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# M&A IN THE AFRICAN MINING SECTOR

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# KEY THEMES IN MINING M&A – COMMODITY PRICES

## Commodity prices on the whole continue to be low/fluctuate...

- Bounce in prices in early 2016 but sector by sector differences
- Some increase in M&A activity and pickup in investment flows into commodities

However

- Complex geo political issues (especially influence of China)
- Demand uncertainties
- Supply uncertainties. Current oversupply in a number of areas. But care and maintenance on marginal projects may create shortage of supply which may lead to further price volatility and spikes as demand outstrips supply
- Means that buyers and sellers are being very cautious

# KEY THEMES IN MINING M&A – FUNDING

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Funding for development and acquisitions less readily available.....

- Access to bank finance is tougher
- Investors are more cautious and more selective
- Existing players seeing loss in share value and over-indebtedness
- Streaming, vendor financing, earn outs, royalties, swaps and other inventive ways of funding projects

# KEY THEMES IN MINING M&A – VALUATION

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## Buyer's market but ...

- Fluctuating prices makes valuation hard
- Are the assets currently on the market the best assets or should we wait for better?
- Should we sell now or wait and see?
- Sellers and Buyers are being creative (swaps, deferred consideration, royalties etc)
- Sellers and Buyers are being strategic: consolidation, cooperation, concentration on core assets

# KEY THEMES IN MINING M&A – REGULATION

Greater regulation makes development and acquisitions more complicated...

- Increasing global emissions regulations (war on coal)
- Greater governmental intervention
- Resource nationalism
- Environmental and rehabilitation issues
- Employment policies, health and safety, social responsibility, local content, human rights – empowerment
- EITI, publish what you pay and transparency initiatives
- Increased policing on corruption issues
- Greater focus on tax structures both at international and national levels
- Rise in anti-trust regulation
- General funding pressures on governments drive behaviour and allegiances

# KEY THEMES IN MINING M&A – BIDDING ROUNDS

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## Worth looking at greenfield licencing rounds...

- Less competition : not so much investment into exploration
- Governments keen to encourage new investment
- Governments may also be prepared to enter into one to one negotiations : but increased emphasis on transparency
- Available data

# OPPORTUNITIES FOR BUYERS IN THE CURRENT ENVIRONMENT: ASIAN BUYERS

- Chinese companies and to some extent Japanese and Indian buyers looking at assets

## Key features of Asian buyers:

- Long term view
- May not have a lot of operating or country expertise but keen to learn and build relationships
- Offtake is important
- Government to government relationships are important
- Offering access to financing and (Chinese buyers) infrastructure

# OPPORTUNITIES FOR BUYERS IN THE CURRENT ENVIRONMENT: PRIVATE EQUITY/FINANCIAL BUYERS

- Actively looking at assets in this environment – this is encouraging greater PE activity in mining, in addition to pure infrastructure plays

## Key features of PE / funds (v. Corporates):

- **As Buyers:**
  - Professional investors. No requirement for link to existing business activities. Stringent financial due diligence requirements and strong management teams.
  - Variety of structures (BO, LBO, Club Deal). Prefer short investment period, leveraged acquisition and successful exit strategy.
  - High focus on investment strategy (rather than nature of business being acquired) – traditionally heavily conditioned (finance / MAC) however this depends on nature of transaction.
- **As Sellers:**
  - Exit strategy established early (sometimes at outset of acquisition).
  - Indemnities heavily restricted.
  - Minimal post closing obligations.



# KEY THEMES IN MINING M&A – DISTRESS HAS REMAINED AN ISSUE

## M&A

- Disposals of assets
- Company mergers & acquisitions (public or private).
- JVs (including umbrella JVs)

## Debt Restructuring

- Debt refinancing
- Bond restructuring/liability management

## Equity Restructuring

- Equity capital raising
- Debt for equity swap

## Insolvency Procedures

- Administration
- CVA/Schemes
- Receivership

# KEY THEMES IN MINING M&A – UNDER PERFORMING ASSETS

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## Why would buyers be interested in underperforming assets...

- Because they have more cash/access to finance than the existing owner
- Because they are looking at a different risk/portfolio profile to the existing owner
- Because they have more know-how than the existing owner
- Because they have better government relationships than existing owner
- Consolidation with existing mines, processing or transportation facilities to make economies of scale

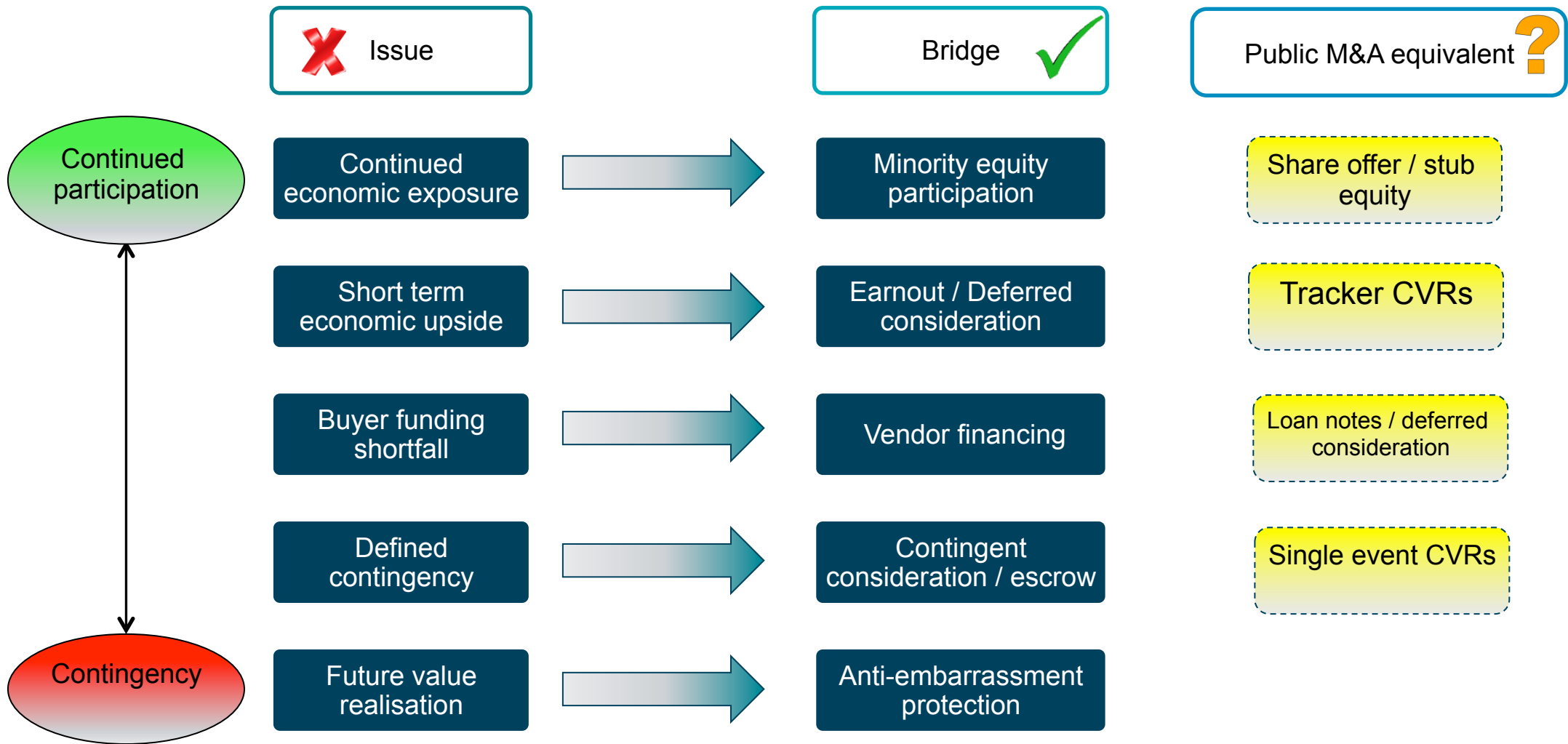
# KEY THEMES IN MINING M&A – UNDER PERFORMING ASSETS

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Consider type of deal

- Assets v. share
- Urgency
- Terms: fully negotiated v. pre-pack
- Bridging value gap may be an issue

# BRIDGING THE VALUE GAP



# ISSUES TO CONSIDER AS BUYER WITH WEAK SELLER

## Execution risk

- Material Adverse Change: insolvency

## Covenant strength?

- Value of warranties/indemnities given
- Holdback of consideration

## Involvement of lenders / bondholders

- Timing for consents / releases of security
- In an auction process ensure bid appeals to Lenders (low execution risk, money upfront, clean break)
- Understand the dynamics between the lenders

## Conditions precedent

- Specify precise obligations
- Avoid use of “reasonable endeavours” or similar

## Preference issues

- Market testing: auction process

## Government consents

- Government consent may be easier if buyer seen to be financially stronger than seller

# LESS EXPERIENCED OR LESS FINANCIALLY SECURE BUYER

## Execution risk

- Financial and technical capability test : convincing government/counterparties of suitability of buyer
- Requirement to bring lenders on board
- Requirement to bring contract operator/ management team on board
- Ability for buyer to get organised and do the deal

## Covenant strength?

- If there is a deferred consideration element consider credit risk
- Break fees

## Conditions precedent

- Limiting CPs and ability to manipulate timing

## Listed company as buyer

- Consents
- Class 1/Reverse Takeover

## Reputational considerations for seller

- Capability of buyer to deal with, eg, environmental and social issues

# ISSUES TO CONSIDER WITH DISTRESSED ASSETS

## Package deals

- Selling the good and the bad together; restructuring may be required
- Consortium Bids: May be a way of combining strengths eg. strong credit + operational expertise; Greater chance of success for bidder if present a simple transaction structure to Seller with low execution risk

## Connected issues

- Solvency of co-venturers and key counterparties
- Continued access to infrastructure?

# WHAT IF THE MINING COMPANY (YOUR COUNTERPARTY) IS LISTED? (1)

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Listed companies:

- subject to raft of continuing obligations
- in the UK there is greater flexibility for AIM and standard listed companies than for premium listed companies.

Particular issues include:

- the continuous disclosure regime and control and disclosure of “inside information”
- rules governing transactions and issues of shares
  - shareholder approval? – time / conditionality
  - requirement for circular / prospectus?
  - Listing Rule requirements
- role of the sponsor



# WHAT IF THE MINING COMPANY (YOUR COUNTERPARTY) IS LISTED? (2)

There are issues in becoming a shareholder of a UK listed company:

- **Controlling shareholders (typically 30%+):** Specific listing rules and other requirements including: need for a relationship agreement; for company to operate independently of controlling shareholder; conflicts; director duties; information sharing
- **Related Party Transactions:** If become a significant (10%+) shareholder, “related party transaction” rules may require independent shareholder approval of transactions, a circular and market announcement
- **Takeover Code:** including rules relating to building stakes in a target company. Mandatory bid threshold of 30%.
- **Control issues:** 25% + block special resolutions, 50% + block ordinary resolutions
- Disclosure of interest in shares
- Market abuse and insider dealing rules
- Consider anti-trust

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