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Executive Summary

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We are pleased to have this special environmental issue of our legal bulletin, with guest article presented by Ms. Giulia Iemmolo, who specializes in CSR trends and strategies in China and works for Pirola Pennuto Zei & Associati. Her article is a part of the upcoming one day training in Beijing, February 21, and in Shanghai, February 23, to register or find out more information please contact Ms. Giulia Iemmolo at giulia.iemmolo@studiopirola.com.

CSR: Smart Business' Sustainable Way to Achieve Economic Success

Protection of Ecological Environment for Extraction of Mining Resources

The exploration and extraction of mineral resources has contributed significantly to China's Economic Growth. Recent measures have been implemented to improve the mining environment, which define the legal grounds and liabilities for those in violation of these measures. This article will review the current state of pollution in mining areas, the improvement of mining environments through current laws and regulations and the liability of those in violation of these laws.



Corporate Social Responsibility

According to the definition provided by the *World Business Council for Sustainable Development*, Corporate Social Responsibility is the "continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and of their families as well as of the local community and society at large". CSR is a model of behaviour based on voluntary integration by companies, of social and environmental concerns in their business activities and on relationships with all stakeholders of the company (European Commission definition of CSR, 2001).

Despite the growing awareness that adopting a more sustainable business model can bring benefits to enterprises in terms of risk management, cost saving, access to capital, customer relationships, human resources management and innovation capacity, many executives are still struggling with nagging doubts over the real possibility that social responsibility can boost productivity and contribute to economic success.

This skepticism is due to a misleading interpretation of CSR and of how it creates value: in fact, many companies still consider CSR as a mere cost for business and continue to seek only short-term financial returns, ignoring social and environmental impacts of their business. The purpose of companies instead, should be redefined as creating "shared values", both for the companies and for society.

Based on the theory that social and not only economic needs define markets, the idea of "shared values" focuses on the connection between societal and economic progress, enhancing the competitiveness of a company, while mutually advancing economic and social condition in the community in which the company operates¹.

In the past few years, the increasing stakeholders' attention on environmental and social footprints of business applied pressure on enterprises and forced them to find a new path to innovation. Companies have been required to become more accountable, increasing for instance reporting activities; to adopt long-term strategic approaches in order to make profits; to develop innovative products and services that can contribute to societal and environmental well-being.

As a direct consequence of this new scenario, companies' performances are no longer measured on the basis of their financial achievements, but rather on their capability to contribute to a sustainable development, and integrate environmental and social needs into their growth strategy.

It is clear investing in CSR is the right choice and it is time to address CSR in the interests of the enterprises and of society as a whole. While such changes are never easy to implement because they require substantial investments in time and resources, they must no longer be postponed.

Enterprises face a tough undertaking in achieving the right balance between "external factors" (stakeholders', such as employees', suppliers', consumers', local community's needs, etc.) and "internal factors" (shareholders' needs/economic achievements).

In order to achieve this balance, companies that want to be "socially responsible", must voluntarily adopt a long-term strategic approach based on the management of relations with various stakeholders, and put ethical, social, environmental values at the heart of its decision-making process. These values include promoting transparency, protecting the environment and workers, respect of human rights and commitment to contribute to sustainable development. It is necessary that companies formulate a strategy on corporate social responsibility and then translate it into action.



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How can companies do this and what are the guidelines that can help them in this process?

The new voluntary standard ISO26000, that is gaining momentum worldwide, can be the answer to the above questions: it represents the most comprehensive framework on social responsibility and a practical guidance to companies and other organizations that want to differentiate themselves finding sustainable paths of innovation, with the aim of creating "shared value".

Companies, can choose different ways to express their commitment to CSR, according to their size and their priorities, such as: adoption of forms of social awareness and accountability, adoption of management

systems and forms of certification, pursuit of activities in the field of so-called sustainable finance.

ISO26000 helps companies identify which aspects of business activities have a direct impact on sustainability, helping them formulate the sustainability strategy which includes company's values, commitment and goals. Designing appropriate structures and management systems across the whole company underlines the urgency of continuous improvement of the adopted SR measures.

Any substantial change requires substantial efforts and companies that are unfamiliar with the concepts of CSR, may find this process particularly difficult, especially if in

an early stage of formulating the company's CSR strategy. A "neophyte" who approaches ISO26000, despite its clear approach to social responsibility, can easily become disoriented among its interpretation and may need guidance by external consultants.

CSR strategies, if not properly formulated, implemented and communicated can create damages in terms of the company's reputation, stakeholders' reaction, such as consumer's sabotage and can be a waste of money. CSR represents "the only way" a company can contribute to a sustainable development and for this reason should constitute a priority for each enterprise.

By Giulia Iemmolo

1: "Creating Shared Value". "How to reinvent capitalism-and unleash a wave of innovation and growth", Porter and Kramer, Harvard Business Review, January-February 2011

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Protection of Ecological Environment for Extraction of Mining Resources

The current ecological circumstance of mining areas

With the rise of China's astonishing economic development, the exploration and extraction of mineral resources has contributed significantly. Environmental protection measures within the mining industry however, have not adequately protected the environment during the extraction process. This has resulted in the contamination of the water, soil and air in mining areas and surrounding habitats, affecting the overall environmental geology. Recent measures have been implemented to improve the mining environment, which define the legal grounds and liabilities for those in violation of these measures. This article will review the current state of pollution in mining areas, the improvement of mining environments through current laws and regulations and the liability of those in violation of these laws.

Pollution of Water Resources

Within mineral resource prospecting and extracting areas, especially within coal and iron ore mining areas, hollow fills will usually develop when minerals are extracted to a large extent. The collapse of hollow fills leads groundwater to collect at the base forming a pit of water, which will irreversibly destroy the supply balance of groundwater. Such phenomenon is quite common in abandoned & old mining areas and mineral cluster regions. These surface collapses are caused to a great extent by the imbalance of pressure caused by the formation of hollow fills, causing the level of the groundwater flowing within aquifers to decrease, which directly destroy hydraulic facilities, leading to the depletion of trees, plants and crops.

In addition surface water pollution is also prevalent in these areas. A large quantity

of sewage and waste water containing radioactive substances, heavy metal substances and other toxic harmful chemical substances will be discharged during the extracting of mineral resources. Since the majority of mining enterprises are intensive, they discharge industrial sewage in a way that does not comply with relevant provisions set forth in the laws and regulations of China, which consequently contaminates water resources and rivers within the mining areas.

Pollution by Solid Waste, Dust and Waste Gas

Enterprises in the mining industry are engaged in extracting, beneficiation, smelting and processing, during which, coal slime, powdered coal, and other mining solid wastes are generated. Such solid wastes are not properly disposed

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of and many enterprises in the mining industry do not adopt corresponding measures to make them hazard-free, allowing them to pile up in mining areas. Such treatment of mining solid wastes does great harm to local environments as well as wastes limited land resources in mining areas, resulting in environmental issues such as river jams and pollution.

With remaining piles and the processing of coal and iron ores, a great deal of toxic and harmful dust and gas are produced. Residents and workers in mining areas who inhale such dust over a long period are susceptible to respiratory diseases and overall health problems. Such waste gas contains various toxic and harmful substances which affect the local atmosphere.

Trees, Plants and Soil Erosion

Article 32 of the *Mineral Resources Law of the People's Republic of China*, states enterprises are required to submit soil reclamation plans to replace trees and grasses in mining areas. Some mining enterprises excessively extract mines and fail to reclaim the flora and fauna, resulting in serious soil erosion. For instance, in rare earth deposits of iron located in Ganzhou Jiangxi Province, the excessive and chaotic extraction has had a profound effect on the climate, topsoil and red clay, disabling vegetation and depleting the soil causing irreparable damage to the ecology.

In addition to the damage of the ecology, the lack of proper management and environmental protection facilities during enterprises' extraction of mineral resources has caused great environmental geology issues within the mining and mineral resource prospecting areas, such as surface subsidence, landslides, and rock cracking.

Mining Environment Management and Improvement and Legal Grounds

The Chinese government has been acutely aware of the series of problems with respect to the damage and pollution of the environment caused by the exploration and extraction of mineral resources. In order to decrease the environmental pollution and the damage to ecological environment, relevant authorities and departments promulgated a series of laws and regulations in response to

the management and improvement of environmental protection in the course of extracting mineral and natural resources.

In order to protect the environment, improve habitation, life quality and decrease pollution & damage to the ecological environment in mining areas, enterprises shall strictly adhere to regulations promulgated by the State, in respect to environmental protection and formulate strategies on environmental protection. The laws and regulations which should be observed by the mining enterprises contain both national and local policies and strategies on economic and social development. Related industry environmental statistics within mining and surrounding areas, require evaluation reports on environmental impact by mining enterprises to improve conditions.

Formulation of Report on Environmental Impact within Mining Areas

According to Article 13 of the *Environmental Protection Law of the People's Republic of China* and Article 5 of the *Procedures for Administration of Registration of Mining of Mineral Resources*, mining enterprises within locations of mining construction areas must during the planning period conduct an investigation forecasting and evaluating the environmental impact and plan to implement measures to significantly reduce the negative impact on the environment. Upon completion of such an investigation they are required to formulate a report with respect to environmental impact on mining areas. Such reports need to include, environmental quality evaluation, environmental impact forecasting and environmental result of mining.

Environmental Approval Certification System

According to Article 15 of the *Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution* and Article 20 of the *Law of the People's Republic of China on the Prevention and Control of Water Pollution*, an Approval Certification System, with respect to environmental protection, is required in the fields of prospecting, extracting and utilizing mineral resources. Mining enterprises must fully perform their obligations of environmental protection

to the fullest extent of relevant provisions and regulations. Mining enterprises must, during the period of making mining strategy, extraction, construction and operation, apply to relevant administrative authorities for an *Environmental Elements Approval Certification* in advance for the entitlement to operate a mining business.

Acceptance System & Completion of Mining Construction Projects

According to Article 26 of the *Environmental Protection Law of the People's Republic of China*, mining enterprises must install environmental protection facilities to effectively protect the ecological environment within mining construction project areas, which effectively prevent the occurrence of environmental pollution. The Acceptance System Completion of Mining Construction Project is an environmental management system that regulates environmental management of construction of projects. This system indicates the design, installation and operation of facilities which prevent environmental pollution, must be incorporated within the schedule of the main body of construction. The facilities for preventing environmental pollution must be inspected and accepted by the competent authorities, who also approve the environmental impact report, prior to the production and use in the mining areas.

Reclamation System of Mined Soil

China has specifically formulated the Regulation on Land Reclamation in respect of soil reclamation, and Article 32 of the *Mineral Resources Law of the People's Republic of China* and Article 42 of the *Land Administration Law of the People's Republic of China* have relevant provisions related to soil reclamation. When applying for construction land and the right to extract mineral resources, mining enterprises must submit a land reclamation plan together with relevant documents required for approval. Mining enterprises must then enact the reclamation in accordance to the submitted plan and shall conduct monitoring and evaluation with respect to soil damage.

Damage to Vegetation and Loss of Water and System to Impose Waste Discharge Fees

Subject to regulations on the use of Discharge Waste Fee, in order to avoid



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and alleviate the pollution on environment caused by solid waste, waste gas, waste water and dust produced during the extraction of mineral resources, mining enterprises shall strictly implement relevant regulations promulgated by the State or local authorities on waste discharge. Additionally, mining enterprises must for the purpose of supervision of environmental protection during extraction of the mineral resources go through the registration formalities with competent authorities. The mining enterprises are responsible for the management and cost of the waste discharged.

Liability for Extraction of Mining Resource Administrative Liability

Environmental administrative liability indicates when organizations or individuals are responsible for environmental pollution and in violation of environmental protection laws. The grounds for determining violation of environmental protection laws, is when a party has caused damage or pollution to the environment, resulting in the harm to residents' health and the flora and fauna. With regard to parties who are in violation of environmental protection law, the environmental administrative departments may, in accordance with relevant provisions as stipulated in Article 35 to Article 39 of the *Environmental Protection Law of the People's Republic of China*, *Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution*, impose administrative penalties on those in violation, such as warnings, fines, confiscation of illegal gains, revocation of licenses and other certificates and may even render an order

for suspension or shutting down of an operation.

Civil Liability

As to the environmental civil liability incurred during the extraction of mineral resources, the *Tort Liability Law of the People's Republic of China* set forth corresponding rules and regulations with respect to liable parties, allocation of burden of proof, joint infringement and infringement by third parties. The law provides that in the case injury is caused due to environmental pollution; those responsible for the pollution shall bear tort liability. This sort of liability is a specific tort liability, to which the non-negligence principle should be applied. So as long as the injured party sustained loss due to the environmental pollution, the responsible party shall bear the liability for such loss, whether or not responsible for negligence. However, they are entitled to defense pursuant to the existence of the mitigating circumstances specified in law. In disputes arising due to environmental pollution, the responsible party shall bear the burden of producing evidence for circumstances specified in law and the absence of causation between their act and the injury. Since, the burden of proof applies to the party responsible of the environmental pollution, it more difficult for mining enterprises to produce the evidence. Furthermore, the *Tort Liability Law of the People's Republic of China* stipulates that if two or more parties are involved in environmental pollution, the proportion of their respective liability shall be determined on the basis of factors such as the type of pollutant and the volume discharged. If the environmental pollution

is caused by the fault of a third party, and has caused injury, the injured person may claim for compensation against the party responsible or the third party. The responsible party does have the right, after paying the compensation to recover the same compensation from the third party.

Criminal Liability

Article 338 of the *Criminal Law of the People's Republic of China* stipulates that the release, dumping, or disposing of radioactive waste, toxic materials and other dangerous wastes into land, water, and the atmosphere is in violation of state stipulations. Such activity that causes major environmental pollution accidents, loss to public and private property, and grave consequences such as personal deaths and injuries, can face both imprisonment and fines. Depending on the severity of the violation, the sentencing of imprisonment can be sentenced from three up to seven years of fixed-term imprisonment or criminal detention.

While environmental protection measures within the mining industry have not adequately protected the environment during the extraction process and the contamination of the water, soil and air in mining areas have been harmed, the recent measures implemented are the first step to improve the mining environment. By defining the legal grounds and liabilities for those in violation of these measures results to more accountability of enterprises who wish to exact the earth's resources.

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