



The BVI Advantage: Musings on Mining Indaba

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Every day, almost everything we come into contact with owes its existence to something that has been mined or extracted out of the earth. Most of the dramatic advances of humankind – the Stone Age, Iron Age, industrialisation, the microchip and the lithium battery – are also linked to our increased ability to extract and utilise natural resources. These are not my musings but the musings of experienced miners.

In February I attended the 30th iteration of the annual African Mining Indaba, a now-grand affair held in the sensationally beautiful city of Cape Town each year. It attracts over 8,500 delegates, including miners, investors, government officials, geologists, mining service providers, mining equipment manufacturers (amongst others) and us lawyers who are ever keen to advise on transactions in the natural resources space. It's a fiercely busy few days spent connecting with old friends and existing contacts and making new ones over one too many drinks receptions! All the while learning about the sector; what is driving it, where it is headed and what current issues and obstacles need to be overcome or addressed. It's a fascinating space; especially for this offshore lawyer who once dreamed of being an exploration geologist.

A highlight for me is always attending the hour long talk given by Robert Friedland, Founder and Executive Co-Chairman of Ivanhoe Mines and I-Pulse (the latter being an innovative tech disruptor in the energy sector). He has attended and addressed every Indaba and I have enjoyed listening to him for the past 14 years or so. Robert has mined in more countries than most people can name and shares his experiences and insights with wit, enthusiasm, optimism and an occasional bit of salty scepticism. *Will we meet the electrification targets for 2040? Apparently we have to mine more copper between now and then than has ever been mined in human history. There is no shortage of lithium reserves, it's just that 70% or more of the reserves are currently inaccessible. How many lithium batteries do we need by 2040? Where is lithium priced currently?*

Much of the natural resources of our planet are consumed and utilised by the leading economies. Much of those needed natural resources are located within the emerging markets that are often strained by geo-political issues, conflict and other risk factors that make it more difficult to conduct business and attract necessary investment. As an offshore lawyer there is nothing I can do about those risk factors. But what I have experienced in my near 20 years of practicing BVI law is that a BVI company and the BVI's progressive corporate laws can be used to mitigate corporate risk thereby improving project viability.

While enjoying a much needed coffee at an Indaba breakfast event it was interesting to hear a seasoned mining lawyer remark that the use of a BVI Company in the natural resources sector was previously the fashion but is used less frequently now. He explained how he found this disappointing because, in his view, the BVI Companies Act is the best corporate legislation he has ever worked with. He is hoping the fashion trend reverts, as am I.

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His comments prompted me to offer this reminder of what I like to call the BVI Advantage. Multinational investors will not risk investing in a foreign market unless the prospects of success are reasonable and the legal structure is sufficient to protect the investment. The primary motivation to use the BVI is not tax driven but rather (and more importantly) to achieve a structural advantage that delivers management control and access to new markets while treating all investors equally or as commercially agreed. This structural advantage increases project viability through investment protection and helps transactions succeed.

The "BVI Advantage" includes:

- Progressive legislation that evolves with business demands
- Commercially focused, responsible and sensible corporate governance
- Effective corporate structuring through unrivalled corporate flexibility
- Effective exit strategies
- Credible and efficient dispute resolution
- Transaction fluency achieved through skill set, expertise and professionalism
- Tax neutrality that ensures investor equality

Should you be minded to enquire how a BVI Company and the use of BVI corporate law could assist your next project please do get in touch.

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