DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Debra Valentine

Group Executive Legal, External & Regulatory Affairs, Rio Tinto

THE SPEAKERS

Debra Valentine
Group Executive Legal, External & Regulatory Affairs, Rio Tinto

Steve Abraham
Partner, Baker & McKenzie LLP

Richard Godden
Corporate Partner, Linklaters LLP

Shea Small
Partner and Board Member, McCarthy Tétrault LLP

Stewart Robertson
Partner, Sullivan & Cromwell LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished guest of honor's personal accomplishments in her career and her leadership in the profession, we are honoring Debra Valentine, Group Executive Legal, External & Regulatory Affairs, Rio Tinto, with the leading global honor for general counsel. Rio Tinto is a leading global mining and metals company headquartered in the U.K. and Australia, with operations in more than 40 countries across six continents. Her address focuses on key issues facing the general counsel of an international mineral resources corporation. The panelists' additional topics include corporate dealmaking; natural resource projects; competition law; and bilateral investment treaties.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman
Directors Roundtable
Chairman & Moderator

Debra Valentine

Group Executive Legal, External & Regulatory Affairs, Rio Tinto

Debra was appointed Group executive, Legal, External & Regulatory Affairs in 2013 having joined Rio Tinto as global head of Legal in 2008. As a member of the Executive Committee, she is responsible for contributing to the development and execution of Group strategy and direction. She is also a member of the Risk Management Oversight Committee; Chair of the Stakeholder Engagement Steering Committee; and Executive Committee sponsor for EU, U.K. and World Bank/IMF/IFC.

She previously worked at United Technologies Corporation in the U.S., where she was vice president, deputy general counsel and corporate secretary. Before then, she was a partner with the law firm O'Melveny & Myers and Co-Chair of the firm's Antitrust and Trade Regulation practice, with extensive experience in counseling on and litigating competition matters.

In Washington, D.C., Debra served as general counsel at the U.S. Federal Trade Commission from 1997 to 2001, where she advised on the full range of competition, consumer protection and privacy issues, managed all appellate litigation, and assisted the Bureaus of Competition and Consumer Protection in enforcement actions during the country's largest merger wave, including AOL-Time Warner, BP-Amoco/Arco, Exxon-Mobil, Staples-Office Depot and Boeing-McDonnell Douglas. She has also worked in the Office of Legal Counsel of the U.S. Department of Justice and been a Judicial Clerk in the U.S. Federal Court of Appeals.

She has been a member of the U.S.-based Council on Foreign Relations since 1993, and the American Law Institute since 1991. She is on the board of the Extractive Industries Transparency Initiative and the North America Advisory Council at Chatham House.

She received her J.D. at Yale University and was Editor of the *Yale Law Journal* and graduated from Princeton University with her A.B., magna cum laude.

Rio Tinto

Rio Tinto is a leading global mining and metals company. Our focus is on finding, mining and processing the Earth's mineral resources in order to maximize value for our shareholders.

We have the people, capabilities and resources to supply a world hungry for the metals and minerals that are used in everyday life, in diverse products — from mobile phones to cars.

We work in more than 40 countries across six continents, including in some of the most difficult terrains and climates. We are strongly represented in Australia and North America, and also have significant businesses in Asia, Europe, Africa and South America. Our businesses include open pit and underground mines, mills, refineries, smelters and power stations — including a significant hydropower portfolio — as well as a number of research and service facilities. We also own and operate infrastructure that takes our products to our customers, including railways, ports and ships. Our major products are aluminum, copper, diamonds, gold, industrial minerals (borates, titanium dioxide and salt), iron ore, thermal and metallurgical coal and uranium.

For 140 years, we have been unlocking the wealth held in the Earth's mineral resources, generating value for our shareholders in the process, in line with our strategy. To deliver superior returns over time, we take a long-term and responsible approach to our activities. This means concentrating on developing first-class orebodies into long-life, expandable and low-cost operations, capable of providing competitive returns through business cycles. The nature of our business means that our operations often last for many decades. Some of our mines have already been in operation and generating value for more than a century.

The success of our business is underpinned by our world-class assets, outstanding people and the integrity with which we do business. Everyone at Rio Tinto is bound by a common code of conduct, which governs the way we work in all corners of the world. We are absolutely focused on safety and remaining true to our values — accountability, respect, teamwork and integrity.

At Rio Tinto, sustainable development is integrated into everything we do. Our operations give us the opportunity to bring shared value to the communities, regions and countries in which we work. By continually engaging with all our stakeholders — who include communities, governments, employees, customers, suppliers and investors — we turn opportunity into advantage. The relationships we build help us to solve business and technical challenges, and contribute to society's transition to sustainable development.

JACK FRIEDMAN: Welcome, everyone. I am Jack Friedman, Chairman of the Directors Roundtable. I have been coming to London for decades, and have always had a wonderful experience.

We are a civic group and have done 800 events around the world, never charging anyone to attend. Our mission is to organize the finest programming globally for Boards of Directors and their advisors.

Directors have told us that they feel that their companies rarely get a positive word from commentators. They've encouraged us to give the business side and the legal side of corporations a chance to talk about what the companies are really about, and the accomplishments of which they are proud. We create a neutral forum where, objectively, the good that business does can be discussed.

The full-color transcript of the program will be sent out to about 150,000 leaders globally after it has been edited.

The audience is what the Roundtable is about in the end, and we want to thank everybody for coming.

We'll begin with the opening remarks of Debra Valentine, our Guest of Honor. She has an unusual background, because she has not only her current corporate position as the head of Global Legal and other functions at Rio Tinto, but she has had a private practice at a law firm; and a background as the General Counsel for the Federal Trade Commission in the United States. She is a graduate of Princeton and Yale Law School, which have a tradition of graduating outstanding women.

Later, I will introduce the other speakers who will introduce their individual topics. We are going to have a sophisticated discussion of dealmaking, business, and regulatory activities in mining, as well as subjects beyond the mining industry.

We would like to have Debra speak; let us welcome her.

DEBRA VALENTINE: Good morning, and thank you, Jack, for the kind introduction. It is an absolute pleasure to be here, and a very great honor to have this opportunity to speak amongst ourselves today about the kinds of issues that directors turn to their advisors for. It enables us to reflect upon how we can advance valuable dialog to promote good practice in corporate governance. By providing this forum, Jack, you've given us all a great opportunity.

Rio Tinto is one of the world's leading mining and minerals companies. We have about 70,000 employees in more than 40 countries on six continents around the world. While we are very strongly represented in Australia and North America, we have significant operations in Asia, Africa, Europe and South America as well. Like some other resources companies, but unlike most companies, we are dual-listed and have headquarters in the U.K. and are listed there and on the New York Stock Exchange, and we likewise have a headquarters in Australia and are listed on the Australian Stock Exchange.

Before I launch into the subjects today, I really did want to take this opportunity to extend my thanks to the members of my Global Legal External Affairs & Regulatory Affairs teams. Because I have not just legal, but also external affairs *and* security *and* compliance *and* risk *and* company secretary reporting to me — no one person *can* do that job, and it's only due to the very dedicated and talented group of people that support me, that I'm able to even stand up today. I'm certainly grateful for the opportunity and for the support that you all provide me every day.

Now, to set the context for our discussion this morning, I thought I would describe the environment that the mining industry finds itself in today. Since the global financial crisis, we've faced an environment of extremely volatile markets and pricing. As a capital-intensive business, and one with very long investment horizons, the mining industry is shifting from a decade-long growth period — driven very largely by China — to a focus on costs and cash flow. Reducing capital expenditure, deferring or canceling projects, improving productivity and removing cyclical costs that have crept in have swiftly become core to mining industry strategy.

An additional challenge is that the complexity of our mining projects is expected to continue increasing. We have found the resources that are easily accessible. Both in terms of geological and socio-political complexity, we are facing a tougher world every day. This is only going to add to project delays, and put additional pressures on capital intensity.

There are, though, positive long-term demand trends for the sector. We believe that the demand for iron ore, copper and aluminum will double over the next 15 to 20 years, driven by urbanization, industrialization, and the growth of affluent middle classes. Global population is expected to increase by 30% in the next 40 years; 70 million people will be entering the middle class every year. That means there will be more cars purchased; many more white goods, homes, mobile phones, and computers acquired — all sorts of wonderful things that consume the iron ore, aluminum, copper, and industrial metals we produce and are powered by energy from our coal and uranium products. And of course, there are always people wanting to wear diamonds!

What this increased demand and more challenging access to supply means for us, as a mining company, is that we need to find even more creative ways to deliver value-adding growth.

Given this tough external context in which we operate, what I wanted to spend some time talking about today are a few of the issues that we face as a global mining and metals company. They are *not* legal issues, I have to confess — but if they are not managed properly, they will explode into legal issues and will require the skill of the panelists who are talking to you next, to solve, and to help me and my team solve. At the root of many of the issues that I'm going to talk about today is the issue of gaining trust — a major challenge that our sector and business more broadly faces today.

First, I'll talk about addressing the reality of resource nationalism, by which I mean governments' efforts to extract rents from their resources or from those, like us, who try to develop those resources. We address this, first and foremost, on the proactive level by engaging with stakeholders. Second, I will try to address dealing with the loss of trust in business, in part, by being transparent about what taxes we pay. Third is respecting human rights, which we try to do all the time in order to earn our license to operate. Fourth, managing our responsibility to the natural environment, and managing increasingly competing demands for limited resources.

These really are some of the key risks that the board looks to me and my team to provide assurances upon, and assurances that as a business, we *are* managing those risks appropriately and responsibly. So I hope we can address some of your issues, Jack, as well.

Now, since we view risk as having the potential to create *both* downside *and* upside for our business, it really is vital — particularly, as lawyers — that we not only mitigate the threat that such risks present, but that we constantly seek to maximize the opportunity that they can bring. We see managing risks effectively — *especially* reputational risks — as critical to the execution of our strategy and as a source of competitive advantage for the company in the short- and medium-term.

1. Stakeholder Engagement and Resource Nationalism. As a global business and a leader in our sector, our stakeholders are numerous and diverse. They include the communities where we operate; the government whose land we often use; our employees; civil society; customers and suppliers; and investors, media, and industry. Even international agencies are vitally interested in the resources sector.

Now, the difficulty with challenging external environments — like the current one of volatility and slowing GDP growth virtually worldwide — is that they put additional pressure and strain on these stakeholder relationships. We *don't* have a growing pie, and it is making it harder to balance the needs and the expectations of all parties. The economic downturn has meant countries — both developed *and* developing — are more starved for cash and hungry for new sources of revenue. And large companies are a tempting target. Governments' efforts to extract greater rent from business have implications for the economics and feasibility of mining projects. Getting the balance right is essential. There are, after all, many places where we can choose to put *our* investment, and it *doesn't* have to be, and it won't be, in the places that extract undue rents.

On the other hand, these increasing pressures make it even more important for us to be credible, to proactively engage, to demonstrate a good track record in sustainable development. By doing this, we are more likely to be viewed as a trusted partner who will be allowed to develop a particular country's resources. Rio Tinto and I firmly believe that responsible mineral development, free from conflict and corruption, provides for improved livelihoods and enhances regional economic stability. It truly *can* be a win-win for producers *and* countries, but it does *not* mean that it's easy to discover ways to align what are often quite different and competing perspectives.

2. Tax Transparency. The spotlight is increasingly trained on what the world's leading businesses pay in taxes. Rio Tinto

has been a strong supporter — in fact, we were a founding member — of the Extractive Industries Transparency Initiative (EITI), which was established in 2003. EITI was developed as a multi-stakeholder initiative among governments, resource companies and civil society. Countries implement the EITI standard to ensure full disclosure of the taxes that they receive, and the payments that they then make, to other levels of their government. Because companies and governments both publish, there is an actual reconciliation of what was paid and what was received. Payments are disclosed in an annual report, which allows citizens to see for themselves how much their government is receiving from their country's natural resources. These disclosures, likewise, assist in the fight against corruption.

The EITI has 41 member countries today, with more wanting to sign up. You may have heard about this during the G8 Summit in June that the U.K. hosted. There is wide civil society support and more than 70 supporting oil, gas and mining companies participate at the international level.

What I can proudly say is that Rio's voluntary reporting goes beyond the EITI. In 2013, we published our third Taxes Paid Report. It brings together information about the taxes that we pay to *all* governments — not just the 41 EITI member countries. And it includes details of amounts over $1 million, broken down by category of payment. It even includes details of our tax strategy.

Why do we do this? We welcome constructive debate on natural resource taxation as part of the overall contribution to economic development that responsible mining investment can make. We believe it really *is* essential, though, for tax policy and design to take into account the cyclical nature of the industry, and to respect agreements we have reached with governments under which investment capital has already been committed. For an industry that makes multi-decade investments with significant upfront capital expenditure, the risk of fiscal instability does influence a country's ability to attract and retain investment. If I can put out one plea above all, tax laws should never be retrospective. Unfortunately, we're beginning to see this in places around the world, and not just in developing countries.

> "As a capital-intensive business, and one with very long investment horizons, the mining industry is shifting from a decade-long growth period — driven very largely by China — to a focus on costs and cash flow. Reducing capital expenditure, deferring or canceling projects, improving productivity and removing cyclical costs that have crept in have swiftly become core to mining industry strategy."
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> *– Debra Valentine*

Now, building the capability of governments to collect and spend revenues effectively and to maintain a positive investment climate is critical for growth. It is an area where governments in both the developed and the developing world, companies and stakeholders can work together. It is *not* always that governments need to tax more; they just need to use their taxes more effectively and efficiently. The Rio Tinto Group paid $11.6 billion of taxes during 2012. Our total underlying tax charge for the year represented 44% of our underlying profit before taxes — a far larger percentage than most sectors. We believe that this kind of tax transparency demonstrates the significant contribution that we make to public finances in the countries where we operate around the globe.

3. Human Rights. Our diverse global operations inhabit very different socioeconomic, political and cultural landscapes. The actions that we take to respect and support human rights help us to build enduring relationships with local communities, employees and business partners. Again, we believe that acting responsibly — including respecting human rights — facilitates our business success in emerging and developed countries.

The alternative poses very real risks, which can include operational delays (i.e., strikes for alleged human rights violations), legal challenges (Alien Tort Suits), reputational harm, investor concern, community distrust, and employee dissatisfaction. Rio Tinto was one of the first companies to publish a human rights policy and to develop practical guidance on implementation for our employees. We're a signatory to a host of international commitments and standards, and we remain dedicated to meeting them. Let me touch on a couple of examples that I think illustrate our approach to human rights of which I'm particularly proud.

First is our participation in the Voluntary Principles on Security and Human Rights. Every miner will tell you that workforce and workplace safety and security is an area of particular importance. Mining operations can be located in very remote and insecure areas, where there may be high rates of poverty, criminality or violence, and where the area may be emerging from recent conflict. It's our responsibility to keep our people and our assets safe and secure.

The human rights dimension of security work requires particular attention and expertise. We're committed to avoiding violations of fundamental human rights through our security arrangements, where we take steps to avoid complicity in human rights violations by private contractors whom we hire, and/or by the government — the public security personnel — whom at times we have offered and helped to train.

The Voluntary Principles for Security and Human Rights were established for the extractives industry, and they provide guidance on what is appropriate, including background checks on security guards, training, and incident reporting. In turn, Rio Tinto's policy on human rights and our guidance address the use of force by security personnel. The use of force on Rio sites is allowed only when it is absolutely necessary and it must be proportional to lawful objectives. Firearms are permitted only in extreme circumstances, and only where there is a grave threat to life.

Another area where our human rights commitment comes to the fore is in addressing the potential gender impacts of our operations. Women in the communities where we mine often bear a disproportionate burden of the change that is brought about by our mining developments. We know that when local women participate in the community programs, it facilitates much more broad-based and lasting outcomes, compared to those designed solely by the male community leaders.

During the exploration phase of our Oyu Tolgoi project in Mongolia, we carried out a program of formal consultation with women from the local herder communities. Why did we do this? We found that a community advisory group already existed, but only male community members had been elected to the group. So we pursued both the male and female lines of consultation, and both garnered valuable but very different information. Women in the community, who are responsible for processing dairy products, were very concerned about impacts that the mine would have on grazing pasture. They gave us all sorts of detail about seasonal migration and shelters for animals. The men provided information on the spiritually significant sites. We made use of both sets of insights, and came up with a very detailed map showing the significant areas for both genders. We were thereby able to develop a mine that minimized disturbances to any areas that were important to the community.

As we continue gaining a better understanding of how our operations and community programs impact men *and* women differently, we are constantly improving our decision-making processes.

4. Environmental Risks. Through our activities — as I hope I've made clear — we make major contributions to the jurisdictions in which we operate — through taxes, through wages, through payments to suppliers. We also invest in numerous community programs that are targeted at infrastructure, healthcare, education and the environment. But we also fully acknowledge that our activities may detract from sustainable development if they're not managed correctly. Mining is fundamentally always going to be about taking away earth and resources; about disrupting communities. We constantly monitor and review our approach, to make sure that it remains focused on those issues that matter most — not just to us, but to our stakeholders.

As a major user and owner of natural resources, such as land and water, our environmental performance is a key area of concern for our stakeholders. Risks around biodiversity, water and carbon, present financial and reputational threats, but they also are opportunities for our operations. If I look at climate change, we recognize the reality of the challenges posed by the increasing demands for energy and the need for urgent action to reduce global emissions of greenhouse gases. Our activities *are* energy-intensive and we have targets to improve the energy efficiency and GHG intensity of our operations. We believe that global energy and climate challenges are best met by companies, governments and stakeholders working together. As part of our energy and climate change program, we engage with governments and other stakeholders to design effective mitigation and adaptation approaches. We support climate change policies that contribute to efficient and equitable emissions reductions while minimizing distortions of international economic activity across jurisdictions.

Water is another key priority. We use it at every stage of our operations, and every operation has its own set of water challenges. The heartland of our iron ore operations is in the arid Pilbara region of Western Australia. In order to keep reaching ore in that area, we have had to go below the water table. In 2012, we began dewatering our Marandoo iron ore mine to enable us to extract ore from beneath the water table. One of the uses that we found for the excess water is in supplying an agricultural project we created. We are growing hay for our cattle stations and selling it to local farmers. This minimizes water discharge into the surrounding natural drainage system. Feeding the cattle the hay also means the station managers can contain them in a relatively confined area where they can be better managed. The project is a good illustration of some of the synergies that exist between mining and agriculture, and the mutual benefits that *can* be achieved.

There is no doubt that managing the competing demands for natural resources is a difficult balance to strike. But we have proven that we can find creative solutions to the various environmental challenges that we face.

Let me provide one last example, and then we'll close. At our Oyu Tolgoi mine in Mongolia, we have committed to zero impact on community water resources. To avoid taking water from the local herders we have tapped an underground aquifer that is not potable for either humans or animals. But with every decision and every investment, we recognize that all parties must take into account the real and lasting social and economic benefit that our operations can bring. Sometimes the competition for resources is just plain hard to navigate, but it is important that everyone weighs up which outcome will ultimately be best for generating jobs and improving regional development.

The business risks that we face continue to grow. Legislative frameworks continue to evolve. We must constantly challenge our approach to ensure that it remains relevant and effective. As a general counsel of a major resources company, I know how vital it is that we listen to and respond to the views of our many stakeholders. But we must do that without compromising our duty and primary responsibility to provide value to our shareholders. Ignoring that reality means less benefit for all.

Put simply, we can't make money without doing the right thing, and we can't just do the right thing without making money. The former would be unethical; the latter would be uncommercial. Both would be a breach of our duties. Our responsibility is to bring these two aims together, to bring down the barriers between shareholders and stakeholders, morals and money, passion and profit, wherever we can.

I thank you, and I thank you for all your help in helping me to do that.

JACK FRIEDMAN: I would like to ask some questions about Rio Tinto, for those who are not already familiar with the company. You said that there is a dual system of headquarters?

DEBRA VALENTINE: Right.

JACK FRIEDMAN: What is your role as the Secretary to the Board? Can you tell us about the governance of this multinational company?

DEBRA VALENTINE: It was initially two companies that came together. Actually, the man sitting at my far left helped to create the dual-listed structure. He did it in a much more elegant way than some of the earlier dual-listed companies that had been created. We have *all* of our directors serving on both the board of the PLC and of the Limited company. We had traditionally had a company secretary in London, and a company secretary in Australia. Now, there is *a* company secretary in London, with a *supporting* one down in Melbourne. The London-based company secretary reports to me as the general counsel, and also reports to the chairman and the board. Dual-listing goes back to the resource nationalism issue — when you join two resources companies, they often have important physical assets in countries that have very passionate feelings about holding on to those assets.

JACK FRIEDMAN: They may be the only important assets in the country, to be frank.

DEBRA VALENTINE: Yes.

JACK FRIEDMAN: Just to touch on your Legal Department, is it spread out in different places?

DEBRA VALENTINE: Yes, we have some corporate functions in London, but what we really try to do is partner with the business. We have general counsels for each of the five product groups — whether it's copper, iron ore, energy, aluminum, and diamonds and minerals. Most of the lawyers for those products groups are actually nested with the businesses. So they may be in Perth for the iron ore; in Brisbane for the coal on the eastern coast of Australia; there is a hub of copper lawyers in Salt Lake City, Utah. Because the diamonds and minerals group is so global — with assets in Madagascar, South Africa, Canada, the U.S. and Namibia — we sprinkle the lawyers worldwide, but they generally tend to be nested with the businesses.

JACK FRIEDMAN: Regarding global communications, I'm reminded of one general counsel who is based in London. She said

that her sister lives in Australia and called her one morning, which was a very unusual time for her to call. The General Counsel asked if there was an emergency. Her sister replied, "Your four-year-old daughter (who can't read yet) Skyped me to complain that you hadn't given her breakfast yet."

How does a company which is geographically so spread out coordinate itself without driving everybody crazy?

DEBRA VALENTINE: It's 24/7. It can be hard. When I get up at 5 or 6 in the morning, Australia will already be fully on line. When I go to bed at midnight, I'm still dealing with Salt Lake and the West Coast. So it's just 24/7. It may have been different before Blackberries and iPhones.

JACK FRIEDMAN: The technology gives access to everybody all the time.

DEBRA VALENTINE: Obviously, we do try to be decent to people — health and safety matter most — but until they're in the operating room — no! [LAUGHTER]

JACK FRIEDMAN: If you have a responsible position in a global company, you just do what you have to do to be successful, and somehow you would adapt to the environments or the pressures of the job.

DEBRA VALENTINE: Yes, we are working with lots of different time zones.

JACK FRIEDMAN: I'd like to have Richard Godden of Linklaters introduce his topic.

RICHARD GODDEN: Thanks, Jack. Thank you, Debra; you're the reason why we're here. Congratulations.

What Debra said was a fantastic example of the fact that social responsibility isn't a matter of something you do as well as your business, or in spite of your business, but something you do *in* your business. As businessmen, we have a duty to keep saying this to those people out there in the community who seem to think otherwise. That, however, is not the subject on which I want to talk to you.

The subject I have involves pulling back from the detail of any particular industry. I want to look at the legal environment in which business, as a whole, operates. Of course, I could take any number of hundreds of angles on that, but I want to go to the thing that's most profound of all, which is the subject of the rule of law. Debra actually has incidentally touched on several aspects of that.

You might be forgiven for thinking that all is well with the rule of law; emerging economies are steadily securing more mature legal systems; more laws are being passed every day; I bet if you opened the newspapers this morning, on every other page — at least in *The Guardian* — there would be something about human rights. You could be forgiven for assuming that all is well but you would actually be wrong. The rule of law is under threat throughout the world. We have a situation in which the plethora of laws in the emerging world has nothing to do with the rule of law as properly understood and, in the West, the rule of law is under attack. I suggest that this is of profound concern to business throughout the world, whatever industry you are in.

I could, of course, give any number of examples of this. There is some pretty low-hanging

fruit out there. I will leave you to think of the various countries in which that might be most obvious. But it would be unfair to talk about all these countries far away. My examples have to come from here, in the U.K. We have no business in criticizing others if we don't have our own house in order.

Let me give you a few examples. Over the last few years — particularly under the last government, but under this one, as well — we have an increasing number of examples of the government taking powers that under any normal view of the rule of law are matters for Parliament.

Section 75 of the Banking Act 2009 — familiar with it? No. It is only about five or six lines long — and what it says is that in relation to a banking crisis, the government can suspend or override any statute or rule of law. I'm not exaggerating — that's what it says. There are no ifs and buts; that's what it says.

Now, of course, that means you could shoot bankers, and that might be extremely popular. [LAUGHTER] But you could also shoot lawyers, and you might be more concerned about that! [LAUGHTER] Now, when passing it through Parliament, there were at least some people who thought that was a bit much. It didn't stop Parliament from passing it, but they thought it was a bit much. The government's defense was that any orders would be subject to the confirmatory resolutions of Parliament within 28 days. That sounds all jolly comforting, except for the fact that acts done in those 28 days pursuant to Section 75 are valid, even if Parliament votes against the confirmation.

I want you to think about whether that is consistent with the rule of law.

What about more everyday things such as regulatory discretion? The discretion to our regulators gets wider and wider every day. There are things that we have just gotten used to. Consider the concept of regulators issuing statutory guidance in relation to the legislation that they are regulating. What's that got to do with the separation of the legislative and the enforcement powers? Increasingly, that guidance *is* the law, particularly when coupled with prosecutorial discretion over these vast ranges of powers. Increasingly, what the law is, is what the regulator says it is.

Is that the rule of law?

I throw in the third thing which is related to the second: vast, wide legislation. No longer do governments seek specific and precise legislation to deal with a problem. Instead, they see a problem that wide — and, for the record, my hands are close together — and they legislate by throwing a blanket vastly wider over that problem. What do they say about it? They say, "Oh, don't worry; we're only concerned about the bad things in the middle of our blanket legislation." A classic example of that is the money laundering legislation in the U.K. The way the word "money laundering" is used in that legislation is straight out of the book *1984*. Who would oppose *anti*-money laundering legislation? The definition of "money laundering" in that legislation, however, covers things that no one would call money laundering in the ordinary sense of the word. It covers things that aren't even, frankly, improper. When it was being passed through Parliament, we Linklaters went to the relevant government department and put various everyday examples before them, pointing out, for example, that solicitors charging some of our major multinational corporations could be guilty of assisting money laundering because they have reason to believe that certain dark things happened in the past of these multinational corporations. We asked, what comfort could be given? The answer was, "We will not prosecute." Now, if that came out of Russia or some other country, you would say, "Classic totalitarian answer. You make sure everyone's guilty of a criminal offense, and then *you* decide who you prosecute." That wasn't Russia; that was this country.

I could give any number of other examples of that. Debra mentioned retrospective tax legislation. It exists here. Section 75 of the Banking Act, incidentally, may have retrospective effect. One of the pillars of the rule of law is that people should know what the law is, and we should not, except in extreme circumstances, have retrospective legislation. Retrospective tax legislation was regarded as unconstitutional until a few years ago; not any more.

Then we've been fiddling with the burden of proof. Everyone knows you have to prove the crime beyond reasonable doubt, unless it's in the financial industry and you claim it's not a criminal offense: it's a civil offense. What is that? I'll tell you what it is: it's a thing you don't call a criminal offense, so that you can have a burden of proof on the balance of probabilities, not beyond reasonable doubt.

I put it to you that these things, taken together, represent a serious attack on the rule of law as it is normally understood. I've chosen the U.K. because I come from here. Most of us in this room do. But I could give you examples from many other parts of the world — the Western world, let alone other parts of the world. I would suggest that this is probably in the top five issues that business should be concerned about today. It should be a concern of all of us.

Thanks.

JACK FRIEDMAN: Let us continue on with Shea Small of the law firm McCarthy Tétrault, headquartered in Canada. He gets the special award of having travelled farthest on this occasion, although Debra has to fly to Australia on other occasions.

SHEA SMALL: Thank you, Jack. Good morning, everyone. My name is Shea Small. I'm a corporate partner and a member of the Board of Partners for McCarthy Tétrault in Toronto, Canada.

First, on behalf of McCarthy Tétrault, I would like to congratulate Debra on receiving this great honor. I have had the pleasure of working with Debra for many years now, and I can say that her leadership and determination are tremendous.

Second, I would like to thank Jack Friedman and the Directors Roundtable for hosting this event. It's an honor and a privilege for me to be here this morning to participate in this roundtable discussion with Debra and my other esteemed colleagues.

The topic I wanted to share with you this morning is corporate dealmaking. I will call it the rule of contract, as opposed to the rule of law. In particular, I want to cover two aspects that have the potential to create uncertainty if not handled well.

The first is the rights of other stakeholders. These rights come in many forms, and you often see them as rights of first refusal and tag-along rights and other similar rights that minority shareholders have. We see these in lots of deals and they are very common in the natural resources sector. The reason for this, primarily, is that we have large-scale projects with multibillion-dollar capital costs, and you're bringing in minority partners as a way to diversify risk and share future funding requirements.

When you have minority partners, it's almost inevitable that some of these rights will be present.

I have a few observations I want to share from our experiences with these rights, which are part of almost every file we deal with these days. I'm looking around the room at a few people I've worked with on these, and they are all nodding their heads in agreement.

The first observation I would put to you is that these rights actually often don't work well, or at all. They often are too general and don't contemplate the scenario that you actually are trying to deal with. There is not enough detail as to timing — that's another common problem — and not enough detail as to offer and closing mechanics. So when you're actually trying to determine what you're supposed to do, you look at it and you sometimes say, "We're not really sure how we apply this in the real world."

Another observation that we're seeing with these clauses is they often don't apply at all levels of the ownership chain. And that is notwithstanding what the clause might purport to do. So that creates another level of uncertainty. Also, for anything other than straight cash bids, we run into situations where further agreement is required to actually implement the clause, because it just doesn't work.

One area where we're seeing lots of problems is the clauses themselves don't properly or adequately address the resale of ownership interests following the exercise of the rights. An example would be: can the partner who's exercising the right have a pre-agreed trade to onsell the interest to somebody else?

The lack of clarity that we're seeing in these clauses can cause quite a bit of uncertainty for a deal. It often works against the seller, and that's whether the seller is a majority partner *or* a minority partner.

It is important to address these to make sure that they work when you're doing deals, and it can be very different if you are a buyer or a seller or the minority partner who is trying to exercise the rights, in terms of what approach you take.

Depending on the process, buyers sometimes need to think about whether or not they will ask to get their costs covered up front, especially where it's pretty clear that the rights will apply, or there is a lot of ambiguity. Sometimes buyers even seek break fees. Sellers need to think about structuring deals with their partners in advance in order to remove the uncertainties; otherwise, the dealmaking process could be very difficult.

The recent *El Morro* decision before the Canadian courts regarding the exercise of a right of first refusal involving Barrick, Goldcorp, New Gold and Xstrata is illustrative of the complexities involved. I won't get into the details of the case and I'm also not going to do attribution of who did what in this case for time reasons – but this was a situation where the junior minority partner in a Chilean copper-gold project was able to use rights of first refusal to onsell the majority partner's ownership interests, thus creating a successful outcome for itself to the detriment of the prospective purchaser, who lost the opportunity to buy the asset. It is one of the interesting cases to read these days, in terms of how rights of first refusal can be very problematic and very complex to figure out.

> "Rio Tinto and I firmly believe that responsible mineral development, free from conflict and corruption, provides for improved livelihoods and enhances regional economic stability. It truly can be a win-win for producers and countries, but it does not mean that it's easy to discover ways to align what are often quite different and competing perspectives."
>
> – *Debra Valentine*

One further thought on this topic to keep in mind is that in addition to what I would call "standard fare rights," like rights of first refusal and tag-along rights, there is also what I would term "more insidious rights" that people often forget about. These are – and we see them all the time – confidentiality restrictions, which can effectively prohibit a transaction that you were otherwise able to do. What I mean by that is you might actually have a situation where you don't have rights of first refusal; the minority partner does not have the right to do something. But when you go through the contract, you realize, "there are confidentiality restrictions that don't actually let me talk to anybody about what I own," and therefore, you can't actually run a dealmaking process. They can effectively create a standstill.

This has been the case for a couple of bidders, who found this out after the fact where they pre-agreed to use restrictions in a friendly context only to find out afterwards they could not go hostile against the target because of use restrictions. This happened in two recent cases, both of which you might be familiar with. There's the case involving Research in Motion's attempt to take over Certicom in Canada in 2009, and a more recent case involving Martin Marietta's attempted takeover of Vulcan Materials in 2011, both of which failed because of confidentiality restrictions.

A second aspect of corporate dealmaking I want to talk about this morning, and that we should keep in mind, are foreign investment restrictions. This goes to Debra's point about resource nationalism, but is a bit broader. Governments around the world are becoming much more active in blocking deals. We are seeing this in a range of industries, and witness last week's block by the Australian authorities of the Archer Daniels Midland acquisition of Graincorp. I think that was a bit unexpected for a lot of people. Also witness this past October's block by the Canadian authorities of Accelero Capital's acquisition of Allstream. Allstream is a telecommunications company in Canada that happens to carry a lot of the government's communications.

What we are seeing is a shift to more active involvement by government to stop transactions for a number of reasons. This could be because the buyer is a state-owned enterprise, because of ambiguous national interest or strategic asset concerns and finally, because of the more problematic national security concerns. I say "more problematic" because there is little to no transparency on what national security is, and it gives the government carte blanche to say, "We have a national security problem," without telling you what it is.

This shift is being messaged by government in such a way that certain transactions – in addition to the fact that they can be blocked – are not likely even to be attempted. For example, the Canadian government has indicated that it will find an acquisition of control of a Canadian oil sands business by a state-owned enterprise to be not for the benefit of Canada, except in exceptional circumstances. They haven't defined what an exceptional circumstance is, so nobody really knows what that is.

What is new are the national security concerns that are starting to appear more regularly in the government decision-making process. Anything that is critical or sensitive infrastructure can be impacted. This could include, for example, port facilities, as was the case with the Dubai Ports World controversy in the United States in 2006. It could also include telecommunications infrastructure, as we recently saw in the *Allstream* decision in Canada. In that decision, the Government of Canada said, "Allstream operates a national fiber optic network that provides critical telecommunications services to business and governments, including the government of Canada." That was all they said; that was their entire basis upon which they declared "national security." There was no other guidance given, no transparency. So at the end of the day, it's difficult to determine the actual reason why the transaction was blocked. There is some speculation that the decision was based on the proposed purchaser's use of technology by Huawei in China, but we also understand that the purchaser had agreed, in advance, to refrain from using Huawei's technology, so it's unclear if that is the real reason or not.

In the future, we do not believe these national security concerns will be confined to state-owned enterprises or Chinese technology companies. There have been significant national security implications resulting from the Edward Snowden leaks. While the Snowden effect reported in the media so far has been confined to lost sales and opportunities for American technology companies like Cisco, we see the effect broadening to foreign investment. What is clear is that sellers and buyers will have to consider national security issues for any deal that involves critical or sensitive infrastructure. This involves a review of both the target and the buyer. In appropriate circumstances, parties should engage with government early. It also means looking at deal protections, including break fees in the case where the government blocks the deal for national security reasons.

I'm going to conclude with one final thought, and it relates back to the two previous topics — a successful deal requires a significant amount of planning. Oftentimes, we will game out the scenarios and walk through all of the mechanics, whether it is rights of first refusal or something else, to see where the problems are. It's only when you actually do that, that you figure out, sometimes, that there are problems, or how you expect the other side to act.

I would highly recommend this as a best practice, and I know it's one that Debra and her team do. We've worked on a number of matters with Rio Tinto relating to acquisitions, divestments and so on, including the successful acquisition of Ivanhoe Mines a couple of years ago. We got together as a group, including corporate lawyers, litigators and business people, and we considered a range of actions that Ivanhoe Mines might take in order to frustrate Rio Tinto's acquisition of control. For each possible action that we could think of, we also thought about our response, both from a legal perspective and a communications perspective, as well as with an eye to managing reputational risk. At the end of the day, all that planning paid off; there was very little that surprised us, including when Ivanhoe Mines adopted a shareholder rights plan, which was intended to deter us from completing the acquisition. We were able to defeat the rights plan in arbitration through the application of Rio Tinto's contractual rights, and it was a result of that careful and thoughtful planning, with Debra and her team leading the way, that Rio Tinto was ultimately able to successfully acquire control.

So, thank you; and congratulations once again to Debra.

JACK FRIEDMAN: Before we move on to our next speaker, I want to ask a couple of questions. How influential are the Delaware courts outside the U.S. in their doctrine about duties of buyers and sellers in M&A deals?

SHEA SMALL: I really think it depends on what the issue is. Where the same legal principles exist, we will often look to Delaware. I'll take Canada as an example. Our corporate and securities laws are governed by provincial law, and we have ten different provinces who sometimes decide they all want to do things differently. As a general matter, we don't have the breadth of case law that Delaware has in M&A matters. So where the issue is the same, Delaware law is not going to be something that our courts will necessarily follow, but it definitely can be instructive. Other times, Delaware has different principles and they've taken things farther. For example, they have fiduciary duties that apply to controlling shareholders; and they have different business judgment rules which don't apply in the Canadian context. It really depends on the issue at hand.

JACK FRIEDMAN: Can we hear from the other speakers, in terms of Delaware's effect on the U.K. or Europe?

RICHARD GODDEN: We do not look to Delaware expressly; a lot of the principles actually turn out to be the same underlying principles, expressed in a different way; the business judgment rule is a fairly obvious example of that. You're not going to find Delaware cases very often cited in the U.K. courts. But certainly, we're all living in the same business environment, dealing with the same business problem, and it's hardly surprising that experiences in one place are used to inform the way people behave and ultimately impact developments elsewhere.

JACK FRIEDMAN: We had a panel in Palazzo Visconti — built in the 1400s in a program in Milan. A member of the Supreme Court of Italy was speaking and you would have thought he was from the Delaware Supreme Court. It was about fiduciary duties of Directors with the same terminology and concepts.

Debra, you have a very extensive professional background in competition law. I have an open-ended question about America versus other places. At one of our programs, a panelist said that the heads of the antitrust areas at the Federal Trade Commission and the Department of Justice are former Wall Street-type lawyers who had defended cases before the antitrust authorities. Soon afterwards, that same lawyer becomes head of the agency and becomes twice as tough. You can't necessarily predict who or where their philosophy will be.

DEBRA VALENTINE: That's probably true in all agencies. Mary Jo White at the SEC was a phenomenally fervent defender of company rights, and may yet be one of the most effective SEC enforcers. On competition policy in general, people historically thought of it as two worlds: there was a U.S. world, and there was an EU world. The U.S. world was somewhat more lenient with single-firm conduct. All enforcers agree that when it's joint conduct to establish cartels, fix prices, or allocate markets, it hurts consumers and everybody will condemn that quite ferociously. With single-firm conduct, the U.S. has historically been more open to hearing arguments that it is entrepreneurship, superior expertise, or business acumen that accounts for market "dominance." Microsoft succeeded simply because it was better. It is *only* at the edges, when a firm engages in truly anti-competitive behavior, that a large firm was viewed as bad. In the EU, historically, and in many other countries, you will see greater restrictions placed on the behavior of single firms. The EU is, quite frankly, more successful in selling its model throughout Europe and also to the Far East and China. This is also why we see Microsoft, Google and a lot of the U.S. firms tied up much more at the European Commission, than in the U.S.

The last point relates to something Shea was saying, which is that while on the books, the laws of India or China may not look that different from either the U.S. or the EU, they differ in the way they are being enforced. It goes both to Richard's rule of law question and Shea's protectionist issue — the ways they are being enforced will often reflect something of a political component, rather than a legal competition analysis: e.g., "Is this harming customers and consumers?"

JACK FRIEDMAN: In the American newspapers like the *Wall Street Journal*, there were reports of the British government making it hard to buy a company in England. Have they had cases recently where they've stopped deals?

RICHARD GODDEN: You should distinguish between the rhetoric of politicians and the reality of the law. Do bear in mind that our politicians want to convince everybody that England is very tough on all nasty people beyond the shores of this country. On the other hand, number one, European Union law prevents that, and England actually traditionally applies that law rather more rigorously than a number of other countries in Europe. Number two, the U.K. depends, to a greater extent than most other jurisdictions, on cross-border trade, with the result that behind the scenes, government officials by and large recognize that. So the rhetoric does not really correspond with the reality in relation to deals.

It is far more serious elsewhere. You mentioned foreign investment. Of course, don't forget France declared that it had a strategic

interest in yogurt a few years ago, when Pepsi was looking at Danone. Certainly, that kind of nationalism is alive and well within the EU — although it is probably incompatible with EU law, as well.

JACK FRIEDMAN: In France, is Burgundy wine or cheese of strategic interest?

RICHARD GODDEN: *All* of it!

[LAUGHTER]

JACK FRIEDMAN: It is a national security issue in France. It is an interesting question.

I'd like to introduce Stewart Robertson of Sullivan & Cromwell.

STEWART ROBERTSON: Thanks, Jack, and good morning, everyone. First of all, I would like to congratulate Debra this morning. Debra's legal career has been a model example — she's been in public service, in private practice, and now is the general counsel of a leading global company. Her commitment to the profession is exemplary. I would also add that her leadership of Rio Tinto's first-class legal team around the world is something that should not be overlooked. I'd also like to thank Jack for including me in this morning's program, and I'll try to be brief.

What I would like to talk about are some of the themes that Debra mentioned. The number and types of challenges faced by Rio Tinto in how it approaches its business are issues that are faced by all responsible natural resource companies and I use the word "responsible" deliberately. In particular, I'm going to discuss one key challenge that's faced by any natural resource company: the management of political risk in connection with greenfield large-scale investments in emerging markets.

At Sullivan & Cromwell, I have had the pleasure of working with Rio Tinto on a number of its projects. However, my discussion will be broader than that, reflecting the fact that we also do a lot of work for oil and gas companies. The approach of oil and gas companies and mining companies overlaps in many areas, but it also differs, and I will highlight some of those differences.

One thing everyone in this room can appreciate is that the natural resource industry is truly fascinating. Having a career in this area of business — be it business, legal or banking — is really quite a privilege. Until I put my notes together this morning, I had not realized that I have had the pleasure of advising clients on projects around the world, literally from A to Z — Azerbaijan to Zambia.

So what do I mean by "political risk"? By "political risk," I mean actions that the host country can take either specifically against the project or generally against other industry players in that country, or against business more broadly, that materially impacts the economics of the project from that existing at the time of the final investment decision, when billions of dollars of capital are committed. As Debra said, and as everyone in this business knows, mining and oil and gas projects are long-term, capital-intensive projects that depend on defined fiscal terms as a going-in assumption. That's what the Board of Rio Tinto looks at and considers when it makes its investment decision. Obviously, there are risks around these matters, but you really have to have a basic understanding of what you're getting into.

> "We also invest in numerous community programs that are targeted at infrastructure, healthcare, education and the environment. But we also fully acknowledge that our activities may detract from sustainable development if they're not managed correctly." – *Debra Valentine*

I would, of course, be remiss if I did not point out that these risks exist outside the emerging markets. I'm frequently reminded by clients in the United Kingdom, the United States and elsewhere that, in fact, the greatest political risks they face are in their home jurisdictions. Of course, Rio Tinto knows this very well, with the recent minerals resource rent tax in Australia. In fact, I can't help myself from using a quote from an Australian politician, who said, "We have a fundamental view that the minerals of Australia belong to all Australians, and there is an obligation to ensure that wealth is spread through Australia from the mining boom." That quote could be attributed to any politician in any resource-rich country in the world; it's not just emerging markets where Rio and other natural resources companies face resource nationalism.

So, political risk can extend from the very bright line of expropriation — without prompt, adequate and effective compensation — to political violence, to the imposition of currency or export controls. These are fairly clear political risks. However, it can also extend to the more difficult areas of what some would view as the natural order of government — regulation, public order, public policy, health, safety and the environment. However, even actions in these areas can have disparate negative impacts on a project's economics; particularly, for example, if a country seeks to impose disproportionate fines for environmental regulatory violations, in the context of an ever-changing environmental regime. And there's no end to the creative ways that rent-seeking host governments, particularly those facing elections, can seek to impose on projects.

Against that background, from a legal perspective, how do you create a sustainable investment climate and stability for natural resource companies? One important caveat: You can have the most effective legal framework in the world, but the long-term nature of these projects, and the economic sustainability of the deal, is something that can always be challenged with hindsight. People are probably familiar with the obsolescing bargain theory, which is certainly the case in resource projects. The maximum leverage a company has is prior to its final investment decision. As soon as the capital is committed, all leverage moves to the host government. Host governments understand this, and occasionally take advantage of it. This issue is exacerbated by the vagaries of the world commodity markets. Commodity prices swing up and down, and the long-term nature of a project always gives new governments a chance to question the previous government's decisions.

From a legal perspective, how do you establish a firm legal foundation in an emerging market?

There will be some discussion later about bilateral investment treaties, but clearly you first want to make sure that you structure the investment to take advantage of all available treaty protections.

Your deal is with the host government. Obviously, it's country-specific; a contract is always nice. It is not as easy when you have to fit in with a specific mining investment regime, but there is always some room for creative lawyering to supplement gaps in local legislative protection.

One thing that we always encourage our clients to do when negotiating the deal with a host government is to make sure that the government has effective legal and financial representation. This is not easy to do; it goes back to a point Debra made about capacity building: a lot of host countries do not have the technical expertise to fully understand the commitments they are being asked to make. If they don't have that expertise made available to them, it really can come back to affect the sustainability of the transaction. What's easier than a local politician issuing a press release saying they didn't know what they were doing — they were out-foxed? It's an important point to remember when negotiating these arrangements.

There should be consistency with all local laws and the constitution: it's very important to make sure that your deal is in absolute compliance with local law. One thing we recommend, and it is not always achievable, is having the top government lawyer provide an opinion that the deal is valid and binding and consistent with law.

Very important: Do not rely on executive authority alone. Obviously, different countries have different systems of government, and you will be negotiating with the executive authority, but you need to make sure that the legislative authority and all relevant local, provincial, and federal authorities buy into your transaction. If they don't, it's a recipe for later problems.

Debra talked about the issues that Rio Tinto considers on a worldwide basis, including compliance with the Voluntary Principles for Security and Human Rights and the Extractive Industries Transparency Initiative. It's very important in any deal, at least from our clients' perspective, to make sure that you get the host government to agree up front to these same obligations. Otherwise, you've got a recipe for problems in the future.

In particular, this is an area where capacity building comes into play. With first in-country natural resource projects, in a very low GDP country, the priority of the host government is unlikely to be spending money, for example, on environmental protection or training police forces to properly protect within the Voluntary Principles' framework, the project, its employees and its contractors. It really requires an upfront commitment and careful program to implement.

Neutral law and forum is critical for regulating any dispute between the project and the host country. It is not always easy to achieve neutral law, but there are ways that that can be handled, and it often becomes a very political issue. I can't think of any clients that we have worked with who have not obtained neutral forum; that's obviously essential. On one transaction, and you see this occasionally, the host country insisted on local law. It's a difficult argument to resist. The end result was local law, except where local law differs with English law, in which case, the laws of Alberta applied! [LAUGHTER] That was the neutral forum.

JACK FRIEDMAN: It's funny that in the olden days, Calgary was like the colonies.

STEWART ROBERTSON: It still is — I'm from Toronto! [LAUGHTER] It would never have been Texan law.

Another critical area is the legal stability of the arrangements. I could speak for hours on stability provisions. Obviously, getting fiscal stability on the economic rent being extracted up front is very important. Sometimes you see arrangements that go far beyond fiscal stability and purport to tie the government's hands for any change in law, in effect freezing the entire legal regime. With perhaps some justification, there have been NGO attacks on these provisions and those types of arrangements are no longer sought by thoughtful companies. You need to tailor the stability provisions to what you need for the project at hand, and always consider, how with hindsight, an NGO might view those provisions, because you'll need to be able to defend them.

Now, the economic terms: this is the hardest part, of course. How do you create a stable economic deal? That's beyond my pay grade, but obviously, stress testing of your economics, capital costs, product pricing and operating cost assumptions is very important. It's not just Year One, Year Two, Year Three; it's over the lifetime of the deal. That's the deal that you have to be able to sell and defend, and it is important that that be done up front, transparently, so everyone knows, again, what is being agreed with the host government.

The oil and gas business operates quite differently from the mining business. The production sharing contract model has a cost recovery and profit-sharing mechanism that is quite different from what you generally see in the mining business. Typically there is a combination of fixed-percentage or sliding scale royalties, income, and other taxes. I haven't seen any empirical studies to see if the production sharing model arrangement, which arguably — provides greater benefits to the host government in a high price environment, but also provides protection to the oil companies, because they get to recover their costs — is more sustainable than the typical mining arrangement; that might be something interesting for Rio Tinto to fund.

My final point is don't forget to consider the tax impact of your foreign investment arrangements both locally and internationally. Debra talked about tax transparency. One of the reasons to get the host government to sign the EITI is so that you can, with their consent, publish what you pay.

One concern that our clients have, as Debra mentioned, in addition to how much the government takes, is what they *do* with the government take. You can't legislate how a government spends its money. Oil and gas projects have occasionally contemplated the establishment of an oil fund into which the government revenues are deposited on a transparent basis. Those funds have had mixed success. It's all part of capacity building, as the local population can see how the revenues are being spent. Transparency may ultimately help lead to a more sustainable deal.

JACK FRIEDMAN: Thank you very much. Our next speaker is Steve Abraham of Baker & McKenzie. I want to thank the firm for making their facilities available and the people who work behind the scenes to put this together.

STEVE ABRAHAM: Thank you very much, and I echo everybody's congratulations to Debra for this prestigious award.

My topic for the day is very much linked to Stewart's topic, and it's the question of political risk and investment protection, but looking at things through the telescope of bilateral investment treaties. I come at this from a slightly dubious distinction, because being a dispute resolution lawyer *and* working in the mining sector, I get to see probably the weirdest and most wonderful aspects of an industry and projects which can, in and of themselves, often be rather weird and wonderful. Some of the weirdest and most wonderful issues undoubtedly arise when the problem that is created is created by the state, and Stewart has touched on some of the challenges that we can face when we are dealing with mitigating against the risk of state misbehavior, if I can put it that way.

What an investment treaty is and what it does is a basic starting point, because they are quite widely misunderstood instruments. Let's get the basics out of the way. A bilateral investment treaty is an agreement negotiated — and they *are* negotiated; there's no standard form — negotiated between two sovereign states, with the aim of creating a legal environment conducive to inward investment by investors coming from one of those states into the other state. There lies one of the initial challenges, because typically, these treaties will be negotiated between a country which has an outbound economy and a country which has an inbound economy.

Whilst the rights bestowed upon investors are mutual and reciprocal — the treaty operates the same way in both directions — the truth of the matter is that the trade flow will typically be predictable from one state primarily into the other. There is the challenge as to how these treaties will or not be honored in practice.

The idea is to create a level playing field between industry participants from those two nations. If we look at the rights that a treaty typically bestows upon an investor, one finds many of the things that Stewart has just been addressing. There is the right to, for instance, fair and equitable treatment, also the right not to be expropriated, or at least not to be expropriated without fair and adequate compensation. Beyond that, there is the right not to be expropriated in an indirect or creeping fashion. So one has to distinguish here between the direct expropriation, which is the direct taking or seizing of an asset or nationalization of a subsidiary, for instance, and the creeping or drip-drip type of expropriation, which takes place in a more subtle and concealed fashion over, perhaps, a course of years, which gradually serves to erode the value of the investment made.

There is the right to repatriate returns, so as to be able to pay dividends out, to transfer hard currency out of a country. The right not to

be discriminated against, and that works on two levels: the right not to be discriminated against, as against industry participants from the country in question — in other words, not to see yourself hard done by compared to domestic investors — but also the right to most favored nations treatment, which is the right to be treated no less favorably than investors from other third countries are treated in the country in question.

Finally, there are so-called umbrella protections, which is the promise made in certain treaties whereby the state will agree, as a matter of treaty obligation, to honor contractual and other promises given to the investor. So in that scenario, potentially — and this is a highly problematic area, which we can come back to in the Q&A — but potentially, at least, contractual breaches can be elevated to the status of treaty breaches, and actioned accordingly.

Where this all gets to is again mirroring what Stewart has just said. The ability to offshore some of the legal risk and to have these issues dealt with in a neutral and sensible forum, not in the local courts. Most treaties will provide for international arbitration before a tribunal of three independent tribunal members. Most, but not all, treaties will provide for that arbitration to take place before an institution called ICSID — the International Centre for Settlement of Investment Disputes — in Washington, D.C., which is a specialized body set up under the World Bank to administer cases of this type.

If it all goes wrong, and there's a breach of one of those protections, the idea is that you can action your claim and recover damages in a completely neutral and unbiased forum.

Therein lies one of the controversies, because an investment treaty tribunal is — conceivably, at least — potentially composed of more or less anybody, provided that they are independent from the parties. At that stage, I want to acknowledge some of the controversies around this area. The *Guardian* has already merited a mention this morning, but I'm now going to give it another one. In a leading article from just a couple of weeks ago, discussing the EU/U.S. Transatlantic Trade Treaty, which is currently under negotiation, there was a leading article arguing — I don't agree with it — that investment arbitration is an affront to democracy.

I just want to read out some of the comments made. "These companies," meaning "investors" — essentially Rio — "along with hundreds of others, are using the investor state dispute rules embedded in trade treaties signed by the countries they are suing. The rules are enforced by panels which have none of the safeguards we expect in our own courts. The hearings are held in secret. The judges are corporate lawyers, many of whom work for the companies of the client whose cases they hear. Citizens and communities affected by their decisions have no legal standing. There is no right of appeal on the merits of the case, yet they can overthrow the sovereignty of parliaments and the rulings of supreme courts. You don't believe it? Here's what one of the judges on these tribunals said about his own work: 'When I wake up at night and I think about investment arbitration, it never ceases to amaze me that sovereign states have agreed to it at all. Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from Parliament. There are no corresponding rights for citizens. We cannot use these tribunals to demand better protections from corporate greed.' As the Democracy Centre says, 'It is a privatized justice system for global corporations.'"

> "For an industry that makes multi-decade investments with significant up-front capital expenditure, the risk of fiscal instability does influence a country's ability to attract and retain investment. If I can put out one plea above all, tax laws should never be retrospective." – *Debra Valentine*

Well, that is not a position that *I'm* going to agree with! [LAUGHTER]

STEWART ROBERTSON: Can we stop talking about the *Guardian*? [LAUGHTER]

STEVE ABRAHAM: But I raise it as an illustration of how sensitive this whole topic can be. Frankly, the upshot of a heavy loss in one of these cases, for a sovereign state, can be extremely severe. They can have their assets directly enforced against under the ICSID convention, which applies more or less around the world. There is, indeed, no right to appeal. There have been cases where heavy damages have been enforced against states. The result is sometimes that the state has to raise taxes or otherwise amend its fiscal policy domestically, to honor the international award. It is highly controversial. For those very reasons, because it can be such an effective mechanism, it is, or at least should be, a key risk mitigant to be taken into account by us in the mining industry.

Why is this particularly relevant in a mining context? Here follow a number of statements of the obvious: We often do our activities in high-risk jurisdictions. I agree with all the comments already made. The whole topic of investment treaty protection is often portrayed as one of big, bad Western corporations versus big, bad governments in emerging or developing markets. That is something of a misnomer. Respondent states in these cases are not just the developing states; there are — increasingly, in fact — cases being brought against even Western European states who have, deliberately or otherwise, slipped up under these standards. It is not a one-way street. We are in high-risk jurisdictions; we are undertaking capital-intensive activities — Debra covered that at the beginning.

We are having to second into these projects specialized expertise, often from internationally. They are long-term projects with no return until the exploration phase has been undertaken. We are contributing to the host state: we're providing economic benefits; we're providing employment; we're providing local infrastructure; and we're undertaking — at least, if we're responsible — social investments in the associated infrastructure. We're sharing; we're not just taking risk, but we're sharing risk. We're sharing the risk of the exploration phase failing or not finding provable reserves; we're taking risks in terms of route to market and on the market itself; we're taking risks in terms of local community liaison issues; and we're taking security and safety risks. Invariably, of course, we're dealing with state counterparts, at least at the concession/license level.

Now, why do I say those statements are obvious? It's because all of those things are classical elements of the definition of an investment, under an investment treaty, and they're all classical elements of the definition of investment in the case law that has emanated from ICSID in interpreting the ICSID convention.

So, this is really made for the mining industry. It's interesting to look historically at where these cases have come from. Oil and gas was very much the industry which primarily, in the past, availed itself of investment treaty protection. If you look at the historical ICSID cases from the past, you'll find a trend where it's typically North American oil majors claiming against South American respondent states. That whole game has changed, and in the last five to ten years, one now finds a proliferation of industries availing themselves of these instruments — mining being a very prevalent one, but telecoms, tobacco, alcohol — all sorts.

Also it's not just there for when things go wrong. So far, I've been talking about the Armageddon situation, where you've been expropriated or you've had some terrible treatment foisted upon you. This is also a front-end topic; it's a risk management preventative planning tool, echoing some comments already made by Stewart and Debra, in particular. This is a growing trend. One sees, increasingly — particularly when investing into a high-risk jurisdiction — that clients do now want to hear about this at the beginning; they want to structure their investments, guided by firms such as us, through a route which is more likely than not to vest them with the protection of one or more of these treaties.

Not a thought process, frankly, that very many people went through in the past, but increasingly a thought process that people do go through now. It's to be viewed alongside, for instance, tax structuring. I usually say to people, "Well, if you can find a tax-efficient structure for your investment which also happens to marry up with investment treaty protection, why on Earth would you not take that advantage? It's free; your government has done the job for you in negotiating the treaty on your behalf."

Looking at mining, the key mining jurisdictions are, or at least are now, all members of the ICSID convention. Congratulations,

Shea — Canada, very late in the day, has joined the ICSID convention on Monday of this week.

This is a growing area. It will continue to be so. If we look at ICSID's case stats — ICSID not being, of course, the only forum in which these disputes are heard, but being the leading one — last year, in 2012, fifty cases registered at ICSID. That was the highest number ever registered in a calendar year. That follows on from 38 in 2011, which itself was also the highest number ever registered. That trend will undoubtedly continue, because we have a snowball going here; we have more investments being structured so as to take advantage of these treaties, and it therefore must follow that more claims under more treaties will at least be capable of being made, if the worst happens.

Tack onto that the growing industry of third-party claim funding, which is really booming at the moment. You can see that claimants who in the past may have been, perhaps, unable to pursue their rights because, for instance, they were insolvent following an expropriation of their primary asset, can now take advantage of third-party funding and third-party participation to pursue their rights. All of these things, added together, will undoubtedly give rise to further growth in this area.

Just to finish off, I wanted to look at some examples of where these instruments have been used successfully by mining companies. When I mean "successfully," I mean either because a claim has been won, or perhaps more constructively, because the BIT has been invoked as part of a discussion with the state around how to resolve a difficulty that has arisen in reality. There will be further examples; I'm simply speaking from personal experience.

At one end of the scale, we have outright nationalization. We then have the creeping expropriation, and that can take a number of different forms. It may be something as simple as the state being difficult with immigration issues or the issuing of visas or other such everyday matters. Blockades or police or army resources not being deployed sufficiently to deal with local uprisings or demonstrations against the mine. The state being complicit in the transfer of a license from one mining company to another miner who may, perhaps, be more ingratiated with the state. Royalty revisions; changes in law; breaches of stability provisions; the removal of concessions — for instance, fuel subsidies — are possibilities. The removal of tax breaks; the misbehavior of customs officials — who demand a level of custom duty not, in fact, due on the product, before it can leave the country — are others.

All of these things — again, simply based on my personal experience — are areas where mining companies are routinely exposed to risk, and where treaties can be used in the worst-case scenario to pursue a claim. In the more constructive scenario, they are used to increase the leverage that we have to bring about an amicable solution. I wouldn't accuse the Rios of the world of being ignorant in any way of this topic, but it, frankly, isn't a topic that is universally known about in the mining industry, particularly among juniors. It doesn't get the attention that — in my view, at least — it does deserve in this sector, hence, why it is worth talking about today.

To end, I need to bring an element of realism to this, that this is not a panacea; it's not the cure to all evils. These treaties won't ultimately stop sovereign states from behaving in the manner in which they intend to behave. They may act as a deterrent, but they won't physically prevent the states from doing what they need or want to do. They can be a blunt tool. At that point, we link back to where this whole debate started — it's not a panacea, and it's not a substitute for sophisticated and responsible stakeholder relationships. That goes straight back to what Debra was talking about at the beginning.

Thank you.

JACK FRIEDMAN: What is the financing for these mega-projects? Does the money come from the company, the lenders, the bankers who have their secured lien interests, local government, or a partner? Are the lenders given collateral rights on every shovel? [LAUGHTER] Bankers often do!

STEWART ROBERTSON: Why don't I take a shot at that. Lots of companies don't finance their projects; others do; so sometimes it's just balance sheet financing. Clearly, in higher-risk jurisdictions, companies like to use project finance to share the pain of adverse government action among actors whom they hope would help mitigate against that eventuality. By actors, I mean export credit agencies from the U.S., Canada, Australia, the U.K., Japan, etc. For particularly high-risk jurisdictions, the multilaterals, such as IFC and EBRD, can get involved, the theory being that the government is not only attacking the company, the foreign investor, but instead is, in effect, also hurting each of those governmental or multilateral agencies who supported the project through loans. It is not only treaty rights those individual lenders may have, but also their relationship with the host government, which they can use to prevent that adverse action from taking place. But each project is different in that respect.

JACK FRIEDMAN: Is there usually a lead bank in a consortium of banks?

STEWART ROBERTSON: Sure, there is funding by commercial banks, either on an uncovered basis, or with the benefit of comprehensive commercial or political cover by these export credit agencies.

JACK FRIEDMAN: In the United States you'll have infrastructure investment like a highway, or a toll road, where you can charge people for use on a special road that's built by private parties. An airport or any number of public works are financed through public funding, user fees, municipal bonds, etc. dedicated to paying off the debt. It doesn't go in the general funds of the local agency. Is project financing available through mechanisms where the debt is passed on to a leader to pay off the creditors?

STEWART ROBERTSON: Sure, all of these project financings are secured, and all the cash flow is dedicated to service the debt after operating expenses. The security structure is put in place upfront. In particular, you mention bonds. A number of deals have been financed using project bonds, either alone or side by side with commercial bank debt, because banks aren't lending as much money as they used to. As a source of long-term capital, the bond market is made for projects. We've been involved in a few transactions — it's fairly rare, so far, to see bond money going into high-risk greenfield developments, as opposed to investment-grade countries where there's an infrastructure project or an oil and gas project.

JACK FRIEDMAN: What about modernizing or doing something in Utah or somewhere else in the United States?

STEWART ROBERTSON: I don't think Rio would finance in Utah, but we should ask Debra that question!

[LAUGHTER]

RICHARD GODDEN: The really interesting thing in relation to project finance which connects in with some of the things Debra was saying, is the application of the Equator principles to the bank lending. These are principles agreed by a very large number of the world's leading banks as to what they require for resources projects which they are financing. They link in to the kind of stakeholder engagement that Debra was talking about — the need for environmental and social assessments, the need for stakeholder consultation, and those kinds of things. Linking those things together with what Debra has been talking about is really quite an interesting area, though I must say, in the ten minutes available to us, probably not one we can explore very far.

JACK FRIEDMAN: This is open to the whole panel. Are there certain elements of the project that have to be estimated up front and projected out many years? We hear about the political risk, regulatory risk, and economic feasibility of something over a 30-year period. What is the nature of the expertise that is brought to bear? In addition to your in-house people, what type of advisors do you bring in from outside?

DEBRA VALENTINE: Jack, it is largely internal assessments that are driving it. We have extremely sophisticated economists who work very closely with the product group experts, and not just demand charts in terms of where we expect demand for a commodity to go — and that is globally, not just China — but very sophisticated supply charts that will make assumptions regarding our projects and rivals and when they might come on line. You can get a lot from public statements that companies make as to when their resource projects are likely to come on line, and then you place your own interpretation of the risks and the probabilities of that happening. On top of that are layered *all* the commodity prices which, again, need to be predicted out for 50 years and input costs. Each company has a unique way of doing that, but I suspect we're all getting at the same issues. It is not easy, and especially as Stewart noted where you're negotiating in a developing country with people who haven't been trained in Adam Smith economics, much less in mining economics 101.

STEWART ROBERTSON: The forward curve.

DEBRA VALENTINE: Yes, it's an extremely difficult thing to do. We literally, at times, will try to sit down with those governments and help them to model what would happen if prices go here; there's an 80% chance that the price may be here; there's a 20% chance the price may be here; this is what will happen. It could be huge differences in the amounts of money coming into their treasuries, and the timing of when that comes in.

JACK FRIEDMAN: What are the big costs associated with a mega-project? One is obviously the financing costs, paying back principal and interest. What are the other epic costs of these projects?

STEWART ROBERTSON: The upfront capital costs could be $10 or $15 billion in terms of hard assets being built in the ground at a remote location. People tend to forget; they see a mine, but the mine's typically in the middle of nowhere, literally, and building a railway and a port and associated infrastructure facilities and management for those is just incredibly capital-intensive.

On the operating side, operating costs, it depends on the individual mine; they can be anywhere — on the curve, you always want to be in the lowest quartile to make sure you've got long-term, sustainable economics.

JACK FRIEDMAN: Let us say you have a good project, but for a period of three years or so, the industry is going through a really slow period. What's the fallback position on the financing?

STEWART ROBERTSON: First of all, the economics always model downside scenarios, and the cash flows are projected long-term. I worked on a project in Argentina where it was very important for the host country to understand the benefits that strong sponsors, such as Rio, bring, because they have a long-term time horizon; they're not making a five-year bet; they're making a 25- or 30-year bet. It is very hard to explain to the host government that commodity prices go up and down, and that when they're down, you're not going to be getting any revenue.

> "Rio Tinto was one of the first companies to publish a human rights policy and to develop practical guidance on implementation for our employees. We're a signatory to a host of international commitments and standards, and we remain dedicated to meeting them." *– Debra Valentine*

On the other hand, if you have strong sponsors with balance sheets, they can see past the short-term. This was the situation in Argentina — where the project bled cash for three years until the commodities cycle turned and all of a sudden the project began throwing off $1 billion a year of free cash flow because of higher copper and gold prices.

Now, the problem that we alluded to before is that in a low price environment, there's nothing there. But when the high prices return everyone says "give me, give me, give me," after you've funded through the low cycle.

I had a question for Steve. I always view actually accessing ICSID and arbitration as the nuclear option. In other words, you've got the nuclear switch; it's useful for bringing the government to the table; but once you've flipped the switch, you're out of the country, say goodbye, write off your investment, and hope you get something later.

STEVE ABRAHAM: Absolutely. For industry reading on the topic, see "First Quantum against the DRC." Exactly what happened? One claim resulted in several licenses being ultimately surrendered in exchange for a settlement. It is completely the nuclear option. This is about the assessment of risk up front, and making sure that you've got something in your armory that you might, at least one day, want to use in extremis. Most clients would think incredibly carefully before invoking one of these claims. Certainly, my experience is that probably one in ten or less of potential claims actually become claims.

The point of the discussion really is that you're better off having the weapon in your armory and being able to pick it up and pull the trigger if you want to, rather than finding out that you don't have an armory at all or that it has the wrong things in it. That's the position historically that people tended to blunder into — not Rio.

JACK FRIEDMAN: Sometimes the other side might overestimate, you know perfectly well you'd never dare do it, but they might think, "How crazy are those business people? They might actually pull the trigger on us." In other words, just to have it on the shelf, people on the other side can worry.

STEVE ABRAHAM: Absolutely. You also get circumstances — certainly I've worked on projects — in fact, not in mining, but there's no reason this wouldn't happen in mining — where to support the project in question, if you are outside of the jurisdiction with effectively no protections and not being party to the key international conventions, you negotiate a BIT or another intergovernmental agreement to get the project up and running. There are precedents for this.

DEBRA VALENTINE: Occasionally, that country actually has some reputational stake in not being called in front of the court, and that's where your leverage comes in.

JACK FRIEDMAN: What is the sanction in world capital markets if a country treats foreign investors badly?

STEWART ROBERTSON: Markets are fickle. When Chavez came into Venezuela, the best structured deals in the world, with ICSID rights, were expropriated. He didn't care. You could see, right after those events, that there was very little capital flowing into Venezuela. History is short; however, memories are shorter. Gazprom has put a lot of money into Venezuela. The Chinese are, too. But even Western oil companies are starting to consider going back, because that's where the reserves are.

SHEA SMALL: I would add that in the emerging countries, the way the government reacts, or how they implement their laws, is very relevant. I'll take the case in point of Mongolia, where the world watches how the government deals with OT. Obviously, the harder they played, the less foreign investment they've had, and they've had other examples where they've changed laws, expropriated assets — in the case of Khan Resources, where it's had a very negative effect on them. In a lot of cases, you don't actually get to the treaty unless you have a situation where it's almost a single-asset company and the nuclear option has been declared on them, and they have really no choice but to go back and go nuclear.

JACK FRIEDMAN: Let me ask a humanistic-oriented question on running a global company. What are some of the charitable interests, besides broad policies of having good environmental policies, that the company has adopted?

DEBRA VALENTINE: On the one hand, you don't want to become the government in many of these countries where you're operating. On the other hand, we generally have a huge interest in investing in developing human capital. Science, engineering and skills training is important.

JACK FRIEDMAN: Do you contribute to upgrading schools?

DEBRA VALENTINE: We will do a lot in the educational space. Actually an area where Rio has made an extraordinary difference is with respect to First Nations in Canada or Aboriginals in Australia. We are the largest private employer of Aboriginals in Australia. We have done a lot of training and have been working with a program that has gotten the first Aboriginals to Oxford and Cambridge. When you see the power of someone who came from nowhere to become an extremely articulate graduate of Oxford or Cambridge, it's a pretty eye-opening experience, and an extremely empowering one for that entire community.

JACK FRIEDMAN: I would like to move on and see if anyone in the audience has a question. Thank you.

[QUESTION FROM AUDIENCE:] One of the great difficulties global companies face is where a law in Country "A" imposes a requirement with extraterritorial effect, which is illegal in Country "B". Increasingly, where a company wishes to or feels obliged to comply with non-legal values, which, from a reputational point of view, are effectively mandatory social norms, which in Country "B" are completely contrary to those social norms. I was wondering, on the panel's observations about how much that is becoming a difficulty for global companies. I probably know the answer to this, but to what extent you feel that governments have the appetite to recognize these difficulties for global companies and make it easier to operate?

DEBRA VALENTINE: It depends on which governments! Certainly, all countries are increasingly enacting laws with extraterritorial effect. You would think that moral norms would be global, but an interesting dilemma we're seeing recently is in the bribery and corruption area, where the U.S. laws do have global, extraterritorial effect. France has now enacted a law that almost makes it impossible for the companies there, who are being prosecuted by the SEC and DOJ, to cooperate. At the end of the day, while French authorities couldn't entirely prevent the companies from

cooperating, they have inserted themselves between the French company and any remedy imposed by the Department of Justice and the SEC, and said, "*We* will be the only ones to impose a monitor to deal with the SEC and/or DOJ, and it must be a French monitor." It doesn't put the company in an easy situation; and thus far, once or twice — French authorities have succeeded in getting French monitors for companies that are under settlements with the SEC and DOJ. I'm surprised that the DOJ and SEC have allowed that.

RICHARD GODDEN: I totally agree that it has existed for a long time — don't forget, it was the 1950s when Tate & Lyle had a House of Lords decision directly contradicting a Supreme Court decision. The French blocking laws were specifically designed to prevent French companies from complying with U.S. antitrust requirements. European data privacy laws directly prevent compliance with some aspects of Sarbanes-Oxley. It's all over the place.

DEBRA VALENTINE: French privacy laws prevent us from having comprehensive speak-out whistleblower systems in France!

RICHARD GODDEN: It's truly extraordinary. What's more worrying is that certain governments rejoice in it; in particular, certain people within the European Commission rejoice in it.

At one time we were representing all of the big four accounting firms in relation to Sarbanes-Oxley, and we went to the SEC and PCAOB, and they were extremely sympathetic to this point; they were really good. I talked to them behind the scenes, and we came to a sensible solution. We went to Brussels, and we said, "This is barking mad"; they were considering their own responses at that time; and they just said, "The U.S. has got to learn!" We said, "Well, we're in the middle! What are we going to do?"

In the extractive industries, the classic example of this kind of problem now is the directive relating to disclosures of payments to governments. Effectively, you have to disclose payments to governments, and government officials, irrespective of whether disclosure is lawful under the law of the place in which it was enacted. Now, at the moment that only relates to a relatively few industries, although it does relate to the one we are talking about now. The legislators are so enamored of it that they're saying that they are going to review it in a few years, with a view to extending it to other industries. It directly contemplates that conflict of laws and says, "Ours prevails."

DEBRA VALENTINE: In fact, while the oil industry has succeeded in blocking the enforcement of that law in the U.S., the EU now has gone ahead and has a transparency directive which requires similar disclosures. Jack was asking earlier, how did these conflict minerals laws and transparency and disclosure laws end up even being adjudicated by the SEC? That was an unfortunate example of Richard's comment about the consequences of the global financial crisis: There is a problem in the financial industry that Congress wants to address through Dodd-Frank; and literally, at the eleventh hour and fifty-ninth minute, these provisions on conflict minerals and disclosure of payments to governments landed in the Dodd-Frank law. It had been an entirely separate piece of legislation.

Quite frankly, recently, the new SEC Commissioner, Mary Jo White, has said, "I don't know how to enforce these; I don't want to enforce these; they're not within my jurisdiction; why on Earth did Congress ever try to stick them in and give them to me?"

JACK FRIEDMAN: I'll give you a quick answer. We had Mr. Oxley speak, about ten years ago, about Sarbanes-Oxley. He said that the Republican majority in the House had worked with the Democratic majority in the Senate, very responsibly and carefully to have a really good bill that both sides could agree on. The week that it went to the House, by coincidence WorldCom or another of these mega-fraud situations surfaced. Members of the House of both parties ran into his office saying, "I need an amendment. I have to introduce an amendment so I can tell my constituents I'm doing something." He said that some things were added and parts of the bill made little sense because they never went to a committee to be carefully drafted, reviewed, or harmonized.

Let me ask one final question of Debra, and then everybody will be invited up. Of the five minutes a month that you have free for your personal time, what do you like to do?

DEBRA VALENTINE: Honestly, of late, I have taken to doing yoga. It's not the total meditation kind; I absolutely cannot sit still. I'm almost to the point where I cannot meditate, but it does get you sufficiently away from, as the yoga professor would call it, your "head space," so that it's actually quite relaxing!

JACK FRIEDMAN: Let me thank you very much. You are an inspiration. In any case, I wanted to again thank the speakers and the audience. Our goal is to help people have more understanding of the companies and their conscientiousness, and the good people working there. This morning certainly was a success from that point of view. Thank you.

Steve Abraham

Partner, Baker & McKenzie LLP

Steve Abraham is a partner in the Firm's Dispute Resolution practice in London. He joined Baker & McKenzie from another leading international firm in January 2013. Steve has extensive experience in international arbitration, adjudication, mediation, expert determination and litigation; he focuses on disputes in the energy, mining and infrastructure sectors. He is also a solicitor advocate. Steve is recognized in his field by *Legal 500* and *Chambers & Partners*.

Practice Focus
Steve's work is predominantly international, with projects in Africa, the Middle East, Eastern Europe and CIS countries. His practice focuses mainly on international arbitration, and he is experienced in working with all of the major arbitral institutions. In addition to commercial dispute resolution, Steve regularly advises on investment treaties and public international law issues. As well as representing clients in disputes, Steve advises on dispute avoidance and project management issues. He also sits as an arbitrator.

Representative Legal Matters

- Acting for a state utility in a multi-billion U.S. dollar Geneva-seated ICC arbitration concerning the supply of gas from one state to another.
- Acting for an internationally renowned luxury hotel group in a series of Geneva-seated ICC arbitrations and Commercial Court litigation in London arising out of the termination of a development in North Africa.
- Acting for the owners/developers of a gas fired power station in Qatar in a Doha-seated ICC arbitration defending claims made by the EPC contractor for extensions of time and additional payment amounting to several hundred million U.S. dollars.
- Acting for a Chinese engineering contractor in two consolidated London-seated LCIA arbitrations concerning the construction of oil pipelines in Kuwait.
- Acting for the developers of the Channel Tunnel Rail Link project defending a series of adjudications brought by contractors responsible for various packages of work on this multi — billion British pound project.
- Advised several mining companies in relation to political risk, validity of title and related issues in several African jurisdictions.

Admission
England & Wales – United Kingdom (2000)

Education
Nottingham Law School (L.P.C.) (1997)

University of Poitiers, France (1996)

University of Bristol (LL.B.) (1996)

Baker & McKenzie LLP

Baker & McKenzie defined the global law firm in the 20th Century, and we are redefining it to meet the challenges of the global economy in the 21st.

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Richard Godden

Corporate Partner,
Linklaters LLP

Experience

Richard has been a partner at Linklaters for over 25 years, during which time he has advised on a wide range of transactions and issues in various parts of the world. He looks after corporate clients, professional services organizations, investment banks and other institutions. Richard's experience includes his time as Secretary at the U.K. Takeover Panel and a secondment to our Hong Kong office. He also served as Global Head of Client Sectors, responsible for Linklaters' industry sector groups, and was a member of our Global Executive Committee.

Notable matters on which Richard has acted in recent years include:

- Deloitte on the acquisition of Monitor
- G4S on the issues arising from problems with its Olympic contract
- Rio Tinto in connection with the unsolicited offer from BHP Billiton
- Saint Gobain on the contested takeover of BPB
- VT Group on the reorganization of the British warship yards and its subsequent takeover

Education

Richard joined Linklaters after completing his degree at the University of Cambridge and training at the College of Law.

Linklaters LLP

Our global mining and metals team have vast experience in the sector and have represented many of the world's leading players.

The team's experience spans all aspects of the value chain and the corporate affairs of mining and metals houses, including projects, development work, financings, corporate/M&A, competition, tax, litigation, arbitration and environmental law. Our mining and metals practice has also consistently been ranked in the First Tier globally by the major legal directories.

In acting on a number of complex takeovers, acquisitions, disposals, project financings and listings, we have built a deep understanding of the challenges that our clients face in the market.

This experience allows us to offer our clients innovative legal solutions that help them to stay competitive during the good times as well as the more challenging. As the economic downturn has brought an end to the "super-cycle" in commodity prices and reduced the availability of much-needed credit, we were at the forefront of helping a number of mining and metals clients deal with distressed situations, debt refinancings and equity capital raisings. Linklaters also continues to advise both potential buyers and sellers during a period of consolidation in the sector and, as the global IPO markets look to recover, we have advised on a number of listings on international stock exchanges. In fact, we have been involved in all significant recent IPOs (both single and dual listings) in the sector.

In your pursuit of the Earth's natural resources, we recognize that you will often operate in remote areas of the world. These countries often have legal regimes that are still under development and facing periods of significant political change. Our emerging markets practice is excellently placed to help our clients to develop risk mitigation strategies and has a proven ability to navigate through previously untested legal regimes. In some cases we have even been asked to assist with the drafting of amendments to local laws in order to facilitate major transactions. Complex, multi-jurisdictional transactions frequently require language skills to understand the intricacies of the transaction and execute the deal to the clients competitive advantage. Our multi-lingual mining team includes fluent Mandarin, Cantonese, Russian, French, Spanish and Portuguese speakers, enabling us to service our clients' transactional needs all over the world.

Shea Small

Partner and Board Member,
McCarthy Tétrault LLP

Shea Small is a partner based in our Toronto office practicing in the Business Law Group and the Global Mining Law Group. Shea is also a member of the Firm's board of partners. Shea has an international practice focusing on mergers and acquisitions, capital markets, foreign investment and commercial transactions, with a proven track record in the mining industry.

Shea regularly advises bidders, targets and controlling shareholders on public and private merger and acquisition transactions including takeover bids, divestitures and joint ventures.

Shea also regularly acts for issuers and investment banks on public offerings and private placements. He has extensive experience with medium term note, commercial paper, maple bond, covered bond, high yield and other debt offerings by Canadian and foreign issuers.

Shea's recent transactions include:

Mergers and Acquisitions

- Advising Rio Tinto on its acquisition of control of Ivanhoe Mines, a NYSE and TSX-listed development company that owns 66% of the Oyu Tolgoi copper project in Mongolia
- Advising Rio Tinto on its takeover of Hathor Exploration, a TSX-listed uranium exploration company
- Advising Rio Tinto on its potash joint venture with the Acron Group of Russia
- Advising Creststreet on the sale of its TSX-listed wind energy businesses, CPIF and Kettles Hill

Capital Markets

- Acting for GE Capital, Wells Fargo and Ford on their debt programs in Canada
- Acting for RBC Capital Markets on numerous debt offerings
- Acting for Rio Tinto on its standby commitments for several rights offerings by Turquoise Hill Resources

Shea was named as a 2013 Leading Canadian Lawyer in Global Mining by Lexpert.

Shea received his BA (Economics) from Wilfred Laurier University in 1993. He received an LL.B. from the University of British Columbia in 1996. Shea was called to the Ontario bar in 1998 and the British Columbia bar in 2013.

McCarthy Tétrault LLP

Through our relentless focus on client success, our team delivers integrated legal solutions to complex business issues. We do this by actively listening to our clients and understanding their needs, their business and their industry.

McCarthy Tétrault is a Canadian law firm that delivers integrated business law, litigation services, tax law, real property law, labor and employment law nationally and globally through offices in Vancouver, Calgary, Toronto, Montréal and Québec City, as well as London, U.K.

We have a history of taking bold steps — from building Canada's first national law firm model to incorporating an integrated structure — to better serve our clients. Our approach creates a single, client-focused team that takes advantage of our size and scale, and frees our lawyers to do what they do best: delivering customized legal services that help you achieve your goals.

We promise our clients and our people better results and a better experience. We are delighted to have been selected as one of Canada's Top 100 Employers 2013, in recognition of our deep commitment to excellence in all aspects of our business.

Passion. Excellence. These traits drive all McCarthy Tétrault lawyers to deliver outstanding client service. Experience the McCarthy Tétrault difference and sense first-hand how integrated competencies, depth of knowledge, expertise and experience can be your competitive advantage.

Stewart Robertson

Partner, Sullivan & Cromwell LLP

SULLIVAN & CROMWELL LLP

Stewart M. Robertson is co-head of Sullivan & Cromwell's EMEA Project Development and Finance Group in London. Over the last 25 years, Mr. Robertson has advised his clients on major transactions in Europe, North and South America, the Caspian, the Gulf, Africa and Southeast Asia and has particular expertise in mining and metals and oil and gas transactions. Mr. Robertson's project development and finance experience includes negotiating joint venture, foreign investment and commercial arrangements among sponsors and host countries and negotiating financing agreements with commercial banks, underwriters, rating agencies, ECAs and MLAs. He is currently representing the Oyu Tolgoi copper and gold project in Mongolia, and has recently advised Emirates Aluminum in the first and second phases of the development of its smelter project in Abu Dhabi (the largest single-site aluminum smelter in the world); the Ambatovy nickel and cobalt project in Madagascar; the Alumbrera copper and gold project in Argentina; and the PT Inco nickel mine expansion project in Indonesia. He also advised Xstrata in its acquisition of the Las Bambas copper concession in Peru.

His oil and gas experience includes Dolphin Energy's refinancing and subsequent bond financing; the Yemen LNG project; the Baku-Tbilisi-Ceyhan (BTC) oil pipeline project in Azerbaijan, Georgia and Turkey; the Sincor heavy oil project in Venezuela; the Cantarell nitrogen gas reinjection project in Mexico; the Merey Sweeny refinery project in the U.S.; and the OCENSA pipeline in Colombia.

Mr. Robertson has been recognized in a number of publications, including *Euromoney, IFLR, Latin Lawyer, Legal 500, Legalease* and consecutive recent editions of *Chambers Global* and *Chambers U.K.*

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