

## Opinion

FROM THE CAPITAL

# Code reform gives CP vital role

## No ducking mandatory checklist for "compliant" companies

John Robertson\*

The 'competent person' carries a heavier burden in creating an efficient investment market for the mining industry than many realise. This was the message from a workshop on the 2012 JORC Code at the inaugural International Mining and Resources Conference (IMARC) in Melbourne.

The latest version of the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code) became mandatory for ASX-listed companies in December 2013.

Present and past heads of the Joint Ore Reserves Committee (JORC), lawyers and the ASX came together at IMARC to explore what the new code means for investors, what changes to reporting it requires and how it connects with other international standards.

Companies had been thumbing their noses at the requirements of the pre-existing 2004 code. It had too frequently been used as a marketing tool rather than a set of guideposts dictating corporate behaviour. It was not unusual to see companies proclaim their resources as "JORC compliant" but rarely did they do what the code's authors wanted and use it as a framework to convey the risks associated with resource estimates.

The new code is still only a set of guidelines. It describes a minimum, albeit rigorous, standard for listed companies. The defining characteristic of the new version is the supporting information now required. Announcements about new resource estimates, for example, must be accompanied by explanations to back up judgements about resource size and quality.

Companies are not able to duck the mandatory information checklist. The so-called, 'if not, why not' approach requires companies to explain why information might not be available, if that is the case. It is not good enough to ignore the question or to fob it off with "not applicable".

At the heart of the arrangements is the role of the competent person (CP). The demand on this expert is not intended to be onerous, but there are lurking dangers for the professional assuming this role and signing off on what a company says about its mineral assets.

The CP is being asked to do nothing more than accurately describe what he or she sees. They are not being asked to be definitive or dogmatic about size or quality. Indeed, the



code embraces and encourages references to risk, uncertainty, confidence limits and the inadequacy of information.

While the CP is supposed to have specialised skills in the mineralisation on which he or she is passing judgement, the necessary knowledge goes well beyond a technical understanding of the geology being confronted. In estimating a mineral resource, for example, the code requires a CP to assess "all matters likely to influence the prospect of economic extraction".

This makes an almost impossible demand on a single person. The code allows for input from multiple parties with the necessary skills but, generally, the pretence of individual genius persists against all the available evidence.

Perpetuating the myth of the all-knowing CP also creates an unrealistic expectation of how much protection is afforded investors. The more regimented the presentation of material becomes, the easier it often is for directors to simply look over someone else's shoulder to see which boxes need ticking.

The new requirement for supplementary information seeks to prevent this happening but already patterns are emerging in the way responses are framed. Common language is a sign that responses are not customised for the situation being described.

The CP must also deal with an inherent conflict. Promoters of investment propositions generally do not want the mealy-mouthed language about risks and uncertainty advocated by the code to clutter their public statements. They want emphatic views about size and quality and firm dollar values to help tap the capital markets.

In contrast to the corporate motivation, the integrity of the code rests heavily on the objectivity of the CP and his willingness to offer a realistic assessment of risk. Despite the pivotal role, there is nothing to prevent a CP approving a report while retaining a financial interest in the market response. Examples of

conflicts are easy to find.

In June this year, one CP signed off on a scoping study for a project on which he was the declared technical director. Until resigning four weeks earlier, he had also been a director of the company seeking to develop the project. There was nothing in the report to say he had been a director or that, as subsequently confirmed in the annual accounts, he still owned 9% of the company's outstanding shares and stood to gain financially from any positive reaction to the document he had authorised.

In this instance, as in so many others, Section 9 of the JORC code which requires "any potential for a conflict of interest" to be disclosed appeared not to matter.

Another area of common neglect is in the economic assessment of ore reserves. Among other things, the CP is required to talk about the source and confidence of discount rates used in valuations. Yet, in many instances, there are no sensitivity analyses let alone any comments about why one discount rate may be preferred to another.

Complaining to ASX or ASIC is a logical step when departures from the code are seen. They have stepped up scrutiny. Both have recently required retractions from companies that have failed to meet the code's standards.

Going to ASX and ASIC has one important drawback. Neither provides feedback to complainants about what action, if any, it has taken. Offending companies relish this secrecy because it shields them from shareholder criticism.

There is another and far more transparent way for investors to proceed now that the role of the CP has been more clearly defined: complain to the professional association of which the CP is a member. Under the JORC Code, registered associations must have disciplinary powers. If warranted, they can strike a member off and, in doing so, strip an errant CP of his income and capacity to damage the market. ▼

\*John Robertson is a director of EIM Capital Managers, an Australian-based funds management group. He has worked as a policy economist, business strategist and investment market professional for nearly 30 years after starting his career as a federal treasury economist in Canberra, Australia