

# Going public

## Partial exits can benefit PE firms, as a £3.5 billion Czech IPO shows. Adam Levin and Claudine Ang of Dechert explain

In May 2008, the shares of New World Resources NV (NWR), a Dutch-incorporated company (formerly a wholly-owned subsidiary of RPG Industries SE) with mining operations in the Czech Republic, were admitted to trading on the London, Prague and Warsaw stock exchanges. The offering, after exercise of the greenshoe option, was approximately £1.3 billion (approximately \$2.5 billion) resulting in a market capitalisation of about £3.5 billion, the largest European IPO to date in 2008. Post-IPO, RPG Industries holds approximately 63.8% of the shares in NWR.

RPG Industries is a Cypriot-incorporated company with diversified investments including real estate, transportation, and mine and landfill gas extraction. Its majority shareholders are two leading private equity players in Europe, Crossroads Capital Investments Inc and Zdenek Bakala (a Czech financier). Its minority shareholders are American Metals & Coal, Inc and First Reserve Corporation, both major international private equity investors. The IPO represents a significant partial exit for all these investors. This article examines the corporate restructure leading up to the IPO, including the use of tracking stock, a tool sometimes used in company restructurings, which tracks a division of a company's business.

### PE firms bring focus

The company undertook a major restructuring and recapitalisation before the IPO. OKD a.s. (NWR's key operating subsidiary) was previously listed on the Prague Stock Exchange. Its then majority investor acquired the Czech National Property Fund's signifi-

cant minority stake, following which RPG Industries acquired that majority investor (in 2004) and took OKD private (in 2005), after a squeeze-out of minority interests. It was one of the largest leveraged finance transactions in Central Europe at that time.

The restructuring that followed shows the focus that private equity houses can bring to a business. This included: the consolidation of the mining businesses within one entity, OKD, rather than the five entities within which the assets had been partially held, and the demerger or sale of the company's non-mining businesses: initially demerging OKD's non-mining property portfolio and placing it under the direct ownership of RPG Industries; separating real estate used by the company in its mining activities from the company's mining operations (thus creating two separate divisions and the tracking stock concept); extracting the company's railway assets into a separate legal entity and placing them under direct ownership of RPG Industries; and transferring NWR's mine and landfill gas extraction business into a separate company wholly owned by RPG Industries, known as Green Gas International BV. The recapitalisation included a €1.1 billion senior facility and €300 million high yield bond.

### Tracking stock

Tracking stock is a security issued by a company to track the performance of a division of its business or a subsidiary. It is used in corporate restructurings to track separate businesses of a company which are not, or cannot be, separated. As part of its policy of managing its real estate business independently from its mining business, RPG Industries wanted to transfer NWR's property portfolio to a separate legal entity, which it achieved with respect to the non-mining real estate.

However, mining regulations in the Czech Republic would not permit land used in mining to be removed before the cessation of mining activities. The mining assets and NWR's real estate portfolio were partitioned into separate divisions – the Mining Division and the Real Estate Division – and operated separately for accounting and reporting purposes. To reflect this division, the company's share capital was reorganised into two separate classes of shares, or tracking stock: the A Shares track the performance of the Mining Division; the B Shares track the performance of the Real Estate Division, and have no financial rights or entitlements over

### About NWR

- A pure play hard-coal-mining and coke production company through its A Shares.
- A leading supplier of hard coal in the fastest growing region in Europe.
- Owns five established mines and two coking facilities in northeast Czech Republic. It is pursuing opportunities in Poland and elsewhere.
- One of the largest industrial groups in the Czech Republic in terms of assets and revenues.
- Second largest private employer in the country with approximately 18,341 employees and 3,563 contractors.

the Mining Division or its assets. The IPO was only with respect to the A Shares. RPG Industries has retained the B Shares.

### Corporate governance

To allay potential concerns about the relationship between the two classes of shares and the operation of the separate businesses, the company adopted divisional policy statements to ensure that the Mining Division has unrestricted access to the Real Estate Division's property, and that the Mining Division and Real Estate Division are managed in the best interests of NWR as a whole.

All dealings between the two divisions are to occur on arms' length terms as if they are separate companies. To ensure proper corporate governance procedures are in place, a real estate committee comprised of NWR's independent directors has been established. The committee: oversees the assets and liabilities of the Real Estate Division; manages the interaction between the divisions in connection with the Real Estate Division assets; and reports to, and advises, the Board regarding the Real Estate Division.

### Good for investors

The tracking stock strategy has benefits and disadvantages. The benefits include: investors can track the performance of a specific part of a company's business; different investor groups can participate in separate lines of the company's business; and shared overheads.

The disadvantages include: no legal separation between the divisions so that each can suffer from unrelated liabilities in the other; potential corporate governance conflicts; and potential competition between shareholder groups.

The concept of tracking stock is useful for diversified companies, or large corporations such as NWR which have significant non-core assets. It is an effective means by which private equity and other investors can optimise exits from their investments.

*Dechert represented NWR in its recent IPO.*

### IPO information

- Offer priced at top of the price range – £13.25.
- Total offer valued at £1.3 billion, resulting in a market capitalisation of about £3.5 billion.
- Offer over-subscribed at about 7.3 times at the top of the price range, amounting to about £9.2 billion.
- Strong institutional demand from all regions in which the shares were offered.
- Morgan Stanley, Goldman Sachs, JPMorgan Cazenove as joint sponsors, global co-ordinators and bookrunners.