fieldfisher

Financing for mining

Going to ground

Contents

Introduction

When Fieldfisher published its first mining finance guide in 2016, the title "*Alternative Financing for Mining*" was appropriate, as many of the funding sources identified and explained were relatively novel.

In 2023, what were once considered "alternative" funding routes are now routinely considered alongside traditional forms of finance. Nevertheless, mining finance continues to be a complicated picture. While the experience of many early stage mining companies is one of frustrating inconsistency and difficulty when it comes to securing finance, there remain routes to successful fundraising that can be less problematic with the right approach.

In our previous report, "Alternative Financing for Mining: New Horizons" published in 2020, we noted that borrowers who implement credible ESG and sustainability initiatives are attractive to investors and financiers alike, and this continues to be the case.

The ability to access sustainability-linked financing has also added to the pool of funds available to companies that can demonstrate strong ESG credentials.

Critical/strategic mineral projects are in a stronger position than they were five years ago thanks to the recognition that these raw materials are needed for energy transition technologies.

Meanwhile, production-based financing sources, such as streaming and royalties, continue to occupy a resilient corner of the market.

But if these windows have opened wider in the past few years, doors to other forms of funding have all but closed for many.

Weaker capital markets activity and a growing risk perception among banks have made it much harder for exploration companies to demonstrate the compelling economics required to secure funding.

More novel forms of financing are giving early stage mining companies more options – some of which appear more dependable than others.

In this report, we look at traditional and newer forms of financing, providing updates where these are warranted, and offering guidance on how to approach different funding channels.

An update on newer financing trends

Critical mineral joint action plans

National governments are cementing international allegiances along resources lines as the race to secure critical mineral supplies intensifies. While political in nature, these decisions form a backdrop to the investment landscape for mining companies, in many instances strengthening their business case.

The European Commission unveiled a proposal for a new Critical Raw Materials Act on 16 March 2023. Key aspects of the proposal focus on speeding up permitting processes for new mining projects and, if adopted, should be a welcome certainty boost for companies trying to develop mines in Europe. However, in its current form, the proposal's targets are non-binding and no new EU funding has so far been allocated to support its objectives.

Meanwhile, in the UK, the government launched its first critical minerals strategy in July 2022, aimed at improving the resilience of critical minerals supply chains that supply UK businesses – including boosting domestic production of some minerals. A refreshed version of the strategy is due to be published in 2023.

In November 2022, the UK and South Africa announced their intention to work to support sustainable exploration and production of minerals for future clean energy technologies and the energy transition in South Africa.

The Association of Southeast Asian Nations (ASEAN), which has had a minerals cooperation agreement in place since 2005, has focused its latest ASEAN Minerals Cooperation Action Plan (AMCAP) for 2021-2025 on "sustainable resource development (including on capacity building towards the use of green mining technologies and enhancing value added in minerals)".

Since 2020, the US and Canada have been advancing their Canada-US Joint Action Plan on Critical Minerals Collaboration, with the aim of "securing supply chains for the critical minerals needed for important manufacturing sectors, including communication technology, aerospace and defence, and clean technology".

Meanwhile, many countries are distancing themselves from China and Russia in the field of resources, over national security concerns and in response to sanctions imposed due to the conflict in Ukraine, respectively.

In November 2022 Canada ordered three Chinese companies to divest their interests in Canadian critical mineral exploration businesses, pursuant to the national security review provisions of the Investment Canada Act.

Australia's government is similarly discussing imposing restrictions on Chinese investment in its domestic critical mineral projects.

For western mining companies with Chinese partners, the latter trend is potentially problematic. For more information on how to protect mining licences from being revoked by host country governments, please see our guide: Mining licence revocations: How to manage the risks | Fieldfisher

Government funds

The EU has earmarked a €2 billion (US$2.04 billion) raw materials fund (launch date 2023) to finance critical minerals and is seeking both public and private sector money for this fund.

Australia has an AUS$2 billion (US$1.37 billion) critical minerals facility, which includes funds available for new mineral processing projects, while Canada has earmarked nearly US$4 billion for exploration projects and infrastructure development for critical minerals supply chains.

Dwarfing these figures, the US is making US$40 billion available to energy transition-related raw material initiatives, with loans available for more than 30 projects to explore and develop rare earths and other critical minerals.

NFTs

While the concept of "tokenising" metals and minerals has started to gain some (limited) traction (see the "Asset-backed crypto tokens" section in our 2020 "Alternative Finance for Mining: New Horizons" report), the entry of non-fungible tokens (NFTs) into the mining arena is a relatively recent development.

NFTs are unique digital assets to which a monetary value is ascribed. It has been suggested by some industry thinkers that mining exploration can be funded through NFTs, in a similar way to crowdfunding (which has been successfully executed by companies including Cornish Lithium and Cornish Tin in the UK).

A simple theoretical model for NFT-based financing would be to allow 'investors' (who may be members of the community local to the mining project) to purchase NFTs for small amounts of money to finance the mine in the expectation of receiving a royalty return once the mine is in production.

To date, however, NFTs have largely been the preserve of riskier, unproven ventures such as asteroid mining. In March 2022, Exploration Laboratories LLC, a California-based aerospace company developing "space task vehicles", announced the release of the first-ever NFT collection intended to fund research and development of "space resource acquisition technologies".

The company's aim is to bring asteroids into a usable orbit so they can be mined for lithium, titanium, gold, platinum group metals and other resources.

Crowdfunding

We briefly touched on crowdfunding in our **previous report** as a financing option suitable for certain kinds of projects, such as those looking to raise relatively small amounts of capital from community stakeholders.

Successful crowdfunding campaigns in the UK by Cornish Lithium and Cornish Tin have proved this can be successful in jurisdictions where crowdfunding is properly regulated.

Private markets/funding platforms

The past two years has seen the emergence of new kinds of "private market" platforms offering services to connect sophisticated and high net worth investors directly to companies looking for funding.

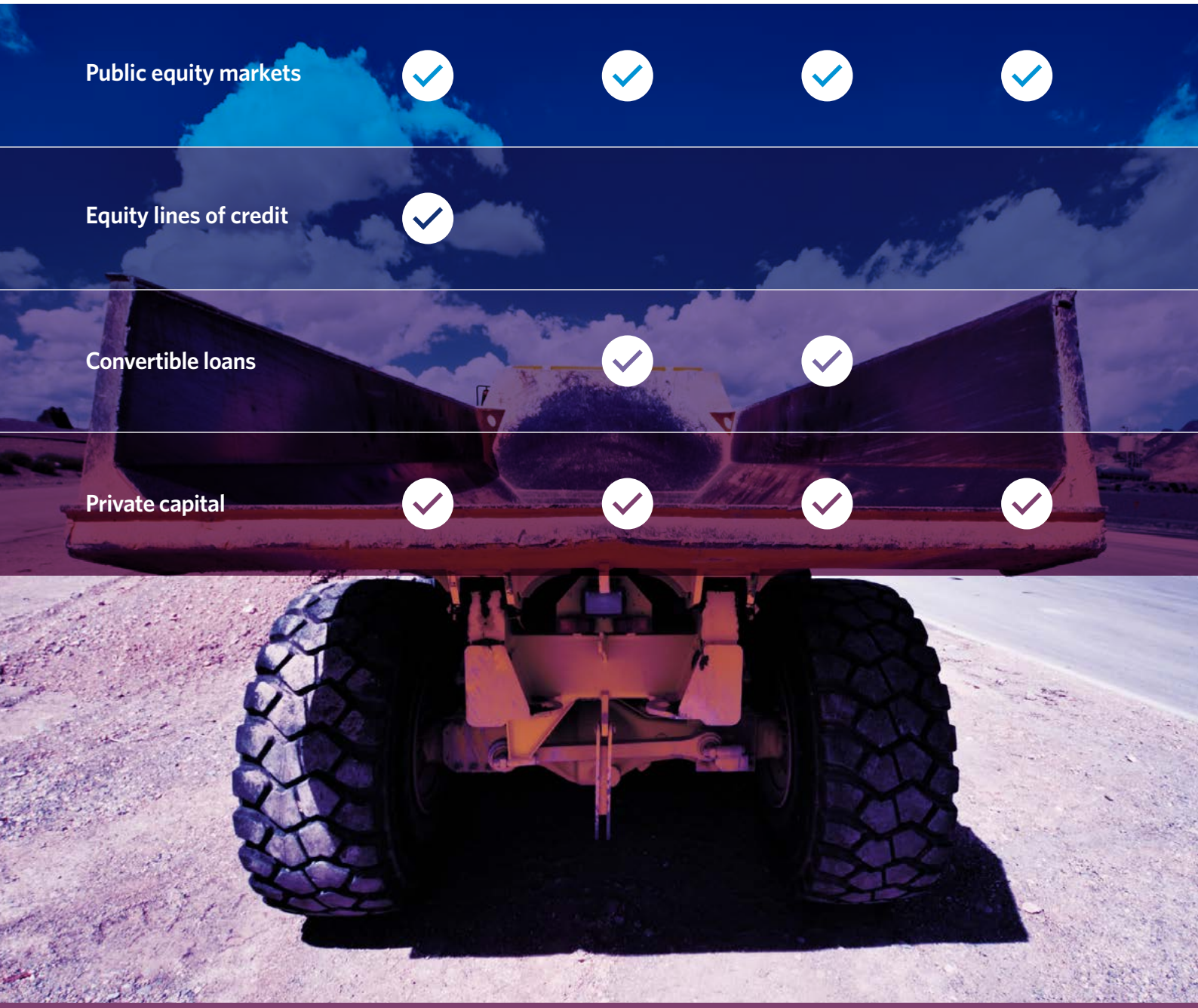
These platforms claim to perform one of the primary services that has traditionally been provided by brokers, although platform service operators have pointed out that their function is complementary, rather than alternative to, brokers' services – widening the number of fundraising routes available to companies seeking finance.

Specialist non-bank lenders

A number of funds (such as Sprott and Appian Capital Advisory) set up specifically to finance – often with flexible financing structures – the production of certain minerals and metals (such as diamonds and gold) has further broadened the suite of financing options available to mining companies.

Stages at which equity financing is available

	Exploration	Development	Construction	Production
Public equity markets	✓	✓	✓	✓
Equity lines of credit	✓			
Convertible loans		✓	✓	
Private capital	✓	✓	✓	✓



Private capital

Funding sources

Private capital covers a variety of funding sources, including:

- Venture capital funds.
- Family offices.
- Private equity funds.
- Hedge funds.
- Strategic corporate investors (e.g. other mining companies and offtakers, such as traders, processors, end users or state owned entities).
- Sovereign wealth funds.

In our previous report in 2020, we commented on the withdrawal of private equity from the mining finance market and the short-lived trend toward specialist private equity companies seeking to take control of mining assets.

While private funds continue to play a peripheral role in mining finance, it seems private equity funds are returning to the sector, specifically to critical minerals projects.

Corporate investors, such as car manufacturers looking to vertically integrate their supply chains by investing in mining projects, are also becoming a significant feature of the private capital market.

Advantages

+ Specialist mining VC funds and family offices tend to have a higher risk appetite and longer-term outlook than traditional equity investors, which tend to be cash-hungry and fearful of cyclical downturns.
+ Strategic corporate investors often have in-depth market knowledge and capital from an experienced operator may be less dilutive than straight equity funding.
+ Corporate and offtake investors will make straight equity investments. Corporate investors may also agree to fund the project through an earn-in arrangement where they commit a fixed amount of capital to fund exploration within an agreed time frame in order to earn an agreed percentage of the project.

Potential pitfalls

– Private capital sources can be difficult to identify, given their private nature.
– Companies negotiating private capital investment can expect a detailed and lengthy due diligence exercise and potentially intrusive involvement in the running of the company (e.g. the right to appoint one or more directors, specific information rights and requirements and vetoes over business and operational decisions).
– Sovereign wealth funds can take longer to reach decisions than other kinds of investor, which can be an issue when it comes to securing other time-sensitive agreements, such as permits.

Guidance

Private capital sources are wide and varied.

Each private capital provider has its own objectives, investment criteria, appetite for risk and target rate of return. It is vital a company understands what these are so it can target its approach accordingly.

Convertible loans

Convertible loans allow investors to convert debt into equity during an agreed period and are a popular form of mining finance. The conversion price can be set at a premium or a discount to the prevailing market price for public companies, or at a negotiated price for private companies.

Advantages

+ Convertible loans delay dilution for shareholders while providing immediate access to funds for companies.
+ They are particularly useful if:
  - The issuer is private and a valuation cannot easily be determined; or
  - The company is publicly traded but feels its equity is undervalued and expects its share price to rise over the term of the loan.
+ A convertible loan does not have to be drawn down in full once it is agreed:
  - It can be taken at scheduled intervals;
  - The timing can be moved around; and
  - In some cases, the full loan amount does not have to be taken.
+ Convertible loans can be secured against the borrower's assets, or they can be unsecured.
+ They can attract an interest coupon, which is payable annually or interest can be rolled-over and paid on redemption or conversion. Some convertible loans may be interest-free.
+ Unlike more conventional loans, arrangement fees, commitment fees and drawdown fees can be paid by issuing shares instead of paying in cash, which helps preserve borrowers' cash resources.

Potential pitfalls

− The conversion price for the loan notes will determine how much of the company is owned by the loan note holder versus existing shareholders.

− Convertible loan notes often come with complex conditions and it is important to consider the expectations of other debt providers when negotiating the timing and price of equity conversion.

− Convertibles can be expensive, both in terms of coupon and the rate of conversion, reflecting the risk associated with early stage issuers and projects.

− Convertible pre-IPO financing can be particularly punitive if the borrower company fails to list by the target long stop date or at a target price.

− The potential overhang of the conversion shares can reduce liquidity and share price of public issuers.

Guidance

Care must be taken around the terms of conversion, particularly if the investor has no obligation to convert on maturity. If the conversion price is higher than the market price of the company's shares, issuing companies are particularly vulnerable when convertibles are nearing maturity, unless there is a clear way of satisfying the loan repayment.

Public equity markets

Capital markets

Following a buoyant period when the global economy was emerging from the height of the Covid-19 pandemic, capital markets were significantly less lively in 2022 and mining and metals equities were among those to suffer.

On London's AIM market, the junior tier of the London Stock Exchange, mining financings for 2022 totalled just £363 million, down 62% from £950 million in 2021 (and down 84% from the height of the mining boom in 2007, where mining financings on the AIM market totalled over £2.25 billion).

The Toronto Stock Exchange Venture Exchange was slightly more robust, with mining financings totalling C$4.1 billion, down 31% from C$6 billion in 2021, which was a record high for the TSX.

In 2023, the threat of recession in major economies and persistently high inflation are likely to make raising money on the capital markets challenging for early stage mining companies, however public markets remain the first port of call for the majority of mining businesses looking to raise capital.

Advantages

+ The traditional stock exchanges of London (LSE), Toronto (TSX) and Australia (ASX) remain the go-to markets for mining equities, with their junior tiers (the London AIM and Toronto Venture Exchange (TSX-V)) giving companies access to retail investors and offering investors a clear view of higher-risk but potentially higher-growth stocks.
+ Public market finance appears to be increasingly favourable towards good ESG, which unlike metals prices and country risk can be relatively easily controlled by companies.
+ Equity markets offer the opportunity for dual listings, which increase a company's exposure to different pools of capital.
+ Listed companies often get more press exposure for their projects and teams than private companies.

Potential pitfalls

– The majority of equity markets financing tends to go to near-production mining stories at the expense of early stage exploration.
– Companies must balance their investment needs against pressure to return money to shareholders.
– Jurisdictional risk can weigh heavily against projects and be reflected in the share price.
– The average amounts of capital raised on public markets remain lower than before the collapse of the commodity supercycle.
– Dual listings can be expensive and time-consuming to maintain without delivering anticipated benefits.

SPACs

Please see our previous report "**Alternative finance for mining: New Horizons**" for information and guidance on SPACs.

Equity lines of credit and standby equity distribution agreements

These facilities are similar to debt draw down arrangements. Exploration companies tend to opt for equity lines of credit or standby equity distribution agreements as a way to manage shareholder dilution.

Advantages

+ Credit lines give companies the option of delaying dilution until they draw down the required funds.

Potential pitfalls

– Entering such arrangements make the credit recipient vulnerable to short selling tactics by the creditor or others.

Guidance

Properly negotiated credit lines overseen by experienced advisers can provide a valuable funding source to early stage mining companies expecting a stream of positive news that will increase their share price. They should be evaluated as an option at the outset of a mining project, rather than after a company has begun to run critically low on funding.

Production-based financing

Production-based finance is often provided as a package with more traditional forms of funding such as tranches of equity and debt funding.

Production-based financing can be divided into four main categories:

- Offtake agreements with associated financing.
- Forward purchase or prepay agreements.
- Royalty agreements.
- Streaming agreements.

All of these enable a company to raise finance by capitalising on proven resources or reserves, while avoiding or minimising equity dilution. These facilities can be put in place relatively quickly as the documentation tends to be less restrictive than conventional debt finance with a less onerous suite of warranties, undertakings and covenants.

Depending on their structure, the facilities may not be treated as debt.

They have several characteristics in common:

- They preserve management control of the project.
- The providers are not banks.
- The providers take a degree of production risk.
- Interest is not typically payable.
- There is typically no obligation to deliver product or make payments to the finance provider until the mine is in production.

Offtake agreements

In an offtake agreement, a mining company sells a proportion of its production to commercial buyers (such as traders, processors or end users) for a fixed period, or for the life of the mine.

Some offtakers are willing to help fund a mine's development or construction in exchange for offtake rights.

The offtaker may take physical delivery of the commodity or, in a synthetic arrangement, London Metal Exchange (LME) warrants representing the underlying commodity deposited in an LME-approved warehouse.

In the past three years, companies eager to secure their supply chains amid crippling raw material shortages have begun signing offtake agreements directly with mining companies. In particular, electric vehicle manufacturers have been agreeing offtakes with battery mineral producers, bypassing supply chains and commodity markets that have been slow to adjust to the growth in volumes of certain critical minerals such as lithium.

This change marks a reversal of a decades-old practice under which carmakers manage their direct suppliers, which in turn work with tier-two suppliers, and so on down the chain, with each business dealing only with the company that feeds directly into them.

While this is a new trend for western car makers, Chinese EV companies have been pursuing this strategy for some time.

Advantages

+ Companies can access development capital at potentially lower rates than other funding.
+ The offtaker secures future supply, often at a discount to a commodity's current or future market value.
+ Securing a long-term offtake agreement with a creditworthy offtaker de-risks the project from a project finance perspective.

Potential pitfalls

– A number of standard terms common to offtake agreements can result in significant downside for a mining company if things do not go to plan (see 'Offtake agreements: Key terms').
– The creditworthiness of the offtaker is a risk that needs to be assessed and companies should bear in mind that the solvency of counterparties, particularly those whose businesses rely on commodity markets, can change over time.
– Offtake agreements tend to carry less weight with equity investors and lenders than royalty or streaming deals in terms of demonstrating the bankability of the project.

Offtake agreements: Key terms

Term of agreement

Fixed period, which can extend up to the life of the mine.

Issues to consider

The parties may wish to include a mechanism for amending the length of the offtake term.

Delivery and purchasing obligations

All, or an agreed percentage of, production.

Issues to consider

Are there minimum or maximum delivery obligations and what is their frequency? Should there be a 'take or pay' obligation?

Delivery terms

The parties should decide who will bear responsibility for shipping, handling and insurance costs etc.

Issues to consider

What costs are for the account of the seller?

Treatment and refining costs

The parties need to decide how these costs will be calculated.

Issues to consider

What penalties and costs are payable by the seller?

Termination

An offtake will terminate at the end of the agreed term, unless the parties decide/are forced to amend this date.

Issues to consider

What are the events of default and cure periods?

Pricing

Usually set with reference to trusted third party benchmarks/indices.

Issues to consider

Should the price be fixed or floating? Which benchmarks/indices should be used? Should there be a discount to current/future market price? Should there be a floor and/or a ceiling? Should the price revised after a fixed period of time? How are issues of product quality dealt with?

Quotational periods

Usually fixed periods, with options to amend.

Issues to consider

Over what period should the price be determined? Who should choose the quotational period?

Forward purchase and prepay agreements

A forward purchase or prepay agreement entails the sale of a percentage of production, or a fixed quantity of commodity, to offtakers (usually commodities traders) or financial institutions.

In exchange for an upfront payment, the company delivers an agreed amount of the commodity in satisfaction of the prepayment, aiming to repay in full by the end of the term.

The main difference from traditional forms of commodities pre-financing is that the trading firm will take the lead in originating and structuring a prepayments transaction and then syndicate the risk to a consortium of banks.

Advantages

+ As pricing is often at a discount to market price, the company may be able to secure better financing terms than under traditional forms of financing.
+ Prepayment financing is especially useful for producers located in countries with exchange controls or restrictions in respect of direct lending to producers by overseas financial institutions.

Potential pitfalls

– While these facilities look like conventional finance facilities, companies must remember that 'repayment' is via physical delivery instead of cash and the risk of default can be high.
– The provider will want to minimise exposure to late deliveries and commodity price fluctuations and default provisions are likely to be strict. These provisions will be backed up by financial covenants (including a negative pledge), representations and warranties and security.
– Terms typically include minimum cover ratios and/or a cash collateralisation account with undelivered commodity and cash of 120-125% of the repayment amount and obligations to top up shortfalls with additional deliveries or cash payments.

Royalty agreements

Royalty financing arrangements involve investors making upfront capital payments to companies in return for the right to share in their project's future revenues.

Royalties are a true alternative to traditional debt finance since there is no fixed repayment plan and payments depend on the performance of the underlying business or asset.

Royalty providers include specialist financial companies and institutional investors.

This type of financing is generally used to fund the development of an asset when traditional debt or equity financing options are limited and tends to be (successfully) accessed by medium-size exploration companies offering promising returns.

Advantages

+ Royalty deals need not involve any fixed payment obligations or repayment terms (and thus carry less risk of default).
+ Agreements are covenant-light, meaning they are shorter and simpler than standard debt packages.
+ Security packages are negotiable and recourse is strictly limited to the financed asset.
+ Royalty payments are tax-deductible.
+ Unlike equity financing, ownership and control of the royalty-bearing company/asset is not diluted.
+ Royalty companies may provide financing at a comparably early stage of a project (e.g. the scoping or pre-feasibility phases).

Potential pitfalls

– Upfront payments may be staged and subject to development and production milestones, with events of default if those milestones are not met.

– Royalties are typically more expensive than bank debt and can cause problems where a company has or tries to obtain traditional debt alongside royalty obligations (because royalty holders effectively rank senior to lenders).

– A royalty combined with (senior) bank debt increases the risk of default.

– Different jurisdictions may have different formulae for calculating royalties owed to local partners (such as governments) to standard formulae used in other commercial agreements.

– Depending on jurisdiction, royalty holders may have the right to acquire an interest in the mining company's core assets.

– Not all jurisdictions recognise royalties under domestic law, which carries the risk of royalties being mischaracterised by local courts.

– Cross-border royalty payments can throw up currency control issues.

– The royalty may be calculated in a number of ways, broadly grouped into three types:

  - Gross proceeds;
  - Net smelter return; and
  - Net profits interest.

In each, payment is calculated on a percentage of project revenues, less any agreed costs, but there are important differences between the different types of agreement (see box: "Main categories of royalty") and the devil is in the detail.

Guidance

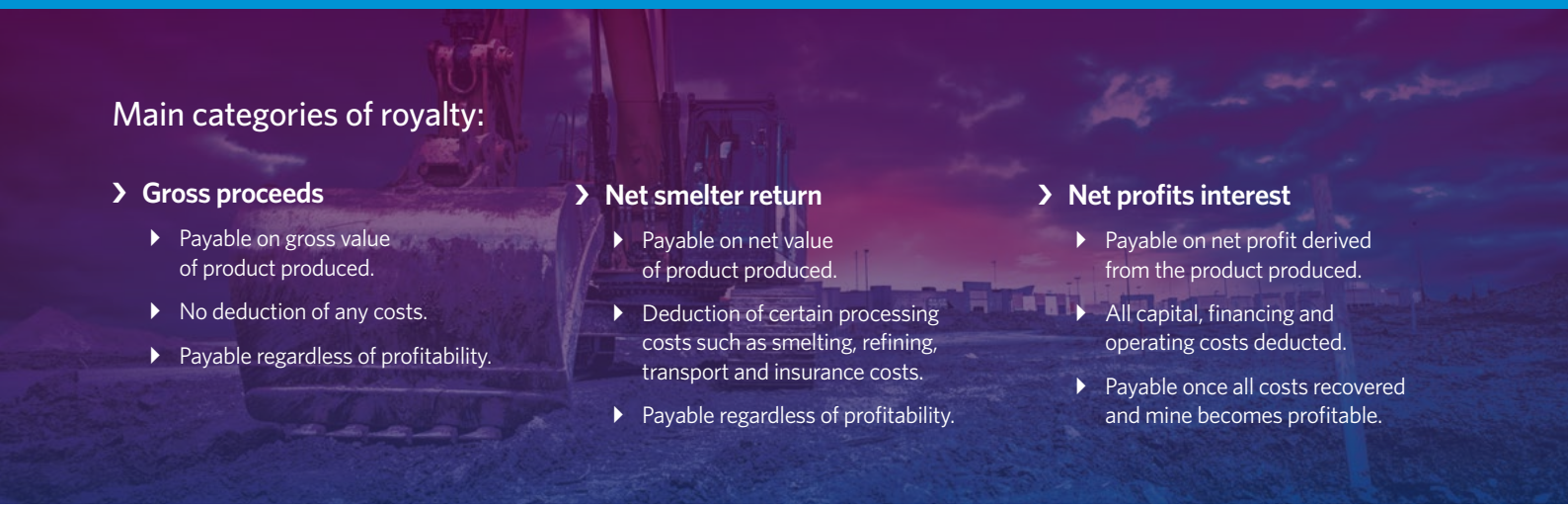
Determining the scope and nature of the royalty agreement is key.

Terms to be negotiated include:

› Is it limited in time, or for the life of the mine?
› What percentage is payable and should the overall amount of royalty payable be capped?
› Does the royalty apply to the principal commodity or to by-products as well?
› Is it limited to a specified or a known size of deposit?
› Does the royalty include upside for the royalty company if there is a reserve upgrade or a new discovery?

Mining companies seeking royalty deals should prepare for rigorous due diligence from royalty companies.

Where a company needs to obtain bank debt but has existing royalty obligations, a possible solution is to negotiate intercreditor provisions with royalty holders, together with the royalty agreement.



Main categories of royalty:

Gross proceeds

- Payable on gross value of product produced.
- No deduction of any costs.
- Payable regardless of profitability.

Net smelter return

- Payable on net value of product produced.
- Deduction of certain processing costs such as smelting, refining, transport and insurance costs.
- Payable regardless of profitability.

Net profits interest

- Payable on net profit derived from the product produced.
- All capital, financing and operating costs deducted.
- Payable once all costs recovered and mine becomes profitable.

Streaming agreements

Streaming agreements involve the sale by a mining company of a proportion of the production (a 'stream') of a particular product from its mine. The streaming company makes an upfront payment to the mining company in return for deliveries of the product at an agreed price.

Whether fixed or based on a formula, the price will be at a discount to the market price at the date of the agreement. The upfront payment is a prepayment or deposit, repaid in full over the term of the agreement.

Over the term of the facility, the upfront payment reduces by the difference between the price the streaming company pays for the product and the market price at the time of delivery.

While most streaming deals tend to be bilateral agreements, syndicated streams with multiple streaming companies are an option.

Some streaming and royalty companies also want to be involved in mineral property ownership, exploration and sale.

Advantages

+ Streaming agreements were originally developed to enable producers to realise better value for by-products but producers now use them as part of debt reduction strategies.
+ Streaming companies will also purchase primary production and may be willing to finance early stage projects with the upfront payment paid in tranches as exploration, development, construction and financing milestones are achieved.
+ Markets typically respond positively when a third-party streaming (or royalty) company invests in a mining company, because the expertise of streaming companies and the extensive due diligence they perform are viewed as endorsements of the project.
+ Disclosure and investor relations activities of streaming companies may expose the mining company to a broader investor base.

Potential pitfalls

– Part of the upfront payment may become repayable with interest if milestones are not achieved.
– Failure to repay the upfront payment by the end of the term may trigger an obligation to pay an amount equal to the uncredited deposit (with possible cash penalties) or the net present value of the remaining deliveries.
– The streaming company may set targets for delivery, with any shortfall requiring a top up.
– In the case of a by-product stream, by-product credits from smelters and refiners are typically deducted from a mine's operating costs so their loss can make the mine's cost structure appear higher than it is.
– A primary production stream will also directly affect shareholder value if the market price of the product concerned increases significantly compared to the price payable by the streaming company.

Guidance

As well as pricing, companies should consider:

- Capping the total amount of production to be delivered.
- Building in a price increase after certain milestones are achieved.
- Negotiating an option to buy back the stream.

For guidance on issues common to all forms of production-based financing, please see our previous report "Alternative finance for mining: New Horizons".

Debt financing

Small and early stage mining companies find it difficult to secure traditional bank debt, and in 2022 banks retreated further from the mining sector as their risk perception grows. However, specialist lenders and increasingly green finance sources are making money available for certain projects.

Green loans

Green loans typically refer to loans for the purpose of specific environmental or climate projects.

Green loans must also comply with the four core components of the green loan Principles, set out by the Loan Market Association (LMA), the Asia Pacific Loan Market Association (APLMA) and the Loan Syndications & Trading Association.

The Principles consist of four core elements:

- **Use of proceeds** – referring to the obligation to use the loan for a 'green' purpose with clear and preferably measurable environmental benefit.
- **Process for project evaluation and selection** – referring to the obligation of the borrower to convey to the lender the environmental sustainability of a project, how it satisfies the eligibility criteria laid down by the Principles and how related environmental risks will be managed.
- **Management of proceeds** – referring to the obligation that green funds should be assigned to a specific bank account or tracked in a manner that ensures the funds are readily identifiable.
- **Reporting** – referring to the obligation to ensure all information relating to the use of the loan is readily available, kept up to date and reported at least annually until funds have been fully drawn down, and thereafter in the event of any material developments.

Sustainability linked loans

Sustainability linked loans (SLLs) have become increasingly popular with companies looking to enhance their sustainability credentials.

SLLs incentivise borrowers to achieve pre-agreed Sustainability Performance Targets (SPTs) by offering a margin reduction if those targets are achieved.

The borrower's performance in achieving the SPTs is measured through selected sustainability Key Performance Indicators (KPIs).

SLLs are based on Sustainability Linked Loan Principles (SLLPs), developed by an experienced working party, consisting of representatives from leading financial institutions active in the global syndicated loan markets.

Unlike green loans, where there is a clear requirement for proceeds to be used for a green purpose, there is no such obligation attached to an SLL.

SLLs are often structured as revolving credit facilities for general corporate purposes. Standard market templates for SLLs have yet to be developed, but some drafting conventions appear to be taking hold with a general adoption of LMA and APLMA facility documentation with add-ins to adapt the relevant document to SLLs.

The condition for borrowers to access SLLs is to have established internal sustainable policies or programmes. The proposed SPTs will need to align with the borrower's broader sustainability objectives, strategy, policy and/or processes relating to sustainability.

Examples of SPTs include reducing the borrower's water consumption, reducing greenhouse gas emissions and improving energy efficiency.

To ensure the achievement of the relevant SPTs can be verified, borrowers must maintain, and keep readily available, up to date information on their SPTs and provide details on the assumptions and methodology used.

Advantages of SLLs

+ SLLs can bring significant benefits to borrowers and lenders, such as reputation enhancement, better relationships with stakeholders and potential access to new markets.
+ The financial rewards for achieving SPTs can be considerable.
+ Because SLLs do not have to be earmarked for specific green purposes, they can be used to fund day-to-day operations, provided the company commits to achieving certain SPTs.
+ Sustainability strategies can be developed on a case-by-case basis and can be flexible to suit the relevant borrower.
+ By linking sustainability strategies to sustainable financing, companies can clearly evidence their sustainability credentials.
+ Reputational benefits of demonstrable sustainability credentials can help with recruitment and retention of mining industry skills and talent.

Potential pitfals of SLLs

– If a borrower fails to meet its SPTs, any discount available to the borrower in connection with the fulfilment of its SPTs would no longer be available and the loan would revert to full pricing.
– Breaching the terms of the SLL would likely have negative reputational as well as financial consequences for the borrower.
– The lack of regulatory framework for SLLs means there is a degree of uncertainty as to whether loans qualify as green or sustainability linked and what SPTs should be.
– Any company entering into a SLL should expect to have to make publicly available detailed information as to their underlying methodology for reporting on SPTs and report on an annual basis as a minimum.

Project finance

Project finance remains the dominant financing model for large-scale, capital-intensive projects.

Lenders are happy to source repayment from the projected cash flows of projects once they commence production, rather than the traditional direct recourse to assets.

Successfully raising debt financing relies on successful risk allocation among all stakeholders. The key risks identified by financial institutions seeking to lend on mining projects tend to focus on the following themes:

- **The bank's internal appetite for natural resource financing**

  Increasing pressure on banks to maintain their capital ratios often manifests in an unwillingness to extend 'long-term' finance (in real terms, anything over five-to-seven years).

  Many banks exited the mining industry entirely after the 2015 commodities crash, which saw a significant proportion of miners default on loans. As a result, there is now a much smaller pool of banks with the capability and know-how to undertake financings in the mining industry.

  Nevertheless, there remains genuine competitiveness among banks still willing to lend to mining companies.

- **Economic returns based on stability**

  Project finance requires stability, including reasonably and consistently high commodity prices.

  Lenders will generate and analyse robust financial models with inbuilt stress-tests for a variety of downturn scenarios.

  Raw materials shortages that began in 2020 and have largely persisted since, have driven up prices for many metals and minerals, but markets remain volatile. Demand for technology/battery metals used in low-carbon technologies, along with gold, has been particularly strong.

- **The merits of the particular project**

  There are a variety of commercial factors and other risks to consider (see box).

  Local bank participation in domestic/regional projects is a trend that has emerged in the past five years, as banks in emerging economies become better capitalised. Banks in developed economies have also chosen to support nearby projects for sustainability reasons.

- **The security package**

  The security under the financing package is key to the arrangement, given it is the only collateral available to lenders if things turn sour.

  Lenders often require additional rights to take over the project, including taking security over material contracts with third parties.

Lenders are generally reluctant to step in and take over projects in the event of a default and typically want to ascertain how easy it would be to find a willing purchaser for a mine/project if such circumstances arise.

This is a particular concern for overseas lenders. Comfort can be gained from the involvement of local entities (initially at an equity level), as well as local banks willing to provide initial and bridging finance.

Moves to share risk more equitably between key stakeholders (private equity, multilateral and bilateral financial institutions and contractors) have been met with approval by lenders.

Other factors/risks banks will consider

- The political and fiscal stability of the jurisdiction concerned
- The quality of the resources and reserves
- The track record of the sponsors, managers and operators
- The likelihood of cost overruns and delays in the commencement of actual production
- The technical challenges of the project
- The market for the relevant commodity
- The offtake arrangements
- ESG/reputational risks and pressures

Development Finance Institutions

Development Finance Institutions (DFIs) are specialised development banks that are usually majority-owned by national governments.

They can be bilateral, serving to implement a government's foreign development and cooperation policy, or multilateral, acting as private sector arms of International Finance Institutions (IFIs) established by more than one country.

Unlike export credit agencies (see below), they are independent of the interests of any single country or recipient government.

DFIs active in the mining sector include:

- The International Finance Corporation (IFC).
- The European Bank for Reconstruction and Development (EBRD).
- The China Development Bank.
- The Industrial Development Corporation of South Africa (IDC).

They bring a number of benefits to mining projects which distinguish them from other finance providers, including:

- DFIs can fund on a longer-term basis and work with commercial banks.
- Innovative risk sharing over time, staggered drawdown with cost-overrun facilities built in and appropriate inter-creditor arrangements.
- DFI and commercial bank involvement could be staggered.
- DFIs get involved at earlier stages through equity participation or convertible debt, paving the way for a structured or layered debt financing with commercial lenders then brought in at a later stage.

DFI involvement almost automatically reduces associated political risks, given their standing and relationship with host country governments.

While DFI involvement still has huge potential for positive impact, their requirements for strict compliance with environmental and social standards usually come with higher project costs attached.

They also have the right to revise their involvement in projects, if company or jurisdictional circumstances change.

Evidence suggests that DFIs have tended to favour power projects over mining, partly in response to governments prioritising domestic access to electricity and partly in response to global climate change goals.

There has also been a general trend towards domestic companies securing DFI finance ahead of international companies seeking to develop projects in host countries. From a policy perspective, it is hoped that by prioritising domestic and artisanal miners' access to finance in mining jurisdictions, DFIs can help foster more sustainable mining practices.

Some DFIs have been criticised for their lack of transparency and for their involvement in controversial projects.

Fieldfisher acts for a number of DFIs and is particularly well-positioned to advise on their requirements.

Please see our previous report "**Alternative finance for mining: New Horizons**" for information and guidance on:

- Nordic bonds.
- The role of ESG in financing.
- Export credit agency financing.
- Pre-export finance.
- Construction-based financing.

Outlook for mining finance

Macro-economic conditions are expected to deteriorate in the near future, which will make it harder for early stage mining companies to find finance on affordable terms.

While ESG-focused, sustainable and critical minerals projects have recently fared better at attracting finance, competition in these areas is increasing and it will become tougher to distinguish projects as deserving of funds.

However, as outlined in our commentary on newer financing trends above, it is beginning to be understood that leaving the private sector to guarantee raw materials security is becoming an untenable position. This has been emphasised by the price volatility and shortages of some materials and components in the past few years.

Government funding for projects may provide the comfort private lenders and public markets need to finance exploration and mining projects. Provided these businesses keep on schedule and do not burn through cash, there is reason to be optimistic that the sector could flourish.

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Fieldfisher Mining and Metals Group

With experts in commercial, M&A, finance, restructuring, construction, tax and dispute resolution matters, our knowledge and practical experience of the mining and metals sector enables us to assist clients in a variety of complex transactions. Our specialists advise on issues including licensing, permitting, concession arrangements and mine development agreements; joint ventures, acquisitions, disposals, mergers and takeovers; tax and structuring.

We also advise on equity financing, debt, project and structured financing, as well as alternative financing; supplier, contractor, construction and engineering agreements; and dispute resolution including international arbitration and treaty disputes.

We work with a range of international clients, including explorers, developers, producers, investors, banks, metals traders and brokers - most notably in Europe, Sub-Saharan Africa and the CIS.

Our Paris office has a particular specialisation in the OHADA laws of West and Central Africa, while our CIS group comprises dual qualified UK and CIS lawyers fluent in English, Russian and other regional languages.

About Fieldfisher

Fieldfisher is a European law firm, with market-leading practices in energy and natural resources, technology, financial services, and life sciences.

Our lawyers advise some of the world's largest corporations including major technology firms, pharmaceutical and life sciences companies, energy suppliers, infrastructure companies, global banks and financial institutions. We take a collaborative approach with clients tailoring our services to their needs and integrating cutting-edge legal technologies into our advice where possible.

Our international network spans over 1,700 people across 26 offices in 11 countries, enabling us to seamlessly advise clients across time zones and disciplines.

We are based in Amsterdam, Barcelona, Beijing, Belfast, Berlin, Birmingham, Bologna, Brussels, Dublin, Düsseldorf, Frankfurt, Guangzhou, Hamburg, London, Luxembourg, Madrid, Manchester, Milan, Munich, Paris, Rome, Shanghai, Turin, Venice and Silicon Valley.

As a responsible and socially-conscious firm, we strive to lead from the front in our industry and make ourselves accountable for our actions. Our commitment to building a more sustainable and equitable future for our people, clients and communities is at the heart of our ESG strategy.