OSLER

Critical minerals: A test for the Canadian mining industry

JANUARY 11, 2022 6 MIN READ

Related Expertise

- Mining and Natural Resources

Authors: Alan Hutchison, James R. Brown

While the pivot away from fossil fuels as a power source is not a new concept, 2022 may have marked a tipping point for the Canadian mining industry in the pursuit of "critical minerals" to facilitate this transition. As we discuss in our Energy Transition article, the push towards energy transition and a net-zero future has accelerated, emphasizing critical minerals in the drive towards non-carbon based fuel sources. In 2022, the Canadian federal government focused on the development of a critical minerals strategy and implemented a number of measures designed to support the strategy and focus on the advancement of critical minerals projects. At the same time, the government has taken action to reduce the influence of foreign state-owned enterprises (SOEs) in critical minerals. In this article, we summarize a number of recent developments related to critical minerals in Canada.

The strategy extends beyond mining and seeks to address the entire value chain, from exploration and extraction, to processing, advanced manufacturing and recycling.

The federal critical minerals strategy

In April 2022, the federal government announced a $3.8-billion critical minerals strategy aimed at identifying and developing mineral projects and related infrastructure for critical minerals. The list of critical minerals includes 31 minerals, but six have been identified as an initial focus – lithium, graphite, nickel, cobalt, copper and rare-earth elements. The strategy extends beyond mining and seeks to address the entire value chain, from exploration and extraction, to processing, advanced manufacturing and recycling.

Most of the details of the strategy will unfold in the coming years. As part of the development of its strategy, the federal government issued a discussion paper exploring opportunities for critical minerals. The comment period closed in September 2022 and the government expects to publish the formal strategy at the end of 2022. Once finalized, the federal strategy is expected to pair with similar provincial strategies, including those in Alberta [PDF], Ontario [PDF] and Québec.

It is expected that the largest funding commitments will be required to help build infrastructure to facilitate the development of critical minerals deposits in Canada. The "Ring of Fire" deposit in northwest Ontario is an example of a prospective mineral deposit that has had multiple owners without significant progress. This is due, in part, to the remote and rugged terrain that makes development difficult to finance. Many of the other critical mineral rich regions identified in the discussion paper are similarly remote and face development challenges.

A key aspect of Canada's critical minerals strategy is the acceleration of project development. In recent years, the timeline of mining projects from discovery to production has become increasingly prolonged. If Canada (and the world) is to become a net-zero economy by 2050

as currently targeted, critical minerals will be required in even greater quantities than today. Taking 20 to 30 years to bring new critical minerals mines into production will not allow for production of necessary minerals at a level that will enable Canada to achieve that goal.

How timelines can be shortened is not entirely clear. Presumably the government's commitment to robust environmental review and meaningful participation of affected First Nations is not going to change. With many critical minerals projects located in areas that have only limited infrastructure and no history of previous mineral development, the scope of the permitting process could be broader than the footprint of a particular mine. The relationship building process for local communities and Indigenous communities is also likely to present new challenges.

We have seen some critical minerals project proponents back away from projects in the face of uncertain community support. With these projects already facing significant technical and operational risks, additional uncertainty associated with permitting and social licence to operate can only compound impediments to building mines. However, this is likely one area where the government may be able to play a leadership role in assisting with project development.

Funding commitments and tax relief

In addition to project infrastructure and development, critical minerals strategies are also focused on identifying new deposits for potential future development. The Canadian government has made significant funding commitments in this regard. Of particular interest to the Canadian mining industry is the immediate commitment of $79.2 million for public geoscience and exploration to better assess and identify mineral deposits.

Additional funding includes $47.7 million for targeted critical minerals research and development through Canada's research labs and $144.4 million for critical minerals research and development and the deployment of technologies and materials to support critical minerals value chains.

On the tax front, the government has expanded the current flow-through share regime with a new 30% critical minerals exploration tax credit, which doubles the existing 15% flow-through tax credit. So far there appears to be limited take-up of this credit. That may be due to the poor state of the capital markets or it may be due to the need for additional details regarding the new tax credit that were to follow the initial announcement. For example, a key eligibility requirement is the need for a qualified engineer or geoscientist to confirm that the flow-through expenditures will be incurred on a mineral project primarily targeting critical minerals. The details around the form and timing of this certification are still pending, even though the Canada Revenue Agency issued guidance [PDF] in October 2022.

Notably, charity flow-through providers seem to have been early adopters of critical minerals tax credit flow-through financings. This should give the rest of the industry some comfort and a body of precedent documentation.

Role of foreign investment

Through the tax credits and funding, a key goal of the critical minerals strategy is to attract foreign investment to drive project development. However, a number of developments regarding critical minerals in Canada have targeted reducing foreign ownership of critical minerals projects – at least in some respects. Recent initiatives have sought to limit or preclude ownership of critical minerals projects by foreign SOEs and groups linked to them.

Thus, the federal government has announced enhanced measures targeting foreign SOE investment in critical minerals projects.

Following this announcement, the government went further and issued divestiture orders for three equity investments by Chinese SOE or SOE-linked investors in Canadian junior exploration companies. One of these companies had no projects in Canada – which represented a notable shift in the target of the Canadian government's actions to prevent foreign ownership. We have previously discussed these critical minerals restrictions and divestiture orders. Additional information can also be found in our Competition and ICA article.

China has been the dominant player in financing, investing in and acquiring critical minerals projects globally. Removing Chinese investment in critical minerals will leave a financing gap to fill. Industrial end-users of critical minerals who are looking to increase their consumption of critical minerals in the pivot towards non-carbon based fuel sources have shown interest in making these kinds of investments. However, there is a limited track record for mining companies successfully vertically integrating into end-product manufacturing. There is also significant uncertainty as to whether earlier stage projects will receive needed funding.

Looking ahead

With focused government strategies and significant funding commitments from provincial and federal governments, Canadian advancement in critical minerals will definitely be a key area of growth for the Canadian mining industry. Having Canadian geoscientists, engineers and financiers who are global leaders in finding and developing minerals projects creates further optimism that the industry can meet challenges associated with critical minerals development.

For years the industry has lamented the increased costs to make a discovery, the need to contend with the longer timeline for permitting, as well as the challenges to manage development costs. Public policy in this regard has often been viewed as ambivalent or at odds with efficient project development in Canada. Critical minerals development may present a rare occasion of alignment between public and private stakeholders that could kickstart mine development and serve as a catalyst for the broader mining industry.