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Canadian companies operating abroad need to know how to protect their assets: experts

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TORONTO - Recent troubles experienced by nickel and zinc miner HudBay Minerals Inc. (TSX:HBM) in Guatemala indicate that it's not always easy to be a Canadian business operating abroad, but experts say there are things companies can do to protect themselves and their assets.

HudBay said several of its employees in the Central American country were injured and one protester was killed last weekend during a confrontation relating to the relocation of people living on land belonging to the miner's Fenix nickel project.

Conflicts like this are not uncommon, and Canadian companies should be aware of what they can do to protect themselves, said Barry Appleton, managing partner of Appleton and Associates International Lawyers in Toronto.

"I tell people who are investing abroad that international business is always more risky than domestic business and therefore they have to be prepared for the additional risks," Appleton said.

The first thing a company should do is find out whether the country in which they plan to operate has a bilateral investment treaty with Canada, Appleton said.

Canada has negotiated 27 such treaties, 22 of which have been ratified. They protect companies against "things like arbitrary behaviour, expropriation without compensation, and they require that they have to follow the rule of law," Appleton said. They also provide recourse if the treaties are broken.

Appleton said companies can also get insurance protecting them against certain eventualities, such as expropriation of their assets by a foreign government or a default of a country's banking system, through Export Development Canada.

This can be particularly useful for resource companies like miners that will often invest tens of millions of dollars into a project in a foreign country and want to protect their investment.

However, even a combination of insurance and bilateral investment treaties won't completely protect the businesses and assets of Canadian companies operating abroad.

John Ries, a professor at the University of British Columbia's Sauder School of Business, said every company beginning a new venture in a foreign country should make sure they write up a clear contract with the local

government that provides for arbitration in case something goes wrong.

"Writing a good contract is essential because these ambiguities can be exploited and going to the local courts can be quite problematic," Ries said.

"So you write the best contract possible, of course, but then things might come up that you didn't expect, contingencies that you didn't plan for, and if you have an arbitration panel that's a neutral party then you're more likely to get a good settlement."

In addition, Ries said companies can curry favour with residents by investing in the local communities in which they operate.

"I think companies are savvy enough to realize that it can be a good investment to do these altruistic things," he said.

HudBay isn't the only Canadian company to face difficulties abroad recently.

Gabriel Resources Ltd. (TSX:GBU) has been mired for years in disputes with the government of Romania over the Rosia Montana gold mine and a stalled environmental impact assessment.

And Sherritt International Corp. (TSX:S) saw an oil production-sharing contract between the Cuban government and Sherritt's partner Pebercan Inc. (TSX:PBC) scrapped nearly 10 years early after months of efforts to have the Cuban government catch up on missed payments to the company.

Sherritt received \$74 million from the termination of the agreement, but the loss of the oil field, known as Block 7, means that Sherritt's Cuban oil production will fall 25 per cent to about 23,500 barrels per day for 2009.

Meanwhile, several Canadian mining companies have faced difficulties in Mongolia.

Ivanhoe Mines Ltd. (TSX:IVN) and Rio Tinto (NYSE:RTP) have been negotiating with the Mongolian government for several years to reach an investment and profit-sharing agreement for the Oyu Tolgoi copper-gold development project.

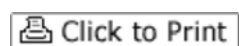
And Western Prospector Group Ltd. (TSXV:WNP), Khan Resources Inc. (TSX:KRI) and Centerra Gold Inc. (TSX:CG) all had operating licences for their various operations suspended due to alleged violations of Mongolian laws.

In Venezuela, problems and concerns over nationalization have affected Crystallex International Corp. (TSX:KRY) and other Canadian miners.

And U.S. oil giant Chevron (NYSE:CVX) has asked an international court in The Hague to investigate whether Ecuador breached international law when it sued the company for US\$27 billion for allegedly polluting the Amazon.

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