

China Minmetals Foreign Investment Approval

Client Alert

Tokyo

BAKER & MCKENZIE

東京青山・青木・狛法律事務所

Australian Foreign Investment Approval granted with conditions to China Minmetals Non Ferrous Metals Co Ltd

As notified in our March 2009 Client Alert, the Australian Foreign Investment Review Board (“**FIRB**”) rejected an application by China Minmetals Non Ferrous Metals Co Ltd (“**Minmetals**”) to acquire control of the Prominent Hill copper-gold mine in South Australia on national security grounds.

Oz Minerals Ltd (the owner of Prominent Hill) and Minmetals subsequently amended their proposed transaction. Instead of a full takeover of Oz Minerals Ltd the parties agreed that Oz Minerals Ltd would sell various mining assets to Minmetals including the Golden Grove copper and zinc mine in Western Australia, the Century Zinc mine in Queensland and the Rosebury zinc and Avebury nickel mines in Tasmania.

The Australian Treasurer announced on 23 April 2009 that Minmetals’ purchase of the above mining assets will be approved under the *Foreign Acquisitions and Takeovers Act 1975* subject to various conditions including:

- Minmetals must operate the acquired mines as a separate business with commercial objectives;
- the mines must be operated using companies incorporated, headquartered and managed in Australia under a predominantly Australian management team;
- the Chief Executive Officer and Chief Financial Officer of the companies operating the mines and at least 2 directors of each company must have their principal place of residence in Australia;
- commodity sales from each mine must be priced on an arms length basis by a sales team headquartered in Australia, by reference to international observable benchmarks (including London Metals Exchange prices) and in line with market practice;
- Minmetals must maintain or increase production and employment at Century, Rosebury and Golden Grove mines, pursue growth at the

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Century and Rosebury mines, reopen Avebury mine and develop the Dugald River mine, subject to economic conditions;

- Minmetals must comply with Australian industrial relations laws and honour employee entitlements; and
- levels of Indigenous employment must be maintained and increased in local operations and Minmetals must honour agreements with Indigenous Australian communities.

Legally Enforceable Undertakings

Minmetals is required to give legally enforceable undertakings on the above conditions.

Chinese Government Approval

Minmetals must obtain Chinese government approval to purchase the above mining assets from Oz Minerals Ltd. Chinese government officials have recently expressed concern at conditions imposed by the FIRB on other similar Chinese government backed investment into Australia. It is not clear if Minmetals would accept such conditions and whether the Chinese government authorities would approve the transaction.

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