or
- (b) may be required by the Minister of Natural Resources to post cash, a negotiable bond or other security in the case of an application for an excavation registration.

Nunavut

Pursuant to Section 10(3) of the Nunavut Waters Regulations, SOR/2013-69, security must be in the form of:

- (c) a promissory note guaranteed by a bank listed in Schedule I or II to the Bank Act and made payable to the Receiver General;
- (d) a certified cheque drawn on a bank listed in Schedule I or II to the Bank Act and made payable to the Receiver General;
- (e) a performance bond approved by the Treasury Board for the purposes of paragraph (c) of the definition security deposit in section 2 of the Government Contracts Regulations;
- (f) an irrevocable letter of credit from a bank listed in Schedule I or II to the Bank Act; or
- (g) a cash payment.

According to the Mine Site Reclamation Policy for Nunavut (the “**Nunavut Policy**”)⁵ released by the Department of Indian Affairs and Northern Development (the “**DIAND**”), for water licences, the Nunavut Water Board determines the amount of security, while the Minister of the DIAND determines the form.

Ontario

In Ontario, pursuant to section 145(1) of the *Mining Act*, RSO 1990, c M.14, the financial assurance required as part of a closure plan must be in one of the following forms:

- (a) cash;
- (b) a letter of credit from a bank named in Schedule I to the Bank Act (Canada);
- (c) a bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance;
- (d) a mining reclamation trust as defined in the Income Tax Act (Canada);
- (e) compliance with a corporate financial test in the prescribed manner; or
- (f) any other form of security or any other guarantee or protection, including a pledge of assets, a sinking fund or royalties per tonne, that is acceptable to the Director.

The above is confirmed on the Ontario Ministry of Northern Development and Mines website.⁶ The “Financial Assurance” webpage includes a link to a surety bond template.⁷

⁵ http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna_1100100036043_eng.pdf

⁶ <https://www.mndm.gov.on.ca/en/mines-and-minerals/mining-sequence/development/mine-development/financial-assurance>

Quebec

According to the Quebec Energie et Ressources naturelles website,⁸ a company that expects to use or that is already using a storage area must provide the department with a financial guarantee once its rehabilitation plan has been approved. The amount of the guarantee must cover 70% of the estimated cost of restoring the storage site. The guarantee must be provided in the form of:

- (a) a cheque;
- (b) securities issued or guaranteed by a government or municipality;
- (c) a guaranteed investment certificate;
- (d) a letter of credit;
- (e) a surety or guarantee policy naming the Government as beneficiary;
- (f) an immovable hypothec granted by a third party; and
- (g) a trust.

Saskatchewan

In Saskatchewan, pursuant to section 15(1) of the *Mineral Industry Environmental Protection Regulations, 1996*, RRS c E-10.2, Reg 7, an assurance fund required by the regulations is to be in an amount and form approved by the minister and may consist of:

- (a) cash;
- (b) cheques and other similar negotiable instruments;
- (c) government bonds, government guaranteed bonds, debentures, term deposits, certificates of deposit, trust certificates or investment certificates;
- (d) guarantees, irrevocable letters of credit, irrevocable letters of guarantee,
- (e) performance bonds or surety bonds;
- (f) security interests in goods, documents of title, securities, chattel papers, instruments, moneys, intangibles or interests that arise from an assignment of accounts that secure the performance of a decommissioning and reclamation plan approved by the minister pursuant to section 14;

⁷ https://www.mndm.gov.on.ca/sites/default/files/surety_bond_template.pdf

⁸ <http://mern.gouv.qc.ca/english/mines/rehabilitation/rehabilitation-provisions.jsp>

- (g) any other financial instrument or security that is acceptable to the minister;
- (h) anything mentioned in clauses (a) to (f) together with an agreement for staged decommissioning and reclamation, with each stage of the decommissioning and reclamation to be completed in accordance with that agreement; or
- (i) any combination of things mentioned in clauses (a) to (g).

Yukon

In Yukon, pursuant to section 2 of the security regulation, YOIC 2007/77, security required under the regulation may be in the form of:

- (a) cash;
- (b) a promissory note guaranteed by a bank in Canada and payable to the Government of Yukon;
- (c) a certified cheque or bank draft drawn on a bank in Canada and payable to the Government of Yukon;
- (d) a government guaranteed bond;
- (e) an irrevocable letter of credit from a bank in Canada;
- (f) a surety bond that is acceptable to the Government of Yukon; or
- (g) any other form of security approved by the Minister in accordance with the Act.