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Competing Considerations in Intercreditor Agreements for Project Finance, Mining Streams and Royalties

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Introduction

The development of a mining project typically requires significant capital expenditure. For that reason, as is the case with many other major infrastructure projects, all but the largest mining companies will seek external financing solutions to fund the development of their mines. Many mining companies raise capital to finance the development of their projects through traditional means such as the debt and equity capital markets and limited-recourse project finance debt. They also frequently utilise a number of more industry-specific pools of capital, such as streaming arrangements and royalties.

Where mining companies seek to combine project financing with secured streaming and/or royalty agreements, an "intercreditor agreement" will usually be required in order to regulate the interests and rights of the various finance providers. Generally speaking, an intercreditor agreement would typically only be required when creditors are secured (which may not be the case for a royalty if the regulatory framework for that jurisdiction allows the royalty to "run with the land").

Although not uncommon in the international project finance market for mining, intercreditor agreements can give rise to relatively complex legal arrangements, as the competing considerations of each of the parties to these multi-source hybrid financing structures must be taken into account. The intercreditor agreement harmonises these considerations and acts to regulate the parties' relationship, potentially for decades.

Click here to read the entire chapter from the 10th edition of International Comparative Legal Guide – Mining Law 2023.