

## ▶ 2015 Myanmar Mines Law

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29 January 2016

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## 2015 Myanmar Mines Law (2015 Mines Law)

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- 2012 - Myanmar Government announced intention to amend Myanmar's 1994 Mines Law.
- Delay in enactment has contributed to the stall in foreign investment. Mining FDI was just US\$6.26 million in the year ending 31 March 2015. By comparison US\$3.22 billion was invested in Myanmar's oil and gas industry over the same period. \*
- Amendments bring Myanmar closer to, but not yet in line with, accepted international standards.
- Implementing rules (**2016 Mines Rules**) to be introduced within 90 days from date of parliamentary approval (24 March 2016).
- A more complete analysis of Myanmar's new mining regime will only be possible after the 2016 Mines Rules have been issued.

\*Source [www.oxfordbusinessgroup.com](http://www.oxfordbusinessgroup.com)

# Key Amendments – New Activities Permitted

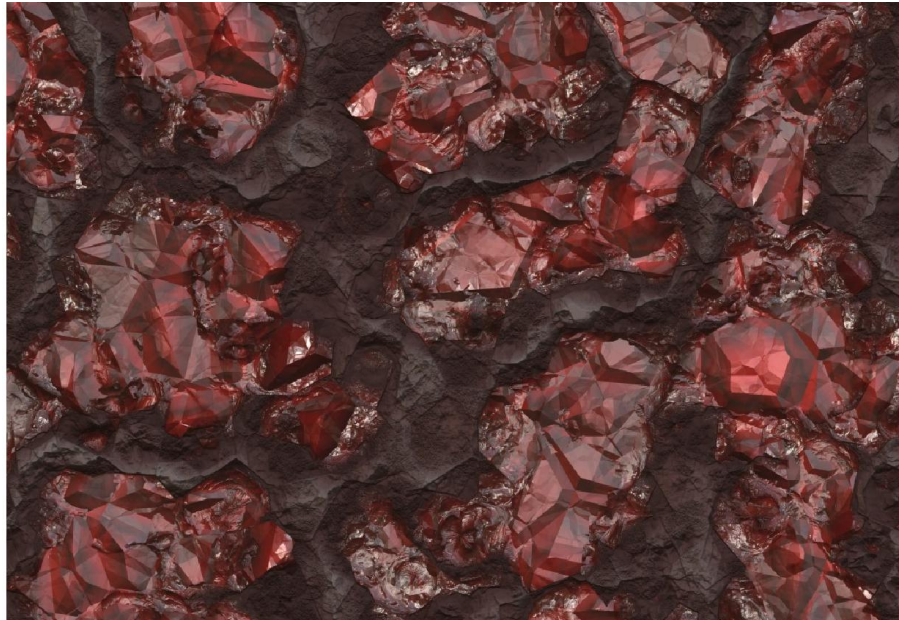
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# Key Amendments – Foreign investment permitted in medium and small-scale projects

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- The 1994 Mines Law, together with Myanmar's Foreign Investment Law, restricted foreign investment to large-scale mining projects.
- Pursuant to Section 4 (f) of the 2015 Mines Law foreign mining companies will be permitted to form joint ventures with small and medium scale permit holders depending on the 'quality and quantity' of the mineral deposit in question.
- Legislation fails to define / describe what is meant by the 'quality and quantity of the mineral deposit' but states a supporting geological report is required.



## Key Amendments – Revised Definitions

	Definition
<b>“Mineral”</b>	definition expanded to include metallic minerals extracted from floors of rivers, creeks, ponds and lakes.
<b>“Permit”</b>	definition expanded to include feasibility studies, processing and trading
<b>“Feasibility Study”</b>	definition added; meaning a study on the commercial viability of a project which should include information on extraction, processing, financial information including anticipated investment, and the environmental and social impact of a project
<b>“Trading”</b>	newly added definition; means buying, selling, transport and storage of metallic minerals. (Trading introduced as a ‘Permitted Activity’)
<b>“Subsistence Production”</b>	definition expanded to cover basic mechanical mining practices. Change reflects the reality of small scale operations. Old definition described Subsistence Production as ‘production using ordinary hand tools’.
<b>“Medium-scale Production”</b>	newly added definition; means medium-scale production from a mineral deposit, which is not a large deposit and which can be carried out for moderate investment and cost or with limited technical know-how and methods
<b>“Processing”</b>	definition amended to remove reference to gemstones

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## Key Amendments – Permit periods

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Definitions of large and small scale production amended to reflect increased permit periods.

Production Category	Permit Period	Permit Period
	1996 Mines Rules	2015 Mines Law
Large-scale production	Up to 25 years	Up to 50 years
Medium-scale production	-	Up to 15 years
Small-scale production	Up to 5 years	Up to 10 years

No changes to the terms of prospecting permit (1 year), exploration permit (3 years) and subsistence production permit (1 year with 4 x 1 year extensions available). Terms may be amended in the revised Mines Rules.

## Key Amendments – Royalty Rates

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- Continues as an ad valorem sales based royalty system
- 1994 Mines Law prescribed royalty rate ranges to different categories of minerals. The Ministry of Mines then fixed the applicable rate per mineral within the rate-range.
- 2015 Mines Law prescribes set royalty rates.
- Rate for certain minerals has been set at the lower end of the royalty rate range contained in the 1994 Mines Law i.e. silver – now 4% rather than 4-5%; iron, zinc, lead, antimony, aluminium - now 3% rather than 3-4%.
- However the rate for gold, platinum and uranium has been set at the higher end of the royalty rate range contained in the 1994 Mines Law i.e. 5% rather than 4 – 5%.
- Rate payable on gemstones reduced from 5 - 7.5% to 2%.
- 2015 Mines Law allows local operators to pay tax or royalties in the form of mineral or cash. Foreign invested operations must continue to pay royalties in cash.
- No variation of royalty rates in line with mine size.

## Key Amendments – Royalty Rates Comparison\*

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1994 Mines Law	
Mineral	Royalty Rate Range
Gold, platinum uranium, and silver	4 – 5%
Iron, zinc, copper, lead, tin, tungsten, nickel, antimony, aluminium	3 – 4 %
Gemstones and jade	5 - 7.5%
Industrial minerals or stone	1 - 3%

2015 Mines Law	
Mineral	Royalty Rate Range
Gold, platinum , uranium,	5%
Silver, copper, tungsten, nickel	4%
Iron, zinc, lead, antimony, aluminium	3%
Industrial minerals or gemstones	2%

*\*Select minerals only*

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# Key Amendments – Production V Equity Share

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## 1994 Mines Law / 1996 Mines Rules

- Government adopted a Production Sharing System
- Pursuant to Production Sharing Contracts (PSCs) entered into under the old regime, foreign mining companies were responsible for meeting 100% of project costs and required to surrender up to 30% of output to the Government.
- Production sharing system was out of line with mining jurisdictions globally and a deterrent to international investment.

## 2015 Mines Law

- The 2015 Mines Law provides for equity (or profit) sharing rather than production sharing.
- Both joint venture partners are expected to contribute to the cost of a producing an environmental impact assessment.

## Key Amendments – Environmental

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- Feasibility study to contain information on a proposed project's social and environmental impact.
- Operators to establish environmental / social fund for annual maintenance.
- Fund to cover mine closure and site rehabilitation. Questions remain as to legacy rehabilitation.
- Duties of the Chief Inspector expanded to include inspection of the systems/controls an operator puts in place to limit the adverse social and environmental impact of a project.
- Improved clarity on feasibility studies is welcome given their importance in capital raising. Permit system for production of feasibility studies gives the Ministry of Mines additional oversight in the feasibility study production process.

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## Key Amendments – Decentralisation

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- Section 6 of the 2015 Mines Law provides for the decentralisation of the application process in respect of local involvement in prospecting, exploration, production of feasibility studies, processing and trading and subsistence and small-scale production.
- State and/or regional authorities are authorised to process permit applications and issue other approvals to subsistence/small-scale operators. The 1994 Mines Law restricted mining management at a local and regional level.
- Decentralisation initiatives often form part of a broader policy of ‘fomalisation’. Decentralisation amendment does not apply to foreign investors at present.
- ‘Fomalisation’ is pursued by Governments seeking to improve the regulation and management of subsistence and small-scale mining in an attempt to make it a more profitable and economically beneficial sub-sector of an economy.
- Advocates of mining decentralisation argue that regional rather than central Government should be responsible for ensuring compliance with mining legislation, overseeing the demarcation of mining rights, revenue collection, the processing of mining rights applications, monitoring production, providing technical support to miners and combatting illegal mining.
- The distribution of mining revenues is often a contentious issue between regional and central authorities.
- Decentralisation as part of a broader policy of ‘formalisation’ could help the Myanmar Government’s peace building efforts.

## Key Amendments – Offences and Penalties

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- The 2015 Mines Law amends a number of provisions set out in Chapter XI “Offences and Penalties” of the 1994 Mines law.
- Section 24 amends Paragraph 28 (b) of the 1994 Mines law. Formerly a permit holder found to be in breach of the conditions of a permit could continue to operate on the payment of a fine. Pursuant to the amended provision the fine should not be less than the Performance Bank Guarantee.
- The new legislation increases the maximum prison term for engaging in prospecting, exploration or processing without a permit from 7 to 10 years and a fine of up to Kyat 50 Lakh or approximately US\$3850.
- The fine for illegal prospecting, exploring or production of gemstones has been increased from Kyats 50,000 (or approximately US\$45) to between a minimum of Kyat 10 Lakhs – and maximum of Kyat 50 Lakhs (or approximately US\$770 - US\$3850). The maximum prison term is also increased from 7 – 10 years.
- The penalty for illegally trading in minerals has been increased from a fine of Kyats 20,000 to Kyat 2 Lakhs or (or from approximately US\$20 - US\$154). The maximum prison term for the offence remains at 3 years.

## Key Amendments – Offences and Penalties (Cont'd)

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- The 2015 Mines Law introduces new penalties for operating without a subsistence permit. Illegal operators face prison terms of 1 – 3 months and a fine of up to 1 Lakh or Kyats 100,000 (Approximately US\$77).
- The 1994 Mines Law did not differentiate between subsistence and large-scale operators in respect of the penalties to be imposed for operating without a permit
- The offence of trespassing on a Mineral Reserve Area is now punishable by a fine of up to Kyats 500,000 and a prison term of up to 6 months. The maximum fine for the offence under the 1994 Mines Law was Kyats 5,000.
- The maximum fine for repeated violations of the terms and conditions of a mining permit has been increased from a maximum fine of Kyats 10,000 to a fine of between Kyat 2 - 10 Lakhs (or from approximately US\$154 - US\$770). Repeated offences are punishable by a mandatory term of imprisonment of up to 1 year.

# What Hasn't Changed?

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## Dead rents , Signature bonus and the Performance Bank Guarantee

- Dead Rents are payable pursuant to the Myanmar Mines Rules so it is possible they may be altered in the amended Mines Rules. Dead rents are payable from year 1 exploration.
- No allowance made for exploration stage companies.
- Performance Bank Guarantees and Signature Bonuses are part of the terms and conditions of production sharing agreements entered into between the Government and foreign miners and as such are unaffected by the amendments. As is the case with dead rent, these payments are required to be made at the outset of operations i.e. in the exploration stage and are prohibitive to smaller or mid-size explorers.
- At present the Performance Bank Guarantee can be anything between US\$100,000 – 200,000 whereas the Signature Bonus can range from US\$50,000 – US\$100,000.

## Other Legislative Developments

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### 2016 Myanmar Arbitration Law (Arbitration Law)

- Replaces the 1944 Arbitration Law and gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (**New York Convention**).
- Arbitration Law based on UNCITRAL Model Law (**UNCITRAL**) on International Commercial Arbitration 1985.
- Foreign arbitral awards will soon\* be recognised and enforceable in the Myanmar courts.
- The incorporation of UNCITRAL into the Arbitration Law means Myanmar's courts will now follow internationally recognised rules and procedures. These rules and procedures will be familiar to international investors and their professional advisers.
- The adoption of the Arbitration Law does not mean foreign miners will be free to choose a foreign seat of arbitration in the exploration / production agreements they enter into with the Ministry of Mines\*\*. Mineral companies should however be permitted to prefer a foreign seat of arbitration in agreements with third parties.

*\*Laws comes into force 90 days from the date it was approved by the Pyidaungsu Hluttaw*

*\*\*The Ministry of Mines have historically insisted upon arbitration in Myanmar*

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## Other Legislative Developments (Cont'd)

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### Revised Myanmar Companies Law.

- Streamlining of import regulations, allowing for faster movement of equipment and technical supplies.
- Change in definition of 'foreign invested company'. The extent to which foreign ownership in 'local companies' will be permitted is to be confirmed.

### 2012 Environmental Conservation Law and draft Environmental Impact Assessment Procedures.

- Additional details as to operators' responsibilities in respect of the environment.
- Miners and investors can be required to comply with laws and regulations originating in their home jurisdiction (or other overseas jurisdictions) concerning the impact of their overseas operations on the environment. Operators will benefit as Myanmar law moves to reflect international standards.

### Foreign Investment Law

- Most recently amended in 2015. Future amendments may roll back some of the remaining barriers to investment i.e. prohibited and restricted activities



# Conclusion

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## Positive amendments?

- move to an equity sharing system rather than a production sharing system.
- the opening up of small and medium level production to foreign investment
- additional provisions in respect of environmental protection are generally positive and more reflective of international norms.
- reduced royalty rates for some minerals
- decentralisation will benefit small-scale and subsistence level operators

## What additional changes are required?

- Will need to wait and see if improved fiscal terms are offered in joint venture agreements
- Small and medium level investment - Additional detail required as to the 'quality' and 'size' of resource which will be opened up.
- 2015 Mines Law silent as to dead rents, signature bonuses, and performance bank guarantee
- clarity on legacy rehabilitation
- incentives at the exploration stage

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## About Charltons' Mining Practice

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# Advising the Mining and Natural Resources Industry

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Charltons assists natural resource companies together with individuals, institutional investors and financial institutions and other professional parties involved in the mining and natural resources industry with: –

- Capital Raising - equity, debt and loan financing
- Mergers & Acquisitions
- Public Market Offers
- Mining Agreements
- IPO's and pre IPO enquiries
- IP protection
- Establishment of operations in Hong Kong and the PRC

# Capital raising – Advising Mineral & Natural Resource Companies

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Charltons is committed to assisting mineral companies to put in place the most suitable investment structure to accommodate their development plans. Charltons advises on the following: -

- Placings to existing shareholders (where option is available).
- Share sale / subscription agreements and shareholder agreements.
- Injection of PE capital via both incorporated and unincorporated joint ventures.
- Where applicable the drafting and/or review of “off-take” agreements.
- Due Diligence.
- The preparation of information memoranda or other investor “teasers” .



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## Capital Raising – Advising Investors

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Charltons is experienced in acting for private equity and institutional investors. We understand their objectives and the risk minimization strategies they employ in relation to: -

- The cyclical nature of commodity demand
- Unpredictability surrounding exploration and production costs
- Access to transport infrastructure, management, and labour
- Changing national regulations
- Geo-political concerns
- Local inflation
- Environmental compliance
- Currency volatility

## Capital Raising – Advising Investors (Cont'd)

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Charltons is experienced in acting for private equity and institutional investors. We understand their objectives and the risk minimization strategies they employ in relation to (cont'd): -

- Risks associated with sustainability and mine-rehabilitation
- Geographic remoteness
- Community relations
- Longer investment horizon

At Charltons we understand the factors that influence mining investors and are experienced in advising on the legal safeguards that should be put in place to protect them. We assist investors balance the goals of risk minimization and profit maximization.

# Capital Raising – Advising Investors (Cont'd)

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## Selected Legal Services

- Due diligence
- Placings to existing shareholders (where option is available)
- Drafting share sale / subscription agreements and shareholder agreements
- IP protection where investor / farm-in party contributes IP
- Injection of PE capital via both incorporated and unincorporated joint ventures
- Where applicable the drafting and/or review of “off-take” agreements
- Exit strategies (including Hong Kong IPOs)
- Representing PE investor as shareholder

# Capital Raising – Advising Investors (Cont'd)

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## Selected Legal Services (cont'd)

- Advising the PE investor's board representative (where applicable)
- Putting in place corporate governance policies and practices to protect investor / investment
- Conflicts of interests with the invested company
- Freedom to transfer interests
- Investor rights
- Anti-dilution provisions
- Tag / drag along rights
- Borrowing and charges
- IP transfers



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## Capital Raising – Advising Lenders

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We are experienced in advising lenders on the legal aspects of mining project financing, including senior, mezzanine, subordinated and convertible debt together with more traditional corporate debt financing arrangements. We can also advise on bridge financing and other credit facility arrangements and assist listed and private companies and financial institutions on debt purchases. Our services include advising on: -

- Proposed project structure (including where applicable SPVs established to facilitate debt arrangement)
- Primary financing documents
- Due diligence
- Provision of security and/or reviewing or drafting security documents as required
- Insurance arrangements and review of insurance documentation

## Capital Raising – Advising Lenders

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- The legal aspects of life of mine plans and development plans.
- Hedging arrangements.
- Off-take agreements, infrastructure agreements, construction agreements, equipment agreements, operating agreements, maintenance agreements, and product purchase agreements.

# Capital Raising – Deal Highlights

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## Highlights for transactions with a **debt / loan financing component**

- Advising Zijin Mining Group Co., Ltd (“Zijin”) – a Hong Kong and Shanghai listed miner – on its acquisition of Norton Gold Fields Limited, an ASX-listed gold miner, included reviewing the bid implementation deed, an AUD\$38 million loan agreement and the ASX announcement from a Hong Kong legal perspective together with drafting Zijin’s public announcement in Hong Kong.
- Advising EIG Global Energy Partners on their postponed Chapter 21 – “Investment Vehicle” (Fund) listing in Hong Kong. Our work included drafting relevant sections of the prospectus, advising on pre-IPO restructuring, advising on a loan amendment negotiation and successfully completing an “Investor Advisor” licencing application with the SFC.
- Advising one of Australia’s largest iron ore producers on a range of project financing options – work included preparation for a Hong Kong listing (postponed at the A1 filing stage), including prospectus drafting together advices on restructuring and pre-IPO capital raising. Presently providing on-going advice in relation to a private debt /equity fund raising worth approximately US \$3.6 billion.
- Advising Zijin on the sale by its wholly owned subsidiary Golden Lake Mining (BVI) Limited of convertible bonds in Glencore Finance (Europe) S.A. to Morgan Stanley & Co. International PLC.

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## Capital Raising – Advising Borrowers

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We are experienced in advising sponsors and borrowers on the legal aspects of mining project financing. We have advised some of the leading PRC and international natural resource companies on their debt offerings. We are also always happy to help junior miners, who may be unfamiliar with the debt financing option, better understand the process so they can make the right choice as to what financing model best suits them. Among other things, Charlton's assists borrowers with the following: -

- Drafting and/or reviewing primary financing documents.
- The provision of security and/or reviewing or drafting security documents as required.
- Coordinating the due diligence process on behalf of the miner borrower.
- Reviewing and/or drafting off-take agreements, infrastructure agreements, construction agreements, equipment agreements, operating agreements, maintenance agreements, and product purchase agreements.



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## Capital Raising – Advising Borrowers (Cont'd)

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We are experienced in advising sponsors and borrowers on the legal aspects of mining project financing. We have advised some of the leading PRC and international natural resource companies on their debt offerings. We are also always happy to help junior miners, who may be unfamiliar with the debt financing option, better understand the process so they can make the right choice as to what financing model best suits them. Among other things, Charlton's assists borrowers with the following (cont'd): -

- Equity contributions (where the financing model combines both debt and equity)
- The legal aspects of life of mine plans and development plans
- Hedging arrangements
- The Listing Agreement (where applicable)
- Options, warrants, and similar rights
- Convertible debt securities

# Mergers and Acquisitions

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We are frequently retained by major domestic and international mineral companies, financial institutions and leading international law firms to provide strategic counsel in M&A transactions. We advise on:-

- Takeovers, mergers and acquisitions in both private and public markets
- Due diligence investigations
- Management/leveraged buyouts
- Privatisations
- Group restructurings and reorganisations
- Corporate finance and structuring

# Mining Due Diligence – Some Key Considerations

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Charltons is experienced in coordinating the legal due diligence process for miners contemplating an acquisition. We work closely with local lawyers, geologists and independent technical experts to help miners manage the due diligence process

- Mine Retirement / Mine Rehabilitation
- Mine Inventory
- Mining Equipment
- Customers & suppliers
- Risk Factors
- Foreign Investment



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## Deal Highlights

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- Advised Zijin on its acquisition of Commonwealth & British Minerals Plc., a wholly-owned subsidiary of Avocet mining Plc. The target company owned significant gold assets in Tajikistan.
- Advised Zijin in relation to the acquisition of KazakhGold Group Ltd., a company listed in the U.K.
- Advised Golden Resource Mining (BVI) Limited, a wholly owned subsidiary of Zijin on its off-market cash takeover bid for all the issued share capital of Indophil Resources NL, an Australian publicly-listed company with copper-gold projects in the Asia-Pacific region.
- Zijin on its acquisition of Kyrgyz and Kazak gold assets from Summer Gold.
- Advised Zijin on its acquisition of certain Iranian assets owned by Rio Tinto Mineral Development Limited pursuant to an international auction process.



## Deal Highlights (cont'd)

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- Advised Hunan Nonferrous Metals Corporation Limited on a proposed A-Share issue.
- Advised Zijin Mining Group Co., Ltd on its acquisition of Long Province Resources Limited which holds various gold exploration interests in the PRC.
- Advised Zijin Mining Group Co., Ltd on its proposed acquisition of copper-molybdenum interests in Peru held by a wholly owned subsidiary of Inca Pacific Resources Inc., a TSX and Lima listed miner.
- Advised a PRC consortium company, Xiamen Zijin Tongguan Investment Development Company Limited, in relation to a cash offer to acquire Monterrico Metals Plc, an AIM-listed miner with copper assets in Peru (first ever Chinese takeover of a UK listed company).
- Advised CST Mining Group Limited - a Hong Kong listed miner - on its disposal of CST Resources Limited which holds 70% interest in one of the largest recent copper discoveries in Southern America.

# Advising Mining Companies – Mining Agreements

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Charltons advises mineral companies on a wide variety of mining related agreements including: -

- Infrastructure agreements
- Mining service agreements – mining operations, mineral handling haulage and loading, general service obligations, safety management, environmental management, tailings management, rehabilitation, management mine water management
- Off-take / take or pay agreements
- Farm-in / farm-out agreements
- Consultancy contracts
- Asset sale and purchase agreements
- Royalty agreements
- Exploration and development joint venture agreements

# Julia Charlton

## Julia Charlton – Partner

- ▶ Julia, LL.B (1st class Honours), A.K.C (Kings College, London) was admitted as a solicitor in England & Wales in 1985 and has practised as a solicitor in Hong Kong since 1987.
- ▶ Julia is a member of the Listing Committee of the Stock Exchange of Hong Kong Limited and the Takeovers Panel and the Takeovers Appeal Panel of the SFC.
- ▶ Julia was named a “**Leading Lawyer**” by Asia Law & Practice for the years 2002, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015.
- ▶ Julia was named a “**Leading Advisor**” by Acquisition International for 2013.
- ▶ Julia was also named the “**Capital Markets Lawyer of the Year – Hong Kong**” in the Finance Monthly Global Awards 2014.
- ▶ Julia has extensive experience in China work and is a Mandarin speaker.



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