



POSITION PAPER 12

DEREGISTRATION OF A COMPANY- EFFECT ON APPLICATIONS AND GRANTED MINING TENEMENTS

ISSUE

What effect does the de-registration of a company have on applications for mining tenements and granted mining tenements?

BACKGROUND

When a company is de-registered by the Australian Securities and Investments Commission (ASIC) pursuant to the *Corporations Act 2001 (Cth)* (Corporations Act), all of the company's property vests in ASIC.

ASIC may then dispose of or deal with any property held by the company as it sees fit.

A granted mining tenement is classed as 'property' for the purposes of the Corporations Act.

An application for a tenement is not 'property' and, therefore, how the Department deals with each is different.

POSITION

Applications for Mining Tenements

It is not appropriate to grant a mining tenement application to a non-entity. Therefore, if the applicant for a mining tenement is a company that becomes deregistered, the Department will notify ASIC of the intention to refuse the application on the basis that the applicant is a non-entity.

Granted Tenements

- Live mining tenements in the name of a deregistered company vest with ASIC.
- A mining tenement cannot be dealt with by a de-registered company. The Department, therefore, checks company status at the following points:
 - on application for extension or renewal of term;
 - before registration of a transfer - both incoming and outgoing parties;



- before registration of a surrender (including drop offs);
- before consent to a dealing (e.g. s.82(1)(d), 64(1)(b), etc.).

The Department will send a letter to the “company” (or lodging party) noting that the company is deregistered and the dealing is to be rejected (copy to ASIC). The rejection of the dealing will be endorsed on the register 30 days later.

- ASIC cannot enter into any new obligations, although in some limited circumstances third parties have successfully applied to purchase mining interests from ASIC.
- ASIC is under no obligation to pay outstanding creditors or take on the responsibilities of the company; for example, pay annual rentals, lodge reports.
- Live mining tenements may be forfeited (the forfeiture notices go to ASIC).

REFERENCES

Sections 82 and 64 of the *Mining Act 1978* and the *Corporations Act 2001*