Mining & Metals
White & Case
Low commodity prices, depressed demand and oversupply, currency volatility and ongoing uncertainty around the pace of global economic recovery, are forcing a sustained period of distress that is rippling through the mining and metals industry.

Some commentators are calling the bottom, others the upswing, and there’s an emerging view that the market might stabilize rather than recover.

Wherever we are in the cycle, companies must reshape its operations and adapt its strategy to survive and thrive.
At the start of 2016, the market showed signs of a rebound with a rally in copper and gold. Zinc jumped too and iron ore soared. But, this was met with severe skepticism from the industry.

Take iron ore for example. Over Q1 of 2016, the commodity rebounded 55% from record lows, following encouraging policy measures announced by Chinese authorities signalling stronger demand. But the mid-long term supply fundamentals have not changed. There is still a glut—the repercussions of investments made during the boom—exacerbated by new supply coming online into 2017 from mega projects. Some players predict that the iron ore supply-demand balance will be out of kilter well into the 2030s.

Looking across the spectrum of commodities, each bringing its own unique set of characteristics, it’s hard to ignore the harsh reality common to most… excess capacity has to be taken out of the market.

We have already seen a painful wave of smaller mining and metals companies going under. Many were born out of the boom, and sit higher on the cost curve than the giants (with fewer sites and less diverse portfolios) and are therefore more exposed to sharp price drops and sudden liquidity shocks.

Sustained low prices are also forcing companies to do deals they perhaps would not have contemplated otherwise.

We’re seeing a flood of quality asset sales to raise much needed capital, free up future cash commitments, streamline portfolios and strengthen debt positions. Even the majors are participating.

Some companies are making transformational moves, including strategically separating entire businesses.

Others are getting innovative, like forming joint ventures to create new ore blends to meet minimum market requirements and acquiring technology and specialty metal businesses to re-focus operations on more profitable end markets.

**An industry-focused approach**

Real industry expertise is our bedrock.

At our core, are lawyers who work exclusively on deals in the mining sector and have done for decades, including in-house at major, mid-cap and junior mining companies.

Not only do we understand the twists and turns of the sector, but we also anticipate its needs...because we have seen it all before.

We also know and track the players, assets, market trends and commodity fundamentals.

And we understand the technical side of the business... the underlying chemistry and geology and how mining works operationally, from pit-to-port.

In essence, we speak the right language.

**Completely comfortable on deals at all points in the cycle**

We understand that as the sector moves, our team needs to change with it. So, we are nimble.

Our team is shaped and reshaped to meet the needs of the industry. We can do this because we have dedicated mining lawyers who can bring in experts across legal practices as needed.

This means that no matter what deals are being done, we can deliver a team of lawyers who can seamlessly advise on the technical aspects of the transaction while keeping an eye on the industry.
At this point in the cycle, our team has transitioned to include lawyers from across our global network, who specialize in cross-border M&A (including distress M&A), restructurings and unconventional finance structures.

This is because we know that companies are taking assets off their balance sheets, analysing their exposures and options and looking for ways to circumvent “debt” restrictions in bond and bank docs as financial covenants are blown through forward sales, prepay, factoring and other structures.

We also know that companies are looking for value across the supply chain and are turning to bespoke offtake and trade finance arrangements, with financing moving closer to the product as lenders insist on taking over actual inventory.

A truly global team

The mining and metals sector is truly global. And so are we, with 37 offices worldwide spread across the Americas, Asia, Europe, the Middle East and Africa.

And with alluring opportunities in the industry, war chests are mounting globally—a lot of it yet to be spent—from activist investors, distress players, private equity firms and hybrid investment vehicles, which means our reach is now even more important.

We are also highly ranked in *Chambers* for regions important to the sector, including China, Latin America and Africa and advise in countries as diverse as Mongolia, Peru, Guinea, Kazakhstan and the Philippines.

So, wherever you do business, we can make sure the right team is with you.

“Solid track record demonstrated by First Tier ranking for Mining and Metals in Legal 500 for the past 10 years”
With you throughout the mining project life cycle...

**Project Matters**
- Exploration rights
- Compliant reporting of Mineral Resources and Reserves (JORC, NI 43-101, SAMREC, etc.)
- Ownership structure
- Country legal regime due diligence
- Anti-corruption, sanctions and other compliance matters

**Corporate and Capital Markets**
- Joint venture, options, earn-ins and earn-outs
- Equity capital raising
- Public and private M&A, including anti-trust and other compliance matters

**Pre-Feasibility and Feasibility**
- Environmental assessment
- Community assessment
Our global team at a glance

Lawyers with in-house experience gained from working within junior, mid-cap and major global mining companies, bringing valuable and diverse industry insight.

Lawyers who work exclusively in the sector—know and track the players, assets, trends and commodity fundamentals—and are completely comfortable steering all mining deals.

Extensive experience in emerging markets, major financial hubs and key mining regions.

Top-ranked practices in areas particularly relevant to the sector, including M&A, project development and finance, capital markets, restructuring, competition, anti-bribery and sanctions and disputes.

Track record across all of the G20 countries.

The only firm that is equally strong on both sides of the Atlantic.
When Glencore and Xstrata announced their merger back in February 2012, it rocked the mining industry—potentially uniting one of the world’s largest producers and traders of commodities and one of the largest mining companies globally.

It came as no surprise that competition authorities in the countries most affected would closely scrutinize the deal; particularly, China, given the influence it could wield over the supply of copper concentrate. China is the world’s leading consumer of copper concentrate and imports the majority of it. The Ministry of Commerce (MOFCOM) of the People’s Republic of China eventually agreed to the merger if they would part with Las Bambas, a highly prized asset in Xstrata’s portfolio. This hurdle was overcome with the sale of Las Bambas on July 31 2014.

The Las Bambas project is a world-class copper asset with prospective, near-mine in Cotabambas, Apurímac Region of Peru, with an estimated long mine life of more than 20 years and expected to produce more than two million tons of high-quality copper concentrate in its first five years of operation.

White & Case advised MMG Limited (MMG) and the MMG-led consortium—Guoxin International Investment Corporation Limited (22.5%) and CITIC Metal Peru Investment, Ltd. (15%)—on the US$7 billion acquisition. We advised MMG on the consortium shareholder arrangements and the consortium on the M&A, HKSE approvals and financing of the acquisition (including ongoing project development costs), through a combination of equity and long-term debt facilities from a banking syndicate arranged by China Development Bank.

We also advised on antitrust, construction law, corporate and tax structuring issues and applicable dispute resolution mechanisms and the implications of the China-Peru and Hong Kong-Peru investment treaties and China-Peru Free Trade Agreement.


A strategic move towards portfolio optimisation

With low commodity prices, Norilsk Nickel’s move to divest non-core assets via structured auction processes follows the trend in the mining and metals industry.

We advised Norilsk Nickel, a Russian nickel and palladium mining and smelting company, on the US$337 million sale of its operations in Africa to BCL Limited of Botswana—the largest in a series of asset disposals by Norilsk Nickel since it took the strategic decision to exit from non-core mining operations in 2013.

The sale included Norilsk Nickel’s 50% participation interest in the Nkomati Nickel and Chrome Mine in South Africa, the largest primary nickel and chrome mine in Africa, and 85% stake in Tati Nickel Mining Company in Botswana and also involved the complete renegotiation of the offtake arrangements for the Nkomati concentrate.

This will mark Norilsk Nickel’s full exit from its African business, which, together with earlier disposals of Australian assets, represents the complete exit from international operations marked for disposal.

In April 2015, Norilsk Nickel completed the sale transaction of its 85% stake in Tati Nickel Mining Company, completing the first leg of the transaction with BCL. The second leg of the transaction, the Nkomati sale, is targeted for completion in 2016.

For BCL, the transaction has strong strategic rationale and allows for the treatment of both Tati Nickel and Nkomati concentrates at BCL’s smelter, significantly optimising this operation and delivering increased economic and social benefits to the region as a whole.

This transaction showcases White & Case’s ability to deliver our combined expertise across mining & metals, Africa and cross-border M&A to the Norilsk Nickel team.
Breaking new ground

Gold Reserve

A landmark dispute in the gold sector

White & Case successfully represented Gold Reserve, a publicly listed Canadian mining company, in a long-running US$2+ billion ICSID arbitration against Venezuela under the Canada-Venezuela Bilateral Investment Treaty (BIT), relating to the expropriation of the Brisas Project, one of the world’s largest undeveloped gold/copper mines.

Gold Reserve’s principal asset was its rights to develop this gold/copper mining project in Venezuela—and the future of the company rides on its investment treaty claims.

Gold Reserve’s claims centered on Venezuela’s unreasonable delays in completing the permitting for construction of the mine followed by rescission, for pretextual reasons, of the project permits and mining licenses, resulting in the total deprivation of all rights to develop the project.

The tribunal found that the Venezuelan government had acted unlawfully in violation of the BIT in terminating the Brisas Project and awarded Gold Reserve over US$740 million in damages, representing the fair market value of the project development rights, interest and legal costs.

The arbitration took place under the auspices of the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) under the arbitration rules of its additional facility.

The award was unanimous and one of the highest awards in ICSID history.

This case opens the floodgates to a new wave of Venezuela disputes related to gold mining, turning on the application of public international law standards to a State’s nationalization program.

This representation highlights White & Case’s world-class expertise in handling the most complex and significant international arbitrations and builds on our strong track record of success in mining and metals and the broader natural resources space.
Vale, the major Brazilian mining company, has ambitious plans on the Nacala cross-border rail and port corridor project in Mozambique and Malawi.

It is estimated that a massive 90-km railway needs to be constructed and rehabilitated as part of this project. It also includes the construction of a new 201 km long rail line to connect Moatize mine in Tete to the existing railway line in Malawi at Nkaya Junction, the rehabilitation of the existing line in the Malawi rail network and in Mozambique between Nkaya and Monapo, for an approximate length of 682 km, the construction of a new branch line of 29 km length which will connect the existing railway line and the port and the construction of a new coal port terminal in Nacala-à-Velha.

The coal mine in Moatize was Vale’s first major investment in Africa. The Sena railway, which is about 600 km south of the Moatize mine, and the only rail link between Mozambique’s remote coal fields and the port of Beira, has proven to be a major constraint on Vale’s coal production capacity, limiting exports. And with plans to expand the mine’s annual production capacity, this project will allow for more reliable transport.

The deal is also of key significance to Mozambique, in light of its resource-driven economy and significant transport infrastructure development needs.

White & Case is advising on the project development and financing of the project bringing the Firm’s strengths in infrastructure, mining and metals, project finance and Africa to the fore.
Finding a way through

**Eurofer**

**Combating anti-dumping in the steel industry**

Over the years, we have advised Eurofer, the European Steel Association that represents major EU steel producers (including the likes of ArcelorMittal, ThyssenKrupp, Corus, Aperam, Celsa, and Outokumpu), on many of its high profile antitrust and trade cases, including three of the largest trade remedy cases ever filed in EU history, affecting several billion Euros of steel imports. And our work in 2015 includes some of the most complex legal issues to date.

In early 2015, we advised on the anti-dumping investigation of stainless steel cold-rolled flat products (SSCR) from China and Taiwan. This was initiated in 2014 following the petition we filed on behalf of Eurofer. The Commission took the highly unusual action of registering imports, making it possible to impose duties retrospectively (90 days earlier than normal). The Commission also issued an affirmative provisional determination in the SSCR case in March 2015, imposing provisional duties at significant levels. This case raised a number of highly complex legal and commercial issues, notably the supply of feedstock from Chinese producers to Taiwanese affiliates.

Also in 2015, we obtained the opening of an expiry review on wire rod from China and the opening of a duty-absorption proceeding regarding stainless steel drawn wires from India. We also lodged an anti-dumping complaint regarding high fatigue performance steel concrete reinforcing bars (rebar) originating in the China, which was initiated in April 2015 and is ongoing.

Anti-dumping and trade issues in the steel market have been brought into sharp focus recently with continued excess production capacity in China, forcing cheap exports onto the international market.

As a result, the steel producers that make up Eurofer find themselves facing major issues making mainstream headline news, and it is hoped that anti-dumping and countervailing measures, such as those we have advised on can help the European steel industry compete on a level playing field.

John has over 20 years’ experience in the mining industry, having worked as in-house counsel for both junior and major mining houses and having advised participants in the industry and as a private practitioner.

His extensive experience in mining and natural resource transactions and projects enables him to deliver value and guidance to achieve the best possible outcomes for clients.

John has steered clients through project acquisitions and investment reviews across the globe, including in Papua New Guinea, Timor-Leste, India, Eritrea, Senegal, Zambia, Madagascar, the Democratic Republic of Congo, Mongolia, Peru, Brazil, the United States and Canada. He has also advised Chinese state-owned enterprises on investments into the mining sector in Australia, Africa and Latin America.

Recent experience includes:

- Representation of MMG Limited and the MMG-led consortium, including Guoxin International Investment Corporation Limited (22.5%) and CITIC Metal Peru Investment Limited (15%) on the US$7 billion acquisition of the Las Bambas copper project in Peru from Glencore plc. We advised MMG on the consortium shareholder arrangements, and the consortium on the M&A, HKSE approvals and financing of the acquisition (including ongoing project development costs) through a combination of equity and long-term debt facilities from a banking syndicate arranged by China Development Bank.
- Representation of Minmetals Resources Limited (HKSX listed) on the CAD$1.33 billion acquisition of Anvil Mining, a company dual-listed on the Toronto Stock Exchange and the Australian Stock Exchange with copper mining assets in the Democratic Republic of Congo.
- Representation of OZ Minerals on its 2008/2009 asset sale process leading ultimately to advising on the US$1.4 billion sale of assets to China Minmetals Non-Ferrous Metals Co., Ltd. and the sales of the Martabe Gold Project and other residual exploration tenure.
- Representation of China Minmetals Non-Ferrous Metals Co., Ltd. on the US$1.8 billion sale of various Australian and international mining assets to Minmetals Resources Limited, a company listed on the Stock Exchange of Hong Kong Limited.
- Representation of Minmetals Resources Limited with respect to the Australian aspects of its proposed A$1.65 billion takeover bid for copper producer Equinox Minerals Limited.
- Representation of Indophil Resources on the acquisition of interests in the Tampakan copper project (and subsequently the listing of that company on the Australian Stock Exchange based on its success in securing the rights to the project and negotiating an option with a major mining house), sale and joint venture arrangement with Glencore and subsequent bids for the company.
Rebecca Campbell
Partner, London

Practice Experience

Rebecca concentrates on the mining and metals sector and brings an industry-focused approach to each transaction. Her breadth of experience, gained as in-house counsel at BHP Billiton and in private practice at top law firms in Australia, New York and London, has forged her significant understanding of the sector.

Rebecca brings her knowledge and experience to a broad range of transactions across the mining and metals sector, regularly taking the lead on project development, mining financing and M&A/corporate transactions, as well as distressed situations.

Rebecca has advised clients in geographies as diverse as Africa, Russia CIS, Latin America, Canada and the USA, across a broad range of commodities including coal, uranium, copper, iron ore, potash, bauxite, aluminium, manganese and diamonds.

Recent experience includes:

- Representation of The Miller Group and Argent Group, on their sale of the entire issued share capital in Miller Argent Holdings Limited, a Welsh coal mining business and the owner of one of the last operating coal mines in the United Kingdom.

- Representation of New World Resources in its second round of operational and balance sheet restructuring following the further significant decline in the coal price since the first round of restructuring in 2014. We advised NWR in its comprehensive, cross-border balance sheet restructuring, allowing NWR to focus on its operational turnaround and survive the prolonged downturn in the global coking and thermal coal markets. This complex transaction involved a UK scheme of arrangement and a rights issue and placing on the London, Warsaw and Prague Stock Exchanges, drawing on a complex mix of capability across mining, restructuring, debt and equity capital markets, corporate and tax. We also advised NWR on the divestment of its €95 million coke subsidiary OKK Koksovny, a.s., the largest producer of foundry coke in Europe, to Metalimex, a class 1 transaction under the UK Listing Rules.

- Representation of MMG Limited and the MMG-led consortium, including Guoxin International Investment Corporation Limited (22.5%) and CITIC Metal Peru Investment Limited (15%) on the US$7 billion acquisition of the Las Bambas copper project in Peru from Glencore plc. We advised MMG on the consortium shareholder arrangements, and the consortium on the M&A, HKSE approvals and financing of the acquisition (including ongoing project development costs) through a combination of equity and long-term debt facilities from a banking syndicate arranged by China Development Bank.

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Independent view

“Possesses a real focus and depth of experience in the sector, with a highly rated London-based team.”

“They handled a very challenging deal very well and pushed very hard for their client.”

“Everything they did worked really well. There was no slippage from anyone in the team from the first day on the transaction to the last day.”

About White & Case

White & Case is a global law firm with longstanding offices in the markets that matter today. Our on-the-ground experience, our cross-border integration and our depth of local, US and English-qualified lawyers help our clients work with confidence in any one market or across many.

We guide our clients through difficult issues, bringing our insight and judgment to each situation. Our innovative approaches create original solutions to our clients’ most complex domestic and multijurisdictional deals and disputes.

By thinking on behalf of our clients every day, we anticipate what they want, provide what they need and build lasting relationships. We do what it takes to help our clients achieve their ambitions.

One of the Top Three Most Innovative Law Firms in North America
Financial Times Innovative Lawyers North America 2015 Report

One of the Top Three Most Innovative Internationally Headquartered Law Firms in Asia-Pacific
FT Asia-Pacific Innovative Lawyers 2015

Most Innovative US Law Firm in Europe
International Financial Law Review 2015

First in Diversity
The American Lawyer Diversity Scorecard 2015

Three Global “Deal of the Year” Legal Awards
The American Lawyer 2015

Number One International Law Firm—Midlevel Associate Job Satisfaction
The American Lawyer 2015 Midlevel Associates Survey

Best International Firm for Women in Business Law
Euromoney Legal Media Group 2015

Best International Firm for Pro Bono Work
Euromoney Legal Media Group 2015

Best International Firm for Talent Management
Euromoney Legal Media Group 2015

TrustLaw Anniversary Award for Pro Bono Work
TrustLaw 2015 (A program of the Thomson Reuters Foundation)
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