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# HKEx Consults On New Listing Rules For Mineral And Exploration Companies

## Introduction

The Stock Exchange of Hong Kong Limited (the **Exchange**) published a consultation paper on 11 September 2009, setting out its proposals to update Chapter 18 of the Main Board Listing Rules for companies involved in natural resource exploration, extraction or production (**Consultation Paper**).

The proposals follow an extensive review of the Listing Rules in consultation with technical experts in the mineral and oil and gas fields. The proposals are aimed at aligning the Listing Rules' requirements for resources companies with international best practices in order to further promote Hong Kong as a major international listing and fund raising centre for natural resource companies. Resource companies have become an increasingly important sector for the Exchange and metals and mining related companies, in particular, have emerged as the primary source of IPO fund raising on the Exchange in 2009. The dual listing of Metallurgical Corporation of China, the state owned construction company, on the Hong Kong and Shanghai stock exchanges raised a total of US$5.12 billion and was the world's second largest IPO to date this year. The listings of aluminium producer, China Zhongwang, and Real Gold Mining, which together raised US$1.39 billion in the first half of 2009, also helped position the Exchange second among world stock exchanges in terms of number of IPOs (14) and funds raised (US$2.5 billion) for the year to 30 June 2009.

The principal proposals include:

* Revised eligibility requirements for mineral and exploration companies applying to list. The Consultation Paper proposes a new definition of a **Mineral and Exploration Company**, being one whose "**principal activity** (whether directly or through its subsidiaries) involves the exploration for or extraction of natural resources (including minerals, oil and gas or solid fuels)." A "principal activity", will be one representing 25% or more of the company's assets, gross revenue or operating expenses. New applicant Mineral and Exploration companies will also need to demonstrate that they have sufficient working capital for 125% of their budgeted needs for the next 12 months;
* A Mineral and Exploration Company which is unable to meet the financial track record requirements of Listing Rule 8.05 may be eligible for listing if its board and senior management, together, have at least 5 years experience relevant to the mining and or exploration activity that the applicant is pursuing. Companies that have not yet commenced production will be required to outline their implementation plans to production citing indicative dates and costs.
* New applicant Mineral and Exploration companies will be required to include in their prospectuses reports by independent experts on their reserves and resources under internationally recognised codes. Exploration stage companies will be eligible for listing provided that they have mineral or oil and gas resources which are identifiable under an acceptable reporting standard. The Exchange does not however propose to allow the listing of early stage exploration companies (i.e. those that have not yet determined the existence of resources).
* Specific continuing disclosure obligations for listed Mineral and Exploration companies;
* Specific disclosure requirements for listed companies entering into major transactions or above involving mineral and/or exploration assets. Existing listed companies involved in the resources sector will only be treated as Mineral and Exploration companies if they acquire mineral or exploration assets by a transaction constituting a major transaction or above after the proposals come into effect; and
* A requirement for listed companies to update annually previously published statements on reserves and resources, if any.

The Consultation Paper is available by clicking [*here*](http://www.hkex.com.hk/consul/paper/cp200909m_e.pdf) or on the Exchange's website at [http://www.hkex.com.hk/consul/paper/cp200909m\_e.pdf.](http://www.hkex.com.hk/consul/paper/cp200909m_e.pdf)

Responses should be made by completing and returning the Exchange's questionnaire before **11 November 2009**. The questionnaire is available [*here*](http://www.hkex.com.hk/consul/paper/cp200909mq_e.doc) or on the Exchange's website at <http://www.hkex.com.hk/consul/paper/cp200909mq_e.doc>.

## Background

Resources companies are making up an increasingly significant share of the total market capitalisation of the Exchange and currently account for around 15% of the Exchange's total market capitalisation. Given the growing number of natural resource companies seeking to list and the increase in merger and acquisition activity by listed companies wishing to gain exposure to the resources sector, an update of Hong Kong's regulatory framework is considered warranted. Market practitioners and industry experts have expressed the view that the current rules lack clarity in comparison to international standards, and that clarification should be made on:

1. the definitions of mineral and oil and gas resources and reserves;
2. the qualifications and experience required of technical experts; and
3. the standards for reporting estimates of resources and reserves.

## International Reporting Regimes

The Exchange has looked at the regulatory requirements governing Mineral and Exploration Companies in other relevant jurisdictions including Australia, Canada, China, South Africa, the UK and the US. It also reviewed the various reporting regimes for Mineral and Exploration Companies including the following:

1. The following four codes that are generally accepted by the international mining industry and are generally referred to as 'JORC-type' codes or CRIRSCO family codes, including:
	* The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the **JORC Code**);
	* The (Canadian) Standards of Disclosure for Mineral Projects, including Form 43-101F1 (**NI 43-101**);
	* The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (the **SAMREC Code**); and perhaps to a lesser extent,
	* The Code for Reporting of Mineral Exploration Results, Mineral Resources and Mineral Reserves (the **European Reporting Code**).
2. The U.S. Securities and Exchange Commission's Industry Guide 7; and
3. Those used by government bureaus of mines and/or geological surveys such as:
	* the Russian standard system used for classification of mineral reserves and resources which was developed by the GKZ (the Russian State Commission on Mineral Reserves); and
	* the United Nations Framework Classification for Fossil Energy and Mineral Reserves and Resources, which the Chinese mining and oil and gas classification systems are currently based on.

	The following reporting standards for oil and gas reserves and resources are mainly based on the Petroleum Resources Management System (**PRMS**) published by the Society of Petroleum Engineers/World Petroleum Council/American Association of Petroleum Geologists/Society of Petroleum Evaluation Engineers (respectively, **SPE/WPC/AAPG/SPEE**) in March 2007:
	* The (Canadian) Standards of Disclosure for Oil and Gas Activities (**NI-51-101**)
	* United States Securities and Exchange Commission (SEC) Release No. 33-8995, Modernization of Oil and Gas Reporting, issued on 31 December 2008 (to be implemented on 1 January 2010 - the **SEC's Oil and Gas Disclosure Rules**).

## Exchange's Proposals

The Exchange's proposals can be grouped under the following principal headings:

1. Additional Eligibility Requirements for New Applicant Mineral and Exploration Companies;
2. Disclosure (General) Obligations;
3. Disclosure (Technical Reporting) Standards;
4. Continuing Obligations (for companies treated as Mineral and Exploration Companies and existing listed issuers engaging in mineral and/or exploration activity);
5. Social and Environmental Standards; and
6. Eligibility of Exploration Companies.

### 1. Additional Eligibility Requirements For New Applicant Mineral And Exploration Companies (Chapter 3 Of The Consultation Paper)

#### 1.1 Proposed Definition of Mineral and Exploration Company

The Exchange proposes new eligibility requirements which a new applicant Mineral and/or Exploration Company will have to meet in addition to the basic requirements for listing under Chapter 8 of the Listing Rules. The proposed definition of a **Mineral and Exploration Company** is one whose "principal activity (whether directly or through its subsidiaries) involves the exploration for or extraction of natural resources (including minerals, oil and gas or solid fuels)."

Whether an activity constitutes a principal activity would be determined by whether the activity represents 25% or more of the company's assets, gross revenue or operating expenses. Existing listed issuers who are engaged in the resources sector will not be automatically categorised as a Mineral and Exploration Company unless they complete a major transaction (or above) to acquire mineral or exploration assets after the Exchange's proposals come into effect.

#### 1.2 Proposal 3A: Rights Relevant to Exploration and/or Extraction and Control of Assets

The Exchange proposes that a new applicant Mineral and Exploration Company must also be able to demonstrate that they have adequate rights to actively participate in the exploration or exploration and extraction of resources, either by having controlling interests in a majority (by value) of the assets in which they have invested or through other rights, which give them significant influence in decisions over the extraction of those resources. The Exchange recognises that companies often engage in mineral and/or exploration activity under joint venture agreements, product sharing contracts or specific government mandates. It therefore proposes to allow applicants to rely on adequate agreements where a third party possesses relevant rights in order to meet this eligibility requirement on a case-by-case basis.

In the case of companies that have not obtained rights to extract relevant reserves, the Exchange proposes that such companies should be required to disclose details of how they plan to proceed to extraction and to state risks relevant to obtaining relevant rights.

#### 1.3 Proposal 3B: Cash Operating Costs and Working Capital Requirements

New applicants will be required to:

* Demonstrate that they have sufficient working capital for 125% of their budgeted working capital needs for the next 12 months. The Exchange comments that working capital statements beyond 12 month periods involve a degree of uncertainty with the result that accountants may be unwilling to provide comfort that these statements are made on a reliable basis. Rather than extend the working capital period, the Exchange prefers a requirement for a buffer of 25% to allow for contingencies which may be required if production or exploration costs exceed initial estimates, as is often the case.
* Provide relevant disclosure of cash operating costs and working capital. Estimates of cash operating costs would include those of: (i) workforce employment; (ii) consumables; (iii) power, water and other services; (iv) on and off-site administration; (v) environmental protection and monitoring; (vi) transport; (vii) non-income taxes, royalties and other governmental charges; and (viii) contingency allowances. This definition of operating costs was sourced from the Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports (at paragraph 91).
* Disclose their operating cash cost per appropriate unit for the mineral(s) and/or oil and gas produced.

The overall aim of the above proposals is to provide investors with the information as to companies' business models, operating costs and sufficiency of working capital which will be relevant to their investment decision.

#### 1.4 Proposal 3C: Alternative Eligibility Requirements for new applicant Exploration Companies and Mineral Companies that cannot meet the financial track record requirements under Listing Rule 8.05

If a new applicant Mineral and Exploration Company cannot meet the financial track record requirements under Listing Rule 8.05, it must demonstrate that:

* Its board and senior management, together, have adequate experience that is relevant to the mining and/or exploration activity that the applicant is pursuing. Individuals that are relied on, must have at least 5 years of relevant experience. The requirement under the current Listing Rules is for 3 years' experience in mining and/or exploration for companies seeking a waiver of the Rule 8.05 financial track record requirements.

Chapter 8 of the Consultation Paper discusses the requirements for exploration stage companies to be eligible for listing (See "Eligibility of Exploration Companies" at part 6 below).

### 2. Disclosure (General) Obligations (Chapter 4 Of The Consultation Paper)

#### 2.1 Proposal 4A: Requirement that Technical/Competent Persons' Reports be prepared by independent Competent Persons

Where technical reports or Competent Persons' Reports (**CPRs**) are required under the proposals, the Exchange proposes that:

1. those technical reports and valuations required by the Listing Rules must be prepared by independent Competent Persons; and
2. Competent Persons must take overall responsibility for the reported reserve evaluation

#### 2.2 Eligibility Requirement for Competent Persons

A Competent Person will be required to:

1. have at least 5 years experience relevant to the style of mineralization and type of deposit under consideration or to the type of oil and gas exploration, reserve estimate, and to the activity which that person is undertaking;
2. be professionally qualified and a member in good standing of a Recognised Professional Organisation (**RPO**) that upholds professional standards and ethics, and has disciplinary powers, including those of suspension and expulsion. An RPO is an association which: (i) admits individuals according to their academic qualifications and experience; (ii) requires compliance with professional standards of competence and ethics established by the organisation; and (iii) has disciplinary powers, including the power to suspend or expel a member. Whereas some international mining (including Australia, Canada and, more recently, South Africa) maintain lists of RPOs, other jurisdictions, including London, do not have a list of RPOs and rely instead on an external expert's review to establish that a report has been properly prepared under the relevant code by a suitably qualified individual. The Exchange will not formulate its own list of RPOs. It proposes instead to follow London's approach and will require an external expert to review prospectuses or circulars to establish that a report has been properly prepared under the relevant code by an independent Competent Person.
3. be independent which will require that the expert retained and his/her associates (as defined in the Listing Rules) must have no economic or beneficial interest (present or contingent) in any of the mineral or petroleum assets being determined or valued, or any association with the listing applicant. In addition, the expert's remuneration must not depend on the outcome of the report. This definition of independence is taken from those in the Canadian Institute of Mining guidelines and the Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports (the **VALMIN Code**).
4. be registered in a jurisdictions where the statutory securities regulator has adequate arrangements with the SFC for mutual assistance and exchange of information for enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong. This requirement could be satisfied either by the relevant country being a party to the IOSCO Multilateral Memorandum of Understanding or an adequate bi-lateral agreement with the SFC.

#### 2.3. Proposal 4B: Age/Currency of the CPR

The Exchange proposes that CPRs must:

1. have an effective date less than 6 months before the publication date of the prospectus or circular;
2. be updated before publication if further material data becomes available before the effective date;
3. include an up-to-date no material adverse change statement; and
4. disclose risk factors and present them with a risk analysis (classifying each risk according to the degree or consequence of the risk and its likelihood) in the format set out in Appendix 1 of the Consultation Paper.

### 3. Disclosure (Technical Reporting) Standards (Chapter 5 Of The Consultation Paper)

There are significant differences between the exploration for, development and production of solid minerals, and, oil and gas. The Exchange therefore proposes to adopt two distinct sets of disclosure standards.

### Mineral Reporting Standards

#### 3.1 Proposal 5A: Accepted Technical Reporting Standards

Where CPRs are required under the proposals, the Exchange proposes to:

* accept the three main JORC-type codes for the presentation of information on resources and reserves, that is the JORC Code, NI 43-101 and the SAMREC. Non-compliance or departure from best practice under the codes must be accompanied by technical and economic reasons as to why the relevant practice or standard is inapplicable; and
* to require reconciliations to one of these codes where information is presented in accordance with Russian or Chinese standards until those standards have achieved widespread international recognition or until efforts at revising them to make them more compatible with the CRIRSCO or JORC-type codes are sufficiently advanced.

#### 3.2 Proposal 5B: Estimates of Mineral Reserves to be Supported y a Pre-feasibility Study

The Exchange proposes that estimates of mineral reserves must be supported by a pre-feasibility study, the definition of which will be based on the definitions set out in the SAMREC Code and NI 43-101.

#### 3.3 Proposal 5C: Requirement that Information on Mineral Resources and Mineral Reserves should not be Combined

* The Exchange proposes that mineral resources and mineral reserves must not be combined because mineral reserve estimates include diluting materials and allowances for losses, which may occur when the material is mined. Mineral resource estimates, on the other hand, are the in-situ material (and may include some economically unmineable material). If companies added them together, the results could provide a more favourable projection of their prospects;
* It is also proposed that mineral resources should only be included in economic analyses if they are appropriately discounted for the probabilities of their conversion to reserves. The basis on which resources are considered to be economically extractable would also have to be stated if they are included in economic analyses. The Exchange considers this to be appropriate as a major risk associated with resources is whether they will be converted and the losses that will arise on conversion.

#### 3.4 Proposal 5D: Disclosure on Commodity Prices (hard minerals)

The Exchange proposes that:

* an explanation must be given of the methods used to determine the commodity prices used in pre-feasibility and feasibility-level studies and valuations of reserves and resources, together with a statement of the basis on which such prices represent reasonable views of future prices. If a contract for future prices exists (for precious or base metals), the contract price must be used; and
* companies must also present sensitivity analyses to higher and lower prices in their valuations of reserves and profit forecasts.

### Oil And Gas Reporting Standards

#### 3.5 Proposal 5E: Oil and Gas Reporting Framework

The Exchange proposes to adopt the Petroleum Resources Management System (**PRMS**) as the oil and gas resources and reserves reporting framework with modifications. Both the SEC and the Canadian standards are based on PRMS.

#### 3.6 Proposal 5F: Disclosure and Presentation of NPVs for Reserves

The Exchange's proposals are as follows:

* The Proved and Proved plus Probable Reserves will be required to be presented as New Present Values (**NPVs**) on a post-tax 'unrisked' basis at varying discount rates, including a reflection of the weighted average cost of capital or minimum acceptable rate of return applicable to the entity at the time of the evaluation.
* Proved Reserves and the Proved plus Probable Reserves must be analysed separately and the principal assumptions (prices, costs, exchange rates and effective date) must be stated in all cases.
* The estimates of NPVs of reserves must be presented using a forecast price as a base case but must also include a sensitivity analysis using a constant price, represented by the unweighted arithmetic average of the closing price on the first day of each month within the 12 month period prior to the end of the reporting period, unless prices are defined by contractual arrangements. This Rule will be modified for companies which have dual listings in Hong Kong and the U.S. and are subject to the SEC's Oil and Gas Disclosure Standards. Those companies would be allowed to present estimates of reserves using the constant price as the base case, provided that they disclose a sensitivity analysis on the forecast case scenario.

#### 3.7 Proposal 5G: Disclosures of Estimated Volumes of Oil and Gas Resources

The Exchange proposes to permit disclosures on estimated volumes of oil and gas resources, provided that relevant risk factors are clearly stated.

#### 3.8 Proposal 5H: Disclosures of Economic Values attached to Resources

Economic values may not be attached to Contingent or Prospective Resources.

#### 3.9 Proposal 5I: Competent Persons for Oil and Gas CPRs

* The Exchange's proposed definition of a **Competent Person** is someone with at least 5 years experience relevant to the type of oil and gas exploration, reserve estimate, and to the activity which that person is undertaking. A Competent Person must be professionally qualified, and a member in good standing of an RPO that upholds professional standards and ethics, and has disciplinary powers, including those of suspension and expulsion.
* Oil and Gas CPRs must be prepared by independent Competent Persons and must cover the items listed in Appendix II at pages 57 to 60 of the Consultation Paper.

#### 3.10 Proposal 5J: Valuation Codes

* If valuations of natural resources properties are prepared in connection with the presentation of estimates on resources and reserves, they must be prepared in accordance with one of the following valuation codes:
	1. Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports (the **VALMIN Code**);
	2. the South African Code for the Reporting of Mineral Asset Valuation (the **SAMVAL Code**); or
	3. the Standards and Guidelines for valuation of mineral properties endorsed by the Canadian Institute of Mining, Metallurgy and Petroleum (the **CIMVAL Code**).
* In order to perform valuations, a Competent Person must: (i) have at least 10 years of relevant and recent general mining or petroleum experience as appropriate; (ii) have at least 5 years of relevant and recent experience in the assessment and/or valuation of mineral or petroleum assets or securities, as appropriate; (iii) hold appropriate licences; (iv) be independent; (v) be professionally qualified; and (vi) be a member in good standing of an RPO.
* The Exchange proposes that the question of whether or not a valuation is required should be determined by the independent Competent Person and the company's management.

### 4. Continuing Obligations For Companies Treated As Mineral And Exploration Companies And Existing Listed Issuers Engaging In Mineral And/Or Exploration Activity (Chapter 6 Of The Consultation Paper)

#### 4.1 Proposal 6A: Requirement for CPRs and Statements on Reserves

The Exchange's proposals are as follows.

* In addition to complying with other relevant requirements of the Listing Rules, Mineral and Exploration Companies would be required to produce CPRs on assets that are to be acquired or disposed of in connection with transactions for the acquisition or disposal of resources and/or reserves which require shareholder approval (i.e. transactions which are classed as "major" or above under Chapter 14 of the Listing Rules). These CPRs would have to be presented to shareholders in the circulars sent to them ahead of the proposed general meeting.
* Listed issuers entering into acquisitions for resources and/or reserves classed as major or above would also be required to produce CPRs.
* The Exchange may dispense with the requirement for CPRs on relevant transactions if detailed information on reserves and resources, in accordance with the Exchange's approved mineral and/or oil and gas codes, is already in the public domain.
* Listed issuers that have previously published details of reserves and resources will be required to update such statements once a year in their annual reports. Statements of no material change will be acceptable for this purpose and there will be no need to prepare a CPR. This should allow such statements to be prepared by the company's internal management.
* Mineral and Exploration Companies will be required to provide details of exploration, mining production and development activities and details of expenditure on these activities in their interim (half-yearly) and annual reports.

#### 4.2 Proposal 6B: Disclaimers in CPRs (also applicable to CPRs for New Applicants)

The Exchange proposes to:

* prohibit blanket disclaimers in technical reports;
* disallow material indemnities in favour of the Competent Person or entity that prepared the report; and
* permit disclaimers for sections/topics in the report in which the Competent Person relied upon other experts' opinions.

The Exchange considers it appropriate to limit disclaimers in CPRs and anticipates that they will be reviewed on a case-by-case basis in prospectuses and circulars requiring shareholder approval.

### 5. Social And Environmental Standards (Chapter 7 Of The Consultation Paper)

Mineral and Exploration Companies will be required to consider and provide disclosure on the following matters, where material to their business operations:

* The nature of the prospecting or exploration right and mining right;
* Project risks arising from environmental, social and health issues;
* NGO impact on sustainability of mineral and/or exploration projects;
* Compliance with host country laws, regulations and permits;
* Determined secondary impacts associated with the proposed activities;
* Provision of suitable funding for management operational measures and for closure of the facilities in an acceptable and sustainable manner;
* Environmental liabilities of the project or property;
* Details of the company's historical experience of dealing with host country laws and practices, including management of differences between national and local practice, details of operational risks and management arrangements;
* Details of the company's historical experience of dealing with concerns of local governments and communities on the sites of its exploration properties and relevant management arrangements; and
* Details of any native claims that may exist to the land on which exploration activity is carried out.

The Exchange has noted that none of the other jurisdictions reviewed had endorsed specific social and environmental disclosures. However, some have set internal guidelines on social and environmental issues.

### 6. Eligibility Of Exploration Companies (Chapter 8 Of The Consultation Paper)

#### 6.1.

As already discussed, the Exchange's proposed definition of Mineral and/or Exploration Company will require the exploration for or extraction of natural resources (whether minerals, oil and gas or solid fuels) to represent at least 25% of the company's assets, gross revenue or operating expenses. The 25% threshold will be consistent with the CPR requirements and determines whether a transaction is "major" and requires shareholder approval.

#### 6.2

It further proposes to amend Chapter 18 to allow listings of Mineral and Exploration Companies that have mineral or oil and gas resources that are identifiable under the proposed reporting standards. For oil and gas companies, this will mean "Contingent Resources" as defined under PRMS, and not "Prospective Resources". Mineral companies are currently required by Chapter 18 to demonstrate the existence of "adequate economically exploitable reserves".

The requirement for identified resources will mean that early stage exploration companies which have not yet determined the existence of resources will not be eligible for listing. Given the higher investment risks associated with early stage exploration companies and that investor knowledge in the mining sector may be less well developed in Hong Kong than in other jurisdictions, the Exchange considers such companies to be unsuitable for listing.

According to the SPE Petroleum Resources Management System Guide for Non-Technical Users [[1]](#footnote-58) ([see archive](PRMS_guide_non_tech.pdf)), "contingent resources" are less certain than reserves. They are resources that are potentially recoverable from known accumulations, but are not yet considered mature enough for commercial development due to technological or business hurdles. For contingent resources to move into the reserves category (which are commercially recoverable and have been justified for development), the key conditions, or contingencies, that prevented commercial development must be clarified and removed. As an example, all required internal and external approvals should be in place or determined to be forthcoming, including environmental and governmental approvals. There also must be evidence of firm intention by a company's management to proceed with development within a reasonable time frame (typically 5 years, though it could be longer).

"Prospective resources" are estimated volumes associated with undiscovered accumulations. These represent quantities of petroleum which are estimated to be potentially recoverable from oil and gas deposits identified on the basis of indirect evidence but which have not yet been drilled. This class represents a higher risk than contingent resources since the risk of discovery is also added. For prospective resources to become classified as contingent resources, hydrocarbons must be discovered, the accumulations must be further evaluated and an estimate of quantities that would be recoverable under appropriate development projects prepared.

#### 6.3

New applicant Mineral and Exploration Companies will be required to include CPRs on their portfolios of reserves and resources in their prospectuses. Those that have not commenced production will have to disclose their plans to proceed to production by indicating the relevant dates and costs. New Mineral and Exploration Companies which have resources (but not reserves in accordance with an accepted standard) will further be required to include a prominent warning statement to investors that such resources may not ultimately be extracted at a profit.

*The purpose of this note is to provide a summary only of the proposals and other information set out in the Hong Kong Stock Exchange's "Consultation Paper on New Listing Rules for Mineral and Exploration Companies (September 2009)". Its contents do not constitute legal advice and specific advice should be sought in relation to any particular situation.*

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1. SPE Petroleum Resources Management System Guide for Non-Technical Users (2007) <http://www.spe.org/industry/docs/PRMS_guide_non_tech.pdf> [↑](#footnote-ref-58)