

THE AUSIMM'S VALMIN CODE (1998) - NOW AN INTERNATIONAL GUIDE TO PROJECT ASSESSMENT AND VALUATION BEST PRACTICE

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ABSTRACT

The VALMIN Code (1998) deals both with the issues to be addressed when technically assessing a mineral property and also those involved in its valuation (or appraisal, using the North American term). This Code is a revision, based upon the experience gained using the initial edition published in 1995. Its use for relevant reports became mandatory only for members of The Australasian Institute of Mining and Metallurgy (AusIMM) at that time, but its widespread acceptance by the market has meant that it is invariably used by professionals writing all independent reports required by the Corporations Law as well as in other related circumstances. In fact, the VALMIN Code has been accepted as a basis for the current development of similar codes in other overseas jurisdictions, eg Canada, USA and Indonesia. This adoption of a relatively standard approach to project assessment and valuation will assist the global mobility of all mineral industry professionals and provide the market with a reliable basis for making investment decisions.

INTRODUCTION

The Australasian Institute of Mining and Metallurgy's (AusIMM's) Mineral Valuation (VALMIN) Committee ^[1] has had the task of the creation and updating of a best practice code and guidelines dealing with the technical assessment and/or valuation of mineral assets and/or securities for inclusion in Independent Expert/Specialist Reports that are required under the Corporations Law (Reports), since its formation in 1991. The first edition, VALMIN Code (1995), was issued in June 1995 (after adoption by Council on 17 February 1995) and it applied to all relevant Reports (ie those required under the Corporations Law), dated on or after 1 July 1995, that were prepared by AusIMM's Corporate and Company Members. See Lawrence (1995) for a discussion of its use as an objective due diligence tool.

The most recent version, "Code and Guidelines for Technical Assessment and Valuation and/or Valuation of Mineral and Petroleum Assets and Mineral and Petroleum Securities for Independent Expert Reports" (VALMIN Code, 1998) was approved by Council on 22 November 1997 and issued in February 1998 (together with an aide memoire to assist its interpretation). ^[2] It requires mandatory compliance with this Code by all AusIMM Members for all relevant Reports issued on or after 1 April 1998. See Lawrence (1998c) for a discussion of the revision; and Cole (1999) for a VALMIN compliance checklist.

The advantages of such codes and guidelines are that they ensure consistency, accountability and appropriate outcomes. Most importantly, they protect those on both sides of the transaction - the author and the recipient of the data. They also provide an objective test of whether what has been done was reasonable, allowing enforcement. If these codes and guidelines prove useful and acceptable in a world context, they are likely to be adopted by many overseas mining countries, thus reinforcing the above comments. Their adoption will also assist the global mobility of resource professionals, such as geologists, mining engineers, metallurgists and environmental scientists from those countries.

Also, if a technical professional has accreditation or registration, such as AusIMM's voluntary Chartered Professional accreditation (CP) in the fields of geology (CPGeo), mining engineering (CPMin), metallurgy

^[1] Representatives come from AusIMM assessment and valuation practitioner members, Mineral Industry Consultants Association (MICA), Australian Institute of Geoscientists (AIG), Australian Securities and Investments Commission (ASIC), Australian Stock Exchange (ASX), Minerals Council of Australia (MCA), Petroleum Exploration Society of Australia (PESA), and Securities Institute of Australia (SIA).

^[2] See Lawrence (1998a).

(CPMet), or environmental CP(Env), so much the better. ^[3] CP identifies those whose academic qualifications, cumulative and current training and experience, commitment to a high standard of ethical conduct and to continuing professional development and education, are of a standard considered the minimum appropriate by the profession for practice in the technical area concerned. Because it is renewed annually, CP is a flexible monitor (and indicator to an employer or client, peers, government and the wider community), of a person's current career status as a professional practitioner, ensuring that they retain appropriate qualifications, experience, competence and repute. See Lawrence (1997) for a description of the different approaches taken by the AusIMM, the Australian Institute of Geoscientists (AIG) and the Institution of Engineers Australia (IEAust).

To be credible, such codes or guidelines and accreditation schemes must be able to be strictly enforced. However, it is this author's view that regulators can devolve these tasks of guideline creation and enforcement to an appropriate professional body, where peer pressure really works.

However, it is a separate matter if the valuation methodology selected for use by the practitioner is misused or misinterpreted through ignorance, incompetence or corruption. Two of the fundamental problems with the current use of VALMIN in Australia are that there is either lack of transparency in the Report making assessment of the valuations difficult; and there are illogical aspects to the practitioner's use of the selected valuation methodology.

Nevertheless, by carrying out a due diligence study in accordance with a set system of procedures monitored by an appropriate supervisory mechanism, and by ensuring that its results are properly recorded and documented, all parties should be in a position to prove that they took reasonable precautions to ensure compliance with the law. Hence, they can claim that any defect was either caused by a reasonable mistake; or was accepted by them when they reasonably relied on information supplied by another person, preferably after independent verification; or was caused by the act or error of another person beyond their control. Following current industry practice and following best practice codes and guidelines can demonstrate what level of care has been taken.

RECENT CANADIAN DEVELOPMENTS - A CASE STUDY

BACKGROUND

The Final Report of the Mining Standards Task Force (MSTF), ^[4] which was mandated by the Toronto Stock Exchange (TSE) and Ontario Securities Commission (OSC) to propose reforms to the Canadian securities surveillance system in the wake of the Busang/Bre-X debacle, was released on 2 February 1999. As an active critic and contributor to its work (both in a private capacity and on behalf of the Institute), it is pleasing to report that the MSTF has heeded the constructive submissions. Whilst the Canadian regulators have put their own slant on the best way forward for the new millennium, it is gratifying to note that much of their thinking has been influenced by the experiences of other jurisdictions, like Australia. Institute members will see much of the VALMIN Code's philosophy in the MSTF's Final Recommendations. The Final Report is thus an improvement on its Interim Report (released in June 1998), for which credit must be given to the MSTF.

The TSE/OSC MSTF has shown considerable courage and understanding of the problems in order to recommend some necessary, but difficult changes to the status quo to bring Canada up to world best practice. They, too, are to be congratulated for this, whether or not such changes were overdue. However, Canada can only fairly lay claim its position as the world leader in mineral exploration, development and mining finance, provided that all of the MSTF's Recommendations are adopted nationally into enforceable legislation that is implemented without delay by all the parties concerned. See Spence (2000) for an outline of the development of a Canadian analogue of the VALMIN Code by the Canadian Institute of Mining and Metallurgy (CIM). Lawrence (1998a, 1999a and 2000b) summarised the Australian experience with VALMIN since 1995 as part of that Canadian process.

^[3] The CPS Scheme is currently being modified to make it more accessible to members, eg a new category, CPMan, will be introduced for those members with technical qualifications who now mainly operate in the financial and management sectors. However its general character has not changed.

^[4] See Lawrence(1999b) for a fuller discussion of the recommendations of this Report.

MSTF FINAL REPORT RECOMMENDATIONS

- Formalisation in Canadian securities regulation of the Qualified Person (QP) concept. The QP is responsible for technical matters and must be independent in certain specified circumstances. Note that the QP is more analogous with the "Expert/Specialist" defined in the VALMIN Code rather than with the "Competent Person" concept that is used in the JORC Code. Note that the name of the QP must be given, together with the person's relationship with the company in any relevant disclosure to the market.
- Establishment of best practice guidelines for the conduct of mineral exploration and development programmes, and mining operations.
- Establishment of disclosure standards for reporting exploration results, resource and reserve estimates, and mining activities. ^[5] For example, it is inappropriate to refer to the in situ value or gross value of Resources/Reserves; Resources must be clearly distinguished from Reserves in any document so that a reader could not assume that they are the same thing; key economic parameters used in the definition of Reserves (or in feasibility studies) should be disclosed; visual estimates of quantity and grade of mineralisation should not be reported; unless prepared according to National Instrument (NI) 43-101, Resource estimates quoting tonnage and average grade of mineralisation may not be reported; when partial results of a drilling programme are released, the balance of the results should be disclosed as soon as they are available irrespective of whether the results were positive or negative.
- The Australasian JORC Code is to be recognised by the Canadian securities regulatory authorities as a "acceptable reporting system", is very gratifying. However, it will be still necessary "if a reporting system other than NI 43-101 is used, the company be required to include explanatory notes describing the material differences between NI 43-101 and the reporting system used." ^[6] Nevertheless, it is pleasing to see that the Canadians will allow the reporting of Resources, whereas the US still clings to the mistaken belief that reporting only Proven and Probable Reserves adequately informs investors.
- Also, the essential elements of the land tenure regime applicable to the mineral property should be disclosed, along with details of any disputes over title or adverse claims.
- As soon as a company becomes aware that others have published information about its mineral properties that is materially misleading, the company is under an obligation to take all such steps available to correct such information or otherwise make it known that the company was not responsible for publishing that information and that it does not necessarily agree with the information disclosed by other parties.
- Establishment of accreditation and quality control standards for analytical laboratories.
- Establishment of standards of professionalism and supervision of mining analysts.
- Increased emphasis on sound corporate governance practices, regulatory oversight of the minerals industry and the enforcement of securities laws.
- National uniformity in regulation throughout Canada, with the commitment of additional financial and other resources to ensure the improved regulatory oversight and investigation, enforcement and prosecution of securities law violations.

LESSONS FOR OTHER JURISDICTIONS (INCLUDING AUSTRALIA)

The author urges Australia's regulators (ie the Australian Stock Exchange [ASX] and Australian Securities and Investment Commission [ASIC]), ^[7] to follow Canada's lead and for ASX to formally include the VALMIN Code in its Listing Rules, since it has already incorporated the JORC Code. ^[8] Whilst the use of the VALMIN Code is strongly supported by ASX/ASIC there is currently no legal requirement to use it. Only the AusIMM makes it mandatory for its members to observe it in relevant circumstances.

^[5] The TSE released disclosure standards for comment on 16 March 1999, requiring any comment by 16 April 1999. These disclosure standards were identical to those appended to the *Final Report* of the MSTF.

^[6] MSTF *Final Report*, Part 5.4, pp 52-53.

^[7] ASIC is the Australian national analogue of OSC; ASX is the Australian national analogue of TSE.

^[8] JORC (1999). *Australasian Code for Reporting of Mineral Resources and Ore Reserves (JORC Code)*, issued by the Joint Ore Reserves Committee (JORC), comprising AusIMM, AIG and Minerals Council of Australia, September, 16p (AusIMM: Melbourne).

The ASX must also adopt the US Gold Institute's methods of calculating and reporting gold production costs (as well as develop methods for other commodities as soon as possible with the help of AusIMM). This makes Australia's system more directly comparable with the intended TSE/OSC scheme.

ASIC must move to require similar formal clarification of the role of securities firms and analysts (as proposed by the TSE/OSC), especially in the area of formal standards of professionalism and supervision of mining analysts (see also above). They must be required to conform to the VALMIN Code and be required to distinguish in their research reports between what is their opinion and what is data supplied by the company and used uncritically by them. Companies, themselves, must be proactive in ensuring that they correct the disclosure of any misleading information by others. Also, ASIC's market fraud units must be expanded in size, funding and scope to better coordinate between the various other regulatory surveillance, compliance, investigation and prosecution bodies in respect of mineral companies and their associated advisers and promoters. They must recruit relevantly trained and accredited technical professionals to assist in this work.

Similar comments apply to securities regulators and stock exchanges in other international jurisdictions (see below).

FACILITATION OF INTERNATIONAL OPERATIONS

According to the Canadian MSTF, "The objective of improved reporting to the investing public should take precedence over the particular requirements of one jurisdiction"; and "a foreign company be required to report according to NI 43-101 or another acceptable reporting system".^[9] These are eminently sensible and supportable recommendations. In a practical sense, however, there are some issues which make it less easy to negotiate exactly comparable reciprocity between reporting systems in all international jurisdictions.

Take Australia, as an example, which has had a successful system in operation for some time. It relies on supervision by AusIMM, for example, to ensure that the JORC Code's Competent Persons and the VALMIN Code's Experts/Specialists are regulated in both technical and ethical contexts. For its part, AusIMM as the national professional body representing all those professionals working in the minerals industry (mainly geologists, mining engineers, metallurgists and environmentalists), has already successfully interfaced with the national securities regulators (ASIC and ASX) for decades. Thus, AusIMM is always ready to negotiate mutual recognition protocols with relevant national overseas professional bodies in appropriate disciplines, in Canada or Indonesia and elsewhere.

The problem for AusIMM is the difficulty in locating an equivalent national professional kindred body in that foreign jurisdiction (assuming that a national jurisdictional interface exists within that country). AusIMM cannot seek out and negotiate separate agreements with the numerous individual provincial or state bodies, often even separately representing geologists and engineers? For example, what is the gain for Australasian professionals if the Canadian registration bodies are unable to give the same freedom to work in their jurisdictions? How could Australasian investors be better protected by subsuming their existing ethical protection in Australia and New Zealand (due to the current jurisdictional settings) by allowing non-AusIMM member Canadian professionals to prepare ASIC/ASX required reports?

The future use of the VALMIN Code is likely elsewhere in foreign jurisdictions when they discover its usefulness as a way to ensure adequate public disclosure of the assessment and/or valuation of mineral properties. This has been the experience with the JORC Code, although it deals with the restricted (though vitally important) subject of the reporting of exploration results and Resources/Reserves.

USA, like Australia, is fortunate in already having a national securities regulator and national professional geological and engineering bodies, with enforceable codes of ethics, that accredit/register members. Ellis (2000a) describes issues arising from using VALMIN in the US and Ellis (2000b) gives a good account of the US patchwork of valuation regulations. The challenge for the Society for Mining, Metallurgy, and Exploration, Inc (and other constituent Societies of The American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc; AIME) is to define its role as a coordination and integration facilitator for all exploration and mining industry professionals. Whilst the existing accreditation/registration processes are supplemented by various State registration schemes, the author strongly opposes the physical involvement of the state bureaucracy. The Australasian self-regulatory model, involving the relevant professional organisations is the preferred approach in the author's experience.

It is noted that Indonesia plans to introduce accreditation of technical professionals (both Indonesian and expatriate) partly in response to the Busang scandal, but also because it is timely to do so in a global context. Hence, AusIMM is providing Bursa Efec Surabaya (Surabaya Stock Exchange), IMA (Indonesian Mining

^[9] MSTF *Final Report*, Part 5.3, pp 52-53.

Association) and PERHAPI (Association of Indonesian Mining Professionals) with information on its approach to accreditation/registration of its geologists, mining engineers, metallurgists and environmental scientists/engineers, as well as advice on the benefits of their adoption of their own variant of the VALMIN and JORC Codes. See Lawrence (1998d) and Lawrence (2000c and d)

CONCLUSIONS

For minerals industry businesses to survive in the next Millennium they must engage the community much more than they did in the past. This is especially the case for the global exploration and mining companies. The gaining of trust through transparency and the obvious support for professional and ethical behaviour from the top to the bottom of the organisation are the keys to success. Thus the need to follow best practice codes and guidelines.

Professional institutes like AusIMM have a duty and responsibility to provide a self-regulatory framework for the individuals who are (or will become) those executives directing these companies activities. The better the self-regulation, the less governmental involvement (from the national, state/provincial or local level) will be required to satisfy the demands of the increasingly influential and more legitimate "civil society".^[10] Evidence of one's commitment to fulfilment of relevant technical and social/moral obligations is membership of an appropriate professional institute, because it sets appropriately high levels of education, experience and reputable behaviour as an entry requirement for membership; because it demands a minimum level of Continuing Professional Development (CPD) and Continuing Professional Education (CPE) as a condition of continuing membership; and because it requires compliance with various ethical and best practice codes of professional behaviour.

Also, such professional institutes are the best bodies to forge multinational agreements on various professional standards, especially appropriate levels of CPD/CPE to keep a members' knowledge level current. This not only facilitates the global mobility of professionals but gives public confidence that appropriate behaviour and standards are observed, irrespective of the jurisdiction.

It is through development of professional standards and guides to best practice in various areas affecting a professional's working life that AusIMM plays its part in ensuring the globalisation of the minerals industry is done in a rational way and in the interests of the individual professional, the company and the community.

^[10] This is a term that describes the increasingly influential community-based organisations which claim to (and often do) represent society's conscience, eg those that presently form the political pressure groups on the environment and sustainable development.

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