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General Chapter:

Country Question and Answer Chapters:

Changing Times; Changing Laws – Policy and Regulations Under Scrutiny Again

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Introduction

In the previous edition we focused on the challenges to governments in setting priorities for their domestic mining industries, and how this manifests itself in a country's laws and regulations. We looked at the precarious balancing act required of government and its lawmakers, and we highlighted the difficulties in creating a dynamic and responsive regulatory regime: a regime that supports long-term capital investment, both local and international, throughout the value chain, at the same time as preserving and protecting current and future national interests in a country's mineral resources.

Changing Times; Changing Laws

Never before has the government balancing act been the subject of such critical scrutiny as the present. As the global mining industry begins its recovery from arguably the worst downward cycle in modern times all eyes have been, and remain, firmly on government and regulation.

In recent years, and in response to that downward cycle, miners have addressed their existing balance sheets in priority to their reserves and resources. In doing so, they have reduced debt and other borrowings and have sought to return operating income to shareholders and investors in an attempt to restore confidence in management teams, the assets those teams are responsible for and, in the longer term, the market itself. A large part of this has meant that construction programmes and expansion projects have been shelved or cancelled, acquisitions and investments have been delayed and exploration activity has been reduced materially.

It is broadly (if cautiously) accepted now that the slow reversal is commencing, unwinding the effects of declining metal prices, increasing production costs and reducing ore grades. With this, a stronger, healthier industry, with more confidence in its supply and demand economics and future commodity prices, is seeking to invest again in its reserves and resources.

And so the focus once more turns to the possible impediments to this investment. As a consequence, increased and changing mineral regulation is again being identified as a material hurdle requiring careful navigation. No more so is this the case than in the mining powerhouse of the Democratic Republic of Congo.

The DRC is not the only country to have made recent changes to its mineral laws. The changes last year to the mining laws in Tanzania created, and continue to create, significant interest as those involved attempt to work through the far reaching implications of, amongst other things, higher royalty rates, increased mandatory state ownership and the government's ability to review and renegotiate mining agreements considered to contain "unconscionable" terms. In addition, the new laws seek to prohibit the right to select international arbitration for disputes, limiting recourse to local courts and laws only – a development with consequences beyond just the mining sector.

Certain aspects of the 2018 Draft Mining Charter in South Africa, in particular, the proposed increase in mandatory local ownership requirements, together with the country's ongoing debate about expropriation of land without compensation, are being viewed cautiously in the context of the foreign investment required to restart the mining industry and capitalise on the country's mineral resources and mining traditions following recent declining years.

Other key mining nations, such as Indonesia, Kazakhstan, Guinea and Brazil, have all made, or indicated an intention to make, significant changes to their existing laws. Individually and collectively all of these (and other) legal developments are seen as sending shock waves of varying degrees through the global mining industry at a time when legislative and regulatory calm is required to support the recovery.

But it is the regulatory developments in the DRC that have arguably caught the attention of most in the last 12 months.

DRC

Following a very long review period, the DRC government recently finalised its position on the changes to the country's mining laws. Implementing regulations passed in June 2018 brought into effect the new mining law (No. 18/001) signed earlier in March which amended the existing 2002 Mining Code.

The 2002 Mining Code was put together with key input from the World Bank and other external consultants. It has previously been heralded amongst industry participants as being part of the foundations supporting the necessary investment in the country required to monetarise its mineral resources in the ensuing period.

The success (or otherwise) of these investments is not for this chapter. But the question of success remains at the heart of any discussion of a country's mineral wealth. It centres on the great difficulties faced in achieving an objective position on whether or not a country can claim that investment in its mineral resources has been a success or not, and, indeed, how success can, and should, be measured. Increased foreign investment in any country is not enough to claim a success. This is particularly so where much of the value of that investment is seen to leave the country and, even more so, where the residual value retained in the country is not redistributed equitably. No more so are these questions relevant than in the DRC.

The devastating geopolitical and humanitarian experiences of the DRC, both before and after the implementation of the 2002 Mining Code, cannot be ignored in any analysis of the country generally and its mineral industry specifically. Yet empirical statistics do present a stark increase in foreign direct investment into the DRC following the implementation of the 2002 Mining Code. And this increase in FDI stands up strongly against comparative analysis with other African countries during the period.

Clearly, an increase in a country's FDI cannot be attributable solely to the actual or perceived robustness of its domestic laws. Much as the law and policy makers would like to take full credit for this, there are any number of factors that need to align at any one time. In the case of the mining sector, this period was witness to very strong metal prices during a commodity super-cycle never before seen. This allowed miners and investors alike to leverage balance sheets and assets in such a way that made vast amounts of capital available for investment in the sector.

In the case of the DRC, this favourable investment climate was matched by its impressive geology and mineral resource which is almost without comparison in terms of grades and ounces in certain base metal markets and others, such as cobalt, gold and diamonds.

But it can be without question that the 2002 Mining Code formed the legislative backbone against which that available foreign capital investment was matched to the country's mineral resources. During this period there was a phase of massive development of mining projects and mine-related infrastructure. Some of the world's largest mining companies and their investors saw comfort and benefit in the DRC's legal framework embodied in the 2002 Mining Code. This mitigated some of the material risk considerations associated with long-term investments in resource assets, and allowed for final investment decisions to be made for otherwise high stakes ventures.

It is these same mining companies who have now formed a consultation group in response to the 2002 Mining Code amendments – amendments which, despite significant criticism from these companies during the initial legislative process, introduce sweeping changes across the ownership, regulatory, financial and administrative landscape of mining activity in the DRC.

We do not summarise in this chapter the changes put into effect by the new laws. Collectively, the changes have a material impact on the whole industry and those operating in it. Individually, a number of these changes are not in themselves unique. For example, the higher royalty rates and increased state free carried interests are similar, in principle, to the type of changes brought about by the Tanzanian government most recently. There is precedent for the type of special tax rates introduced by the new laws to be applied to excess profits from mining ventures. And other changes to administrative and financial processes, whilst not insignificant, are not necessarily new.

Stabilisation

But there are some particularly notable changes, not least the changes to the stabilisation protection previously afforded in the 2002 Mining Code.

Stabilisation protection has always been controversial and never without its critics. It is not specific to the mining industry or to investments in Africa. It is seen by investors as the necessary legislative support afforded by a government to underpin long-term capital investment in a country.

In many different forms, stabilisation protection broadly represents a legally enforceable commitment of a government (written into law and/or into private contracts) that it will not, for a defined period, make legislative changes that might otherwise adversely affect foreign investment in a project or venture. The areas of legislative changes focus largely on the tax and fiscal treatment of such an investment.

The principle is that this type of stabilisation protection affords certainty around some of the many variables making up an investment decision. It allows financial models to create clearer risk and return forecasts against which capital investments can be sized. In other words, it is the other side (the government side) of the bargain to a commitment to invest in a project or a venture in a foreign country where the timescales for the necessary financial returns against large capital investments can be both long and unpredictable, and subject throughout to market, geological and technical uncertainties.

It is thus that the reaction to the reduction of stabilisation protection from the 10 years embedded in the 2002 Mining Code to 5 years has caused perhaps the most amount of concern. Capital investments in all resources projects are large. In the DRC, as with many other African mining countries such as Guinea and Zambia, mine and mine-related infrastructure for logistical, transportation and processing activities is far less developed than other resource rich areas of the world.

This only increases the amount of capital and technical expertise required to develop the reserves and resources. In some cases, the amount of investment required in the infrastructure assets themselves that are necessary to get the mine production to market (railways, roads, ports, smelters and processing facilities) far outweighs the investments needed to actually develop the mine itself. For mining and mine development in the DRC, it is feared in the industry that the halving of the stabilisation period could more than double the associated operating and development risks.

Strategic Minerals

The question as to whether, and in what form, stabilisation protection is provided by a government is not a new issue however. It is neither specific to the DRC nor to mining. But the second notable aspect of the changes to the 2002 Mining Code is a relatively new development, and in many ways specific to the geology of the DRC.

The designation of certain minerals as "strategic", and the application of different royalty rates for those strategic minerals, can only been seen as a direct response to the massive increase in global demand for battery materials, in particular cobalt, coltan and lithium.

With the DRC holding approximately 60 per cent of the word's sources of cobalt, it has become the country of focus for the rapidly developing energy storage industries and the rush to secure long term high grade supply. The use of cobalt in battery technology ranging from mobile telephones and domestic electric vehicles to large scale grid-connected energy storage facilities has led to a huge increase in its value - similarly, with lithium and other commodities such as nickel, manganese and graphite.

The law designating cobalt and other minerals as "strategic" can be seen as a clear, if blunt, response by the government to take best advantage of its county's specific supply side pre-eminence. The DRC is not the first country to adjust royalty and tax rates in response to strong metal prices. Zambia, for example, did the same for its copper exports when the market price last rallied for a sustained period. But the "bet" on specific battery and other energy storage minerals represents a modern day positioning by a government. Whether or not that may be a gamble will be determined largely by the current research and development in energy and transport industries to find the most effective raw materials needed to produce the longest lasting batteries.

The paradox, therefore, appears yet again as a country seeks to change its laws in response to positive market developments to ensure that it benefits appropriately. But the effect of these changes is to create uncertainty and distrust within the investment community at the very moment those investments are most required to take advantage of the market. Whilst miners have traditionally been prepared to assume geological and mining risks, together with market price fluctuations, they have, at the same time, looked to host governments to assume and manage equitably certain risks beyond their control such as regulatory, fiscal, title and security of tenure risks.

Broader Considerations

The industry will watch with great interest as the continuing dialogue between government and stakeholders develops in the DRC, in South Africa and elsewhere throughout the mining world. Global macro factors, such as political and financial sanctions, "tit for tat" trade tariff escalations and the ongoing and increasingly unpredictable relationship between the US and China, continue to dominate and shape the industry. In fact, many commentators point first to the US/China relationship as being the most significant factor in the strength or otherwise of global metal markets going into the next 12 months.

But, as we have highlighted, as part of these considerations much attention is focused currently on government policy and law. The term "resource nationalism" continues to be applied in this context and has arisen in many commentaries on the recent regulatory developments in the DRC and South Africa. Whilst it remains without question that changes in laws and policies centred on natural resources can, and will, have unjust and inequitable implications that negatively impact investors, often the label of "resource nationalism" fails to consider fully the underlying difficulties in balancing national interests with foreign expectations.

One of the many explanations for the rise and application of resource nationalism is its relationship with populist politics. Indeed, it can be argued that resource nationalism is, in itself, a manifestation of populist politics, heralded on the one hand as being founded on an ideal of restoring national domestic benefit, and yet criticised on the other as being short-sighted and protectionist.

Today, arguably more so than ever in recent times, there are many forms of populism and populist politics upon which governments are being mandated to govern and set policy. This form of politics is affecting the way domestic governments look to shape all of their laws and regulations as they apply to multiple industries in a global world. The trade tariff escalations mentioned above form no small part of these politics. And in some ways it is difficult to see the difference between both the objectives and the effects of trade tariffs and some of those elements of resource nationalism mentioned above.

So, whilst the changing laws in the DRC and South Africa, for example, will be characterised as resource nationalism in its barest form, the reasons underlying these changes have to be considered in the wider context of modern global politics. And in the specific context of mineral regulation, these changes need to form part of a broader discussion about the role of regulation and law, and whether an objective standard can ever be achieved against which success can be determined.

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Tom Eldridge is a partner in the Banking & Finance practice of Mayer Brown International LLP. He has 20 years' experience in UK and cross-border transactions. He has worked on a variety of lending transactions in the mining and metals sector including project and export credit finance, pre-export and prepayment (producer and trader) facilities, forfaiting and discounting arrangements, letters of credit, borrowing base and reserve base facilities, inventory and warehouse arrangements, royalty and streaming structures and other forms of offtaker finance.

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Mayer Brown's global mining group works throughout the world, advising clients on a wide variety of transactions including project finance, environmental, corporate, construction, insurance and commodities matters. Our lawyers have extensive experience of the day-to-day legal, financial and operational issues faced by mineral producers and those who provide finance to the industry sector. This enables us to get straight to the heart of what our clients need and for the assistance we provide to be given with a full appreciation of real and practical industry concerns. No matter how complex the deal or remote the operation, our mining team is likely to have worked on a similar assignment before and will therefore be familiar with the issues that have to be resolved.

Angola

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mining Code, approved by Law 31/11, of 23 September 2011 ("**Mining Code**"), is the cornerstone of the Angolan legal framework for the mining industry. This statute regulates the activities of exploration, evaluation, reconnaissance, mining and marketing of mineral resources in general.

In addition to the Mining Code, other statutory and regulatory acts must be considered, including, *inter alia*:

- Joint Executive Decree 316/17, of 27 June 2017, which approves the list of equipment for use in exploration and mining activities exempted from customs duties and fees;
- Presidential Decree 231/16, of 8 December 2016, which classifies rare metals and rare earth elements as strategic minerals;
- Presidential Decree 163/16, of 29 August 2016, which approves the policy for the marketing of rough diamonds;
- Presidential Decree 158/16, of 10 August 2016, which approves the mineral administrative offences and relevant penalties regime;
- Presidential Decree 2/14, of 2 January 2014, which establishes the Market Regulation Agency for Gold whose main purpose is to organise, regulate and supervise the gold market; and
- Order 2/03, of 28 February 2003 of the National Bank of Angola, which establishes the foreign exchange regime for diamond producers.

1.2 Which Government body/ies administer the mining industry?

The main regulatory bodies are the Head of the Government ("**HOG**"), the Ministry of Mineral Resources and Petroleum ("**MMRP**"), the Ministry of Finance and the Angolan Central Bank ("**BNA**").

Brief reference should also be made to: **(a)** Empresa Nacional de Diamantes de Angola – Endiama E.P. ("**Endiama**" – the national concessionaire for diamonds, rare metals and rare earth elements); **(b)** Empresa Nacional de Ferro de Angola – Ferrangol – E.P. ("**Ferrangol**" – the national concessionaire for noble materials, ferrous and non-ferrous metals); **(c)** the Market Regulatory Agency for Gold (entrusted with the organisation, regulation and supervision of the gold market); and **(d)** SODIAM – Sociedade de Comercialização de Diamantes de Angola, S.A. (the single channel for marketing of all diamond productions extracted from Angola).

1.3 Describe any other sources of law affecting the mining industry.

There are many other miscellaneous statutes applicable to the mining industry, remarkably the Private Investment Law (Law 10/18, of 26 June 2018), the General Labour Law (Law 7/15, of 15 June 2015), the Foreign Exchange Law (Law 5/97, of 27 June 1997) and the Environmental Law (Law 5/98, of 19 June 1998), among others.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

There is no specific title to carry out isolated reconnaissance activities (please see our comments in question 2.2 below).

However, under the Mining Code, private entities may carry out geological mineral investigations and produce geological information under a public-private partnership structure and under the methodological supervision of the Public Geological-Mineral Services, provided that (i) such public-private partnership is duly justified (since, as a rule, the Government is the entity responsible for this activity), and (ii) a proper authorisation is obtained from the MMRP.

2.2 What rights are required to conduct exploration?

As a rule, to carry out exploration activities, the investor is required to negotiate and enter into a mineral investment contract ("**MIC**") with the MMRP and/or a national concessionaire. However, for exploration and mining of mineral resources used in civil construction and public works, a mineral permit suffices. In respect of artisanal activities, only a mineral ticket is required.

Focusing now on industrial mining, the Mining Code adopted a single-contract model (the MIC) under which mineral rights are granted, from the outset, for the whole mineral process (exploration, evaluation, reconnaissance, mining and marketing). The Mining Code divides the mineral activities into three phases (reconnaissance and exploration stage, appraisal stage and mining stage), although explicitly stating that the rules, rights and obligations covering the three phases are to be set forth in the relevant MIC.

MICs may be entered into further to either (i) a spontaneous application, or (ii) a public tender. Public tenders may be optional or compulsory, depending on the geological potential of the relevant area and/or the qualification of the mineral to be exploited as strategic or non-

strategic. Minerals may be classified as strategic by the Government depending on their economic relevance, its use for strategic purposes or other specific technical mining aspects. Other relevant criteria to qualify a mineral as strategic are its rarity, its impact on economic development, the demand on the international market, the impact on its exploitation on job creation, its technological relevance, the impact of its exploitation in the balance of payments and/or its relevance for the military industry. Diamonds, gold and radioactive minerals are expressly qualified as strategic minerals in the Mining Code. Presidential Decree 231/16, of 8 December 2016, recently classified rare metals and rare earth elements as strategic minerals.

In the absence of a mandatory public tender procedure, mineral rights may be granted on a 'first-come first-served' basis to the applicant who evidences the technical and financial capability required to carry out the relevant mineral activities.

Although all mineral rights (from exploration to marketing) are formally granted from the outset by means of a MIC, the holder of the mineral rights must obtain an exploration title – to be issued upon the approval of the MIC – and, subsequently, a mining title, in order to commence the mining activities in relation to each phase.

The transition from the exploration phase to the mining phase depends on the submission and approval of a technical, economic and financial feasibility study (which must include an environmental impact study). Upon approval of this study by the MMRP, a mining title should be issued.

2.3 What rights are required to conduct mining?

Please see our comments in question 2.2 above.

2.4 Are different procedures applicable to different minerals and on different types of land?

Depending on the geological potential of the relevant area and/or the qualification of the mineral to be exploited, the mineral rights may be granted further to either (i) spontaneous applications, or (ii) public tenders. The type of land is not a criterion to take into consideration for this purpose.

2.5 Are different procedures applicable to natural oil and gas?

Yes. The award of mineral rights for oil and gas exploitation is subject to a specific and comprehensive statutory framework. The most relevant legal statute in this respect is the Petroleum Activities Law (approved by Law 10/04, of 12 November 2004).

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Mineral rights may be granted to any form of association permitted by law (i.e. incorporated or unincorporated JVs), provided that the following requirements are met: (a) the associates satisfy the conditions established in the Mining Code to access mineral rights; and (b) the associates are jointly and severally liable for compliance with the mineral obligations.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

As a rule, mineral rights may be owned directly or indirectly by a foreign entity. However, the latter are required to either register a branch or incorporate a company in the country to carry their business activities.

There are no special rules for foreign applicants. All the above apply to both national and foreign applicants. However, there are certain rights that may only be granted to Angolan citizens/entities (please see our comments in question 3.4 below) and foreign applicants may be required to engage national entities in their activities. Preference shall, nevertheless, be given to national partners or companies when setting up a business partnership.

3.3 Are there any change of control restrictions applicable?

No express change of control restrictions are provided for in the law. However, the assignment, transfer or, more broadly, the disposal of mineral rights, is subject to a number of restrictions (please see our comments in question 5.1 below).

3.4 Are there requirements for ownership by indigenous persons or entities?

As a rule, no local content requirements apply to the mining industry. However, there are some exceptions, as in the case of artisanal mining activities, which may only be carried out by Angolan citizens, and mineral rights for civil construction and public works minerals and mineral-medicinal waters exploitation, which may only be granted to either Angolan citizens or legal persons having at least two-thirds of its share capital owned by Angolan citizens.

As concerns diamonds, Endiama has been acting as the (exclusive) national concessionaire and is consistently engaged in projects as both a member of unincorporated joint ventures for the exploration stage and shareholder of the companies incorporated for the mining stage, either directly (prior to the enactment of the Mining Code) or through an Angolan subsidiary company wholly owned by Endiama. More recently, Endiama has also become the national concessionaire for rare metals and rare earth elements.

Ferrangol is a State-owned company and the national concessionaire for noble materials, ferrous and non-ferrous metals. Ferrangol usually associates itself with both national and foreign partners, through either unincorporated or incorporated joint ventures.

3.5 Does the State have free carry rights or options to acquire shareholdings?

As a consideration for the granting of the mineral rights for mining and marketing, the State is entitled to participate in mineral production (i) through a State-owned company holding an equity of at least 10% in the company to be set up for the mining phase, and/or (ii) receiving a share of the production in kind, in terms to be negotiated and defined taking into consideration the production cycles (as a rule, the State's share should increase along with the increase of the internal rate of return of the project).

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Specific provisions apply to diamond cutting.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The exportation of minerals is subject to licensing/clearance by the relevant body of the Ministry of Commerce and the Customs National Service, as well as notification to the MMRP.

Prior to the export, strategic minerals must be valued and sorted using, whenever the circumstances or the nature of the minerals so require, an internationally renowned evaluation entity retained for such purpose. The producer has the right to use its own evaluator in all stages of the valuation process.

All minerals extracted in and exported from Angola must have a certificate of origin issued by the relevant authorities.

The exportation of minerals legally extracted and processed is not, in principle, subject to payment of duties or other customs charges, except for stamp duty and the customs officers' personal fees. However, mineral resources that are exported without being processed are subject to a 5% custom duty of their market value.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Mineral rights may be transferred to third parties, provided such transfer is previously authorised by the MMRP or the HOG, as the case may be. Transfer of mineral rights may only be authorised if the prospective assignee meets the same technical and financial requirements of the assignor and is subject to the payment of fees and charges.

The transfer of mineral titles (i) must be recorded in the relevant exploration and/or mining title, with an express reference to the new holder and the transfer authorisation, and (ii) is subject to the same publication requirements as the original rights award.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Mining rights may only be pledged to secure loans taken by the concessionaire to fund the geological mineral activities covered by the concession title.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

No, they are not.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

No, they are not.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Rights over accessory minerals must be expressly included in the MIC and relevant titles. Otherwise, the holder of the mineral rights does not have the right to exploit them. The exception applies to strategic minerals or minerals subject to a special framework, which are always subject to a new award procedure.

It is also worth noting that primary and secondary diamond deposits are deemed, from a legal standpoint, as different minerals and therefore, mineral rights over each one of these types of deposits must be expressly granted under the relevant MICs and mineral licences.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Mineral rights cover a specific mineral or minerals (main and/or accessory) discovered within a specific area. If the residue deposits, cumulatively, are related to one of the minerals covered by the title and are located within the relevant area, the holder is allowed to exploit them.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes. The Mining Code contains specific rules for mineral activities in the sea.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The granting of mineral rights does not imply the transfer of ownership over the areas awarded for geological mineral investigation or over the land where mineral occurrences are located, but grants the holder of the relevant mineral rights the right to use and exploit such land against payment of surface fees.

In the case of privately owned land and areas in the private domain of the State or a public entity, the holder of mineral rights may only use the land upon obtaining the consent of the owners and/or possessors, in terms to be agreed between the holder of mineral rights and the owners and/or possessors (consent is deemed to be granted upon deposit of the annual rent and the posting of a provisional bond).

In case the concessionaire fails to reach an agreement with the owners and/or possessors during the mining phase, operations may not commence until the land is acquired by the holder of mineral rights or expropriated by the State on grounds of public interest.

Holders of mineral rights are entitled to request the creation of easements required for full exercise of their rights, rights of way included.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Please see our comments in question 7.1 above.

7.3 What rights of expropriation exist?

Please see our comments in question 7.1 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

All projects that by nature, dimension or location may have an impact on the environment and social balance and harmony are subject to an environmental impact assessment ("**EIA**"), made on a case-by-case basis. In the case of the mining industry, holders of mineral rights are required to complete and obtain approval of a mandatory EIA prior to transitioning into the mining phase.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The mandatory EIA must contain, among other information, a waste management plan and an abandonment plan. Mining companies are also required to create a legal reserve in an amount of 5% of the capital invested in the relevant project for mine closure and environmental restoration.

Mining companies are also subject to the requirements provided for in the general environmental statutes applicable to all industries, such as, without limitation, the waste management regulations, approved by Presidential Decree No. 190/12, of 24 August 2012.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Upon completion of the works, the holders of mineral rights must restore the land and landscape in the terms approved under the EIA. Prior to the definitive abandonment of the concession area, holders of mineral rights must request the MMRP to inspect the area of the mineral operations. This inspection must be carried out in accordance with the plan for closure and abandonment of the mineral operations approved by the MMRP as provided for in the Mining Code and the EIA.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Areas subject to reconnaissance and exploration operations are subject to demarcation by the MMRP. Holders of mining rights are required to demarcate the area with easily identifiable concrete markers, no later than 90 days as from the mineral title being issued or any change to the area being made. Mineral production areas are divided into (i) restricted areas, (ii) protection areas, and (iii) reserve areas, as follows:

(i) Restricted areas comprise mining areas, including the deposits or beds and the respective dressing facilities in a radius of up to 1,000 metres.

(ii) Protection areas comprise: (a) the areas corresponding to the strips of land around restricted areas in a radius of up to 5 kilometres, to be established at the prudent discretion of the relevant body, as from the outer limits of the deposits protected by mineral demarcation; and (b) the areas corresponding to mineral occurrences discovered under an exploration title, plus a surrounding strip of up to 5 kilometres, to be established at the prudent discretion of the relevant body, as from the outer limits of the protected beds or deposits, during the period from the discovery of the occurrences to the granting of mining rights.

(iii) Mineral reserve areas are areas within the national territory in relation to which no mineral rights have been previously awarded, but are already allocated to future mining development.

Each type of area is subject to different rules concerning the movement of persons or goods, allowed business activities and residency rules.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No. The impact of land rights is as mentioned in question 7.1 above.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Although specially regulated in the Mining Code, health and safety requirements for mineral activities are also subject to the general statutes applicable to other activities, such as the General Labour Law (approved by Law 7/15, of 15 June 2015).

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Yes. The Mining Code contains a broad provision requiring holders of mineral rights to adopt measures to ensure hygiene, health and safety at work, as well as to prevent occupational hazards and accidents at work, as set forth in specific regulations issued by the relevant bodies and approved by the MMRP, the Ministry of Public Administration, Employment and Social Security and the Ministry of Health.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. The award, modification, transfer and expiry of mineral rights must be recorded with the Public Geological-Mineral Service.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is a system of administrative appeals provided for in the general administrative law, which also applies to mineral activities.

The Mining Code also contains some specific rules on this matter (namely, without limitation, for the exercise of the rights of opposition and/or challenge to the requests for award of mineral rights).

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Yes. The Constitution of the Republic of Angola sets forth that natural resources are exclusively owned by the State, who determines the terms under which they may be exploited.

12.2 Are there any State investment treaties which are applicable?

The Angolan National Assembly has approved bilateral investment treaties between Angola and various countries, such as Cuba, Germany, Italy, Namibia, Portugal, Russia, South Africa, Switzerland and the United States.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The Mining Code provides for special rules on taxation of mineral activities, from which we highlight the following:

a) an industry-specific industrial tax rate of 25% (lower than the general industrial tax rate of 30%);

b) a number of additional costs and expenses may be deductible to determine the taxable income, such as all the authorised exploration, evaluation and reconnaissance costs; and

c) a surface fee (ranging from US$2 to US$40 per square kilometre). These figures are doubled in the event of extension of the exploration period.

Special customs rules are also included in the Mining Code.

13.2 Are there royalties payable to the State over and above any taxes?

A royalty to be levied on the value of extracted mineral resources is due at the following rates: strategic minerals and precious metallic minerals and stones – 5%; semi-precious stones – 4%; non-precious metallic minerals – 3%; and construction materials of mining origin and other minerals – 2%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Without prejudice to the terms and conditions provided for in the relevant MICs, the holder of mining rights may abandon the mineral area, in whole or in part, at any time with a prior notice of no less than 180 days to the MMRP.

The abandonment only becomes effective on the date it is approved by the MMRP and may not take place in less than three months or after the prior notice period has expired.

In case the mineral area is abandoned entirely, the mining title expires. In case the mineral area is abandoned only in part, the holder must update the boundaries of the newly reduced area and promote the registration of such reduction and update the mining title.

The abandonment of any area pursuant to the preceding paragraphs does not release the holder from: (a) paying taxes, charges, fines or any compensation due up to the date of the abandonment formally acknowledged by the MMRP; (b) complying with all obligations relating to environmental matters; and (c) complying with any obligations imposed by law or by the MIC until the effective date of the abandonment.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

At the term of the initial five-year exploration period, the holder of the mineral rights must relinquish 50% of the concession area and, at the end of each extension, must relinquish an area to be defined by the MMRP upon assessment of the results obtained during the relevant extension period. The holder of mineral rights may oppose to the relinquishment rule and keep the whole area against the payment of an aggravated surface fee.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Failure to comply with all the obligations deriving from the law or the MIC allows the State or the national concessionaire company, as the case may be, to terminate the MIC and cancel the relevant title. However, (i) failure by concessionaires to comply with its obligations under the law or the MIC may only be invoked as grounds for termination in case of repeated default, and (ii) unilateral termination by the State must be preceded by notice to the concessionaire, stating the legal and factual grounds for termination and granting the holders of the minerals rights a minimum 60-day period to exercise its right of defence and oppose the termination.

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Chapter 3

Australia

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

A seminal element of Australian mining law is that virtually all minerals are vested in the Crown in right of the States (with respect to the Australian States) and the Commonwealth (with respect to the two Australian Territories). Accordingly, each of the States and the Northern Territory (***NT***) has enacted a separate legislative regime that governs the exploration for and extraction of minerals within their respective state or territorial boundaries. The Commonwealth has sovereignty in respect of minerals located beyond the low-water mark of the Australian continent, although through agreement with the States, has conferred certain rights to the States over minerals located within three nautical miles of the low-water mark. The primary legislative regimes governing mining in Australia include the following:

Legislation	Jurisdiction
Planning and Development Act 2007	Australian Capital Territory
Offshore Minerals Act 1994 (Cth)	Continental Shelf and Exclusive Economic Zone
Mineral Titles Act 2010	Northern Territory
Offshore Minerals Act 1999 and Mining Act 1992	New South Wales
Offshore Minerals Act 1998 and Mineral Resources Act 1989	Queensland
Offshore Minerals Act 2000 and Mining Act 1971	South Australia
Mineral Resources Development Act 1995	Tasmania
Underseas Mineral Resources Development Act 1963 and Mineral Resources (Sustainable Development) Act 1990	Victoria
Offshore Minerals Act 2003 and Mining Act 1978	Western Australia

1.2 Which Government body/ies administer the mining industry?

Responsibility for the administration of each of these legislative regimes is vested in a Minister (who is an elected member of the government). The Minister is assisted by a separate department of the public service of the State or Territory.

1.3 Describe any other sources of law affecting the mining industry.

In addition to the legislation providing for the exploration for and extraction of minerals within their territorial boundaries, each of the States and Territories have legislated with respect to the plethora of legal issues affecting the mining industries including environmental law, access, health and safety, employment and real property.

The Commonwealth has constitutional powers over many of these aspects of law, and Commonwealth legislation in exercise of those powers overrides any inconsistent State legislation by virtue of the Commonwealth Constitution. Relevantly for the mining industry, the Commonwealth has legislated in respect of corporations, exports, taxation, national security/defence, indigenous rights, foreign affairs, competition, employment and environmental matters.

In addition, due to the size and scope of certain mining projects (particularly iron ore and coal projects), certain States have developed a practice of negotiating contractual agreements with the proponents of these large projects which are then ratified by the State Parliament and, in some cases, override any inconsistent State law. State Agreements are intended to foster cooperation between proponents and the various State departments and authorities involved in the project, lend certainty to the development of the project, and so encourage investment.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Most States and Territories (other than the Australian Capital Territory (***ACT***) and New South Wales (***NSW***)) recognise a right to 'prospect' or 'fossick' for minerals on a small scale. Such rights are generally granted for a short period (of between one to four years, although in Victoria (***Vic***) a miner's right can be granted for a term up to 10 years), convey rights to conduct non-mechanised activities on the surface of the land only and are subject to the prior consent of any owner or occupier of private land. In certain jurisdictions (South Australia (***SA***) and Western Australia (***WA***)), a prospecting licensee has a right to apply for and have granted a mining lease, or leases over land the subject of the prospecting licence.

2.2 What rights are required to conduct exploration?

All States and the NT recognise a right to conduct large-scale exploration for minerals through the grant of an exploration licence

or permit. An application for an exploration licence must include information relating to the type of minerals sought (i.e. Queensland (***Qld***) has a separate exploration licence for coal), a programme of work, intended expenditure, the financial and technical capacity of the applicant, and environmental impact, although these requirements vary between the States.

An exploration licence will generally grant the following rights:

- entry onto the land for purposes of exploration (including employing the use of vehicles, machinery and equipment);
- conducting works including digging pits, drilling holes, tunnelling and removing samples of the minerals noted in the licence; and
- exclusivity in the application for mining rights over that land.

An exploration licence will generally impose the following obligations:

- compensation payments to any existing owner or occupier;
- annual licence payments;
- minimum expenditure requirements;
- annual reports deliverable to the relevant department;
- environmental rehabilitation; and
- advertising and notice requirements.

Exploration licences are granted for longer terms than a prospecting licence, often up to five years, and may be renewed in special circumstances. Most States impose compulsory relinquishment requirements to halve the size of the exploration licence part-way through the term and on an annual basis thereafter.

2.3 What rights are required to conduct mining?

A mining lease is required in order to conduct commercial mining activities in any State or Territory. In certain States (Qld and WA), only holders of an existing licence or permit under the applicable regime may apply for a mining lease. An application for a mining lease must include a map, development proposal, information relating to the financial, technical and operational capacity of the applicant, an environmental impact and management plan, and must comply with notice and advertising requirements. Most jurisdictions provide for an objections period following advertising and a recommendation by an administrative magistrate (a 'mining warden') to the Minister to grant or not grant the mining lease.

A mining lease will generally grant the following rights:

- entry onto the land for purposes of mining;
- conducting mining works relating to the minerals noted in the application (including exploration work, extractive work, constructing processing, refining and disposal facilities and transport infrastructure);
- use of water (subject to certain limitations in certain States); and
- disposal of minerals.

A mining lease will generally impose the following obligations:

- compensation payments to any existing owner or occupier;
- rental payments;
- minimum expenditure requirements;
- annual reports deliverable to the relevant department;
- environmental rehabilitation, including posting of security bonds or contribution to rehabilitation funds;
- disposal of waste; and
- royalties on minerals recovered.

Mining leases are generally granted for a 21-year term (other than in Qld, where the Minister determines the term for each grant) and may be renewed in some circumstances.

2.4 Are different procedures applicable to different minerals and on different types of land?

Some minerals are subject to separate considerations in different States. For instance, in WA it is not possible to prospect for iron ore without the Minister's written authority, and in Qld coal must be the subject of a separate exploration licence and mining lease. In NSW, exploration licences in 'controlled release areas' can only be granted pursuant to a competitive selection process; 'controlled release areas' are designated by the Minister in relation to specific minerals and currently include the whole State with regard to coal.

In addition, due to Australia's obligations under the World Trade Organisation rules and trade agreements, rough diamonds and nuclear materials are subject to special procedures. Rough diamonds may only be exported to countries participating in the Kimberley Process Certification Scheme. Nuclear materials (generally defined as an element having an atomic number greater than 92) are subject to tight export controls imposed by the Commonwealth government under the *Atomic Energy Act 1953* (Cth), which imposes specific requirements for reporting discoveries, among other measures, and the *Customs Act 1901* (Cth).

In most States, a special prospecting licence, permitting prospecting for gemstones and semi-precious metals, may overlap other mining tenements. In WA, a special prospecting licence may be obtained for alluvial gold located on land the subject of another mining tenement.

2.5 Are different procedures applicable to natural oil and gas?

Each of the States (other than Tasmania) and the NT has a separate legislative regime governing the exploration for and recovery of natural oil and gas. In addition, because the majority of Australia's existing natural oil and gas reserves are located offshore, the Commonwealth's legislative regime for natural oil and gas is particularly relevant and governs hydrocarbons located more than three nautical miles from the coastline.

Although responsibility for the administration of the legislative regime lies with the Commonwealth outside the three nautical mile limit and with the applicable State or Territory within that limit, all legislative regimes for offshore natural oil and gas are identical and permit exploration and production under separate licences. Onshore natural oil and gas is governed by State and Territorial legislative regimes that broadly divide rights between exploration, retention and production licences.

The interplay between the mining and natural oil and gas regimes has become more significant with the development of unconventional and coal seam gas projects, particularly in Qld, leading to the granting of overlapping tenure. This interplay forces the State to balance the interests of the mining (usually coal) proponent and the oil and gas proponent, a determination which is ultimately subject to the Minister's discretion. Policies for unconventional and coal seam gas projects differ between the jurisdictions. For example, Victoria has in place a complete ban on onshore hydraulic fracturing and coal seam gas activities.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

There are no restrictions on the types of entity that can hold reconnaissance, exploration and mining rights. An application for reconnaissance, exploration or mining rights can be made by an individual or a company (incorporated under the *Corporations Act 2001* (Cth)). It is most common for a company to hold reconnaissance, exploration and mining rights. Such rights may be held under an incorporated joint venture structure (i.e. a company in which shares are held in agreed proportions by shareholders in that company) or an unincorporated joint venture structure (i.e. where a number of entities agree to hold assets such as a mining tenement as tenants in common, in agreed proportions).

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

The entity holding the rights can be a foreign entity or owned directly or indirectly by a foreign entity.

However, certain acquisitions of interests in entities, businesses and land in Australia by 'foreign persons' must be approved by the Commonwealth Treasurer, acting on the advice of the Foreign Investment Review Board (***FIRB***). The regime applies to: individuals not ordinarily resident in Australia; foreign governments and foreign government investors; and entities in which an individual not ordinarily resident in Australia, a foreign corporation or foreign government holds an interest of at least 20%, or two or more of those persons hold an aggregate interest of at least 40%. Applications are assessed against the national interest, which is generally determined by reference to factors including national security, competition, federal government policies (including tax), the impact on the economy and the community and the character of the investor. Foreign government investors are subject to more rigorous screening than other investors.

Foreign investment approvals are governed by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (the ***FATA***). There are two mechanisms by which the FATA governs transactions:

- For **significant actions**, the Treasurer has broad powers to make orders if satisfied that the transaction would be contrary to the national interest. The transaction may be prohibited, or, if it has already occurred, an order may require disposal. The Treasurer can also impose binding conditions (whether or not the foreign investor asks for FIRB approval) if necessary, to ensure the transaction is not contrary to the national interest. The risk of adverse orders is removed if FIRB approval for the transaction is obtained.
- For **notifiable actions**, there are criminal penalties if FIRB approval is not obtained before proceeding.

Mining or production tenements

All acquisitions of interests in mining or production tenements are generally both notifiable and significant actions, except for acquisitions by investors from Chile, New Zealand and United States below a threshold, which is currently set at $1,134 million. Mining or production tenements include mining leases and licences and petroleum production leases, rights that preserve a right to recover minerals, oil or gas, leases under which the lessee has rights to recover minerals, oil or gas and an 'interest' in any of these (including certain interests in profit/income sharing agreements). There is an exemption for tenements granted directly by the Australian government (however, this does not apply to foreign government investors).

Acquisitions of interests in exploration and prospecting tenements may be notifiable in certain circumstances. The relevant question is whether the exploration or prospecting tenement gives a right to occupy Australian land for a term (including extensions and renewals) that is reasonably likely at the time of grant to exceed five years. This will depend on the nature of the rights conferred by the relevant State, Territory or Commonwealth legislative regime.

Mining and oil and gas companies

The acquisition by a foreign person (together with its associates) of an interest of 20% or more (or an interest of 40% or more in aggregate with other, non-associated foreign persons) in an Australian mining or oil and gas company with a value over an indexed threshold is a notifiable action. The threshold is currently set at $261 million generally, and $1,134 million for Chilean, Japanese, South Korean, New Zealand, Chinese, Singaporean and United States private investors.

The acquisition of an interest in a mining or oil and gas company may also be notifiable, as an acquisition of an interest in an Australian land corporation, where the company's interests in Australian land (including mining or production tenements) exceed 50% of its total assets.

The acquisition of shares in an Australian mining or oil and gas company will also be a significant action where it meets the prescribed threshold (currently set at $261 million generally and $1,134 million for Chilean, Japanese, South Korean, New Zealand, Chinese, Singaporean and United States private investors), where the company carries on an Australian business, and the action results in a change of control. Entering into, or terminating, an agreement with the holder of a mining or production tenement, where the total value of the business exceeds the monetary thresholds outlined above and the action results in a change in control of the business, is also a significant action. Agreements include those relating to leasing assets, the right to use assets, participating in profits or management and control of the business.

Agricultural land register

Foreign persons are also required to register certain interests in Australian agricultural land, as well as any new acquisitions or divestments of such interests. Agricultural land includes land in Australia that is used, or that could reasonably be used, for a primary production business. There are, however, some limited exemptions in the definition for certain types of land associated with mining and oil and gas projects.

3.3 Are there any change of control restrictions applicable?

The transfer of mining tenements in most States require Ministerial consent and registration in order to become effective, and in most States there is no consent required in relation to the change of control of a corporation that holds a mining tenement (other than in NSW and SA, where the Minister's consent to such a proposed acquisition is required). The *Corporations Act 2001* (Cth) requires transactions involving the acquisition of a 20% or greater interest in an Australian company to comply with certain structure, procedure and disclosure requirements.

A change in control in favour of a foreign person should be notified to FIRB under the FATA, irrespective of the position under the State legislation.

3.4 Are there requirements for ownership by indigenous persons or entities?

Ownership by indigenous persons or entities is not a standard condition or requirement.

3.5 Does the State have free carry rights or options to acquire shareholdings?

There are no free carry rights or options to acquire shareholdings in favour of States, Territories or the Commonwealth.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are no special regulatory provisions relating to processing, refining and beneficiation of mined minerals, although a Minister under most State regimes has discretion to impose any such conditions on the grant of mining tenements. These matters are most often addressed in a State Agreement on a project-by-project basis, and by agreement.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are restrictions on the export of diamonds and nuclear materials that are based upon Australia's international treaty obligations and membership of international organisations. See the answer to question 2.4 for an explanation of these restrictions. One of the pre-conditions for export is to hold a permission granted by the Minister responsible for the relevant legislation. However, there are no fees or levies associated with lodging an application for such a permission.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The sale, purchase or transfer of an interest in mining tenements in most States requires Ministerial consent and registration in order to become effective. The relevant Minister will generally assess the proposed transferee's financial, technical and operational capacity to fulfil the exploration or mining work plan set out in the application for the applicable mining tenement. In States such as Qld and WA, only transfers, mortgages, discharges of mortgages and name changes affecting legal interests are required to be registered, while other dealings with beneficial or equitable interests do not require Ministerial approval and registration. See also FIRB requirements addressed in answer to question 3.2.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Security interests in mining tenements, including mortgages, are generally capable of being created to secure finance, but because mining tenements, being personal property, are exempted from the *Personal Property Securities Act 2009* (Cth), it is necessary for the security interest to be registered as a statutory mortgage or charge in order for it to be effectual.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The transfer of a legal interest in part only of a mining tenement is not permitted in most States and Territories, although such subdivisions are permitted in NSW and Victoria where, following subdivision, the two parts of the original tenement are registered under separate instruments. Certain jurisdictions also allow dealings with equitable or beneficial interests in parts of mining tenements, but approval and registration of those dealings does not relieve the registered holders of the mining tenement from any statutory obligations.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Many mining projects in Australia are undertaken by multiple proponents through a joint venture arrangement in order to pool technical, financial and operational resources. Such arrangements often take the form of an unincorporated joint venture, in which the proponents hold their interests in the mining assets directly, as tenants in common. Most jurisdictions support these arrangements by allowing multiple holders of mining tenements, and their relative holdings, to be recorded on the applicable register. In certain jurisdictions, such as NSW and Victoria, multiple owners may be recorded on the register, but their relative holdings are not, and so they appear as joint tenants.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Most jurisdictions do not permit a tenement holder to conduct mining or exploration activities with respect to minerals other than those minerals specified on the relevant mining or exploration licence. In WA, rights to conduct exploration and mining activities are granted with respect to all minerals generally, other than with respect to iron ore which may only be explored for with the Minister's consent.

In addition, special rules apply in most States with respect to the mining of nuclear materials, which has been a politically charged issue in Australia for decades. In SA, uranium mining is permitted, provided Ministerial authorisation of such operations is obtained. A ban on uranium mining in WA was removed in 2008 but reintroduced following a change in government in 2017. However, existing projects granted State Ministerial approval by the former government have been allowed to progress. In Qld, a ban on uranium mining was removed in 2008 and reinstated following a change in government in 2015. In NSW, mining uranium is prohibited, but a ban on exploration for uranium was repealed in 2012. In Victoria, exploration for and mining of uranium and thorium is prohibited. In Tasmania, uranium mining is permitted, but there are no significant known uranium deposits in that State.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Generally, rights to conduct exploration and mining activities may be exercised over minerals that remain in the land and those in residue deposits located on the land the subject of the applicable tenement.

6.5 Are there any special rules relating to offshore exploration and mining?

The Commonwealth retains ownership and legislative power over minerals located on the continental shelf and more than three nautical miles from the coastline, and mining of these minerals is governed by the *Offshore Minerals Act 1994* (Cth). Within the three nautical mile zone, minerals are vested in the applicable State or Territory. Separate regimes exist for exploration and production of petroleum – see the answer to question 2.5.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The right to use the surface of the land for purposes consistent with the nature of the tenement is generally one of the rights granted, among others, when the tenement is awarded. Accordingly, the application process for such licences usually involves seeking the consent of, and the agreement of compensation arrangements with, the owners and occupiers of such land. However, in WA a proponent may apply for sub-surface exploration or mining rights only, which obviates such consent and compensation requirements. If necessary, the holder of a tenement for subsurface rights may only seek an extension of such rights to the surface of the land upon application to the Minister, and such holder must then satisfy the consent and compensation requirements with respect to any owners or occupiers on such surface areas.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

All State and Territory legislative regimes require that compensation be paid to owners or occupiers of land the subject of exploration or mining tenements as part of the application process. If a proponent cannot reach agreement with owners or occupiers regarding such compensation arrangements, a court process determines appropriate compensation. Such arrangements generally take into account damage to the land and improvements, loss of use and access, but not the value of minerals extracted.

7.3 What rights of expropriation exist?

The Crown in right of the Commonwealth is entitled compulsorily to acquire land for public purposes only, but must pay just terms compensation for such expropriation. The private holders of exploration or mining tenements are not permitted to expropriate land for any purpose, although mining leases may confer a right to exclusive possession during mining operations.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Environmental authorisations are required at all stages of mining operations. Standard approvals are generally granted for early stage operations causing minimal disturbance to the land, and more significant and complex approvals are required for more invasive operations, or in areas with highly sensitive environments.

Such approvals are required at the State or Territory government level in connection with the tenement application process, and will involve varying degrees of public comment, consultation and appeal. Projects involving significant or complex environmental issues will require an environmental impact statement, which involves detailed studies, assessment, community consultation and a comprehensive environmental management plan and may take 12 months or more to develop. The Minister with responsibility for the environment will generally be empowered to grant the approval, and such approvals are commonly granted subject to conditions around which the environmental management plan must be built.

If a project is likely to have a significant impact on a matter of national environmental significance, such as nationally listed threatened species and ecological communities, migratory species, nuclear actions, World Heritage, and National Heritage areas, the Commonwealth Minister must determine whether approval is required under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (***EPBC Act***). If the Minister believes that coal seam gas development or large coal mining development is likely to have a significant impact on water resources, including any impacts on associated salt production and/or salinity, the EPBC Act requires the Minister to obtain the advice of the Independent Expert Scientific Committee on the development before deciding whether to grant approval.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Storage of tailings and other waste products are matters generally addressed in environmental management plans submitted in satisfaction of environmental approvals at State and Territory government levels. However, if a tailings or waste storage facility is likely to have a significant impact on a matter of national environmental significance, approval may be required under the EPBC Act. Regulators expect these management plans to demonstrate that storage of tailings and other waste will be safe and non-polluting, both during operations and after mine closure. Some states, like NSW, have enacted specific legislation addressing tailings storage facility safety and management. Other states, like Victoria, WA and Qld, have issued guidelines in relation to tailings storage facility design and operation.

Mine closure is a critical part of the development proposal required for mining lease applications in all States and Territories, which must provide for the return of the land to substantially its condition prior to commencement of exploration or mining activities. Liability for fulfilment of the mine closure plan remains with the proponent of the mine and in most States and Territories must be secured by the posting of a security bond or, in WA, regular contributions to a general rehabilitation fund. Special mine closure and monitoring obligations apply to mines for nuclear materials.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The proponent of a mining right retains liability to rehabilitate the land which has been the subject of mining activities. This liability is only discharged, and any security bond returned, once all regulatory obligations have been fulfilled and the land use objectives specified in the mine closure plan have been achieved. In Queensland, liability for failure to meet environmental obligations also may be imposed on entities or persons related to the proponent(s).

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

The requirement for zoning and planning approvals depends on the local and regional planning schemes in which the reconnaissance, exploration or mining activities are proposed. Construction of buildings or mining infrastructure will generally attract local government planning approvals. There may also be requirements to notify local governments of mining applications and proposals. Major projects which are the subject of State Agreements will commonly have such zoning and planning approvals incorporated into the State Agreement itself.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

In Australia, native title is recognised as a bundle of rights and interests vested in indigenous people over lands with which they have maintained a traditional and continuous connection. Native title rights are deemed extinguished if that continuous connection is broken, including by the grant of freehold title to the relevant land. Since 1 January 1994, the application of the *Native Title Act 1993* (Cth) (***NTA***) requires that any action (including the potential grant of any mining rights) which might be inconsistent with registered native title rights comply with a negotiation regime. The goal of this regime is that the affected native title parties and the proponent agree upon the terms (such as an access arrangement) on which the action may go ahead without disturbing those rights, or by suspending those rights in exchange for compensation (typically indigenous employment conditions, preferred service provider requirements or monetary). If no agreement is reached after six months of good faith negotiation, the National Native Title Tribunal will determine whether the action may go ahead with appropriate compensation, or that compensation is inadequate and the action may not proceed.

In order to register their native title rights under the NTA, traditional landowners must make an application to the Federal Court, which may hear evidence from affected parties (including farmers and mining proponents) before determining the nature and extent of the native title rights of such traditional landowners.

There are separate Commonwealth and State regulatory regimes that protect indigenous cultural heritage through the preservation of areas and objects of significance, as well as the imposition of a duty of care in some States, namely Qld and NSW. This duty of care requires that proponents take reasonable measures to protect cultural heritage (even in areas where native title has been extinguished) such as commissioning cultural heritage surveys and protecting known sites.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Commonwealth and each of the States and Territories have enacted workplace health and safety (***WHS***) laws that apply to all workplaces in the jurisdiction. Model WHS laws apply in most States and Territories (excluding Victoria and WA). Some States (such as NSW, Qld and WA) also have health and safety regimes that apply specifically to mining workplaces. These regimes impose strict rules aimed at establishing a high level of safety in Australian mines, and carry significant penalties for non-compliance.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Most WHS laws impose obligations upon owners, employers, managers, employees, officers and directors to ensure the safety of all persons working on site. The obligations extend to persons who design and manufacture plant and equipment as well as those who install or construct it. WHS laws generally require that officers and directors of a corporation exercise due diligence to ensure the corporation complies with WHS laws. In addition, the mining industry in Australia is heavily unionised and workplace health and safety standards are often included in industrial awards that cover mining sites.

11 Administrative Aspects

11.1 Is there a central titles registration office?

States and Territories maintain registers of mining interests that evidence grant, encumbrances and dealings with respect to mining tenements. Title is not made indefeasible through registration; the regulatory system in each jurisdiction is one for registration of title, rather than title by registration. However, a person dealing with a registered holder can generally rely on the register to take title to a tenement free of unregistered interests.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Administrative decisions relating to mining are vested in the applicable mining department of the State or Territory or the warden, which is an office established under the mining legislation in most States and the Northern Territory that has a judicial and an administrative function. Appeals from the decisions of the mining department and the administrative decisions of the warden are generally available to the applicable District Court or equivalent, and appeals from the judicial decisions of the warden are generally available to the applicable Supreme Court.

In addition, administrative decisions taken by the Minister may be amenable to review by the applicable State or Territory Supreme Court. Such judicial review of the Minister's application of discretion under the applicable mining legislation is rarely successful because the mining legislation generally casts the Minister's discretion very broadly.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Under the Commonwealth Constitution, the power to legislate with respect to onshore minerals is vested in the relevant State or Territory, and with respect to offshore minerals located beyond three nautical miles of the coastline is vested in the Commonwealth.

The Commonwealth also has constitutional powers over many aspects of law that impact upon mining projects. See the answer to question 1.3 for a discussion of the Commonwealth's powers in this regard.

12.2 Are there any State investment treaties which are applicable?

There are no investment treaties that apply specifically to mining, but Australia is a party to many regional, multilateral and bilateral free trade agreements, security arrangements (mostly relevant to the export of nuclear materials) and international tax agreements that apply to a varying extent to mining projects. Sanctions regimes may also, from time to time, impact upon mining investments in Australia.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Generally, non-residents are only taxed on Australia-sourced income and capital gains related to taxable Australian property (which includes exploration and mining rights). Non-residents are also subject to generally applicable taxation laws that apply to dividends, thin capitalisation rules and transfer pricing. Special taxation rules govern the availability of deductions for mining equipment and expenditure and the depreciation of mining tenure (for instance, current Commonwealth tax policy narrows the availability of the immediate deduction on exploration activities to exclude expenditures on the acquisition of mining rights).

13.2 Are there royalties payable to the State over and above any taxes?

Royalties are payable to the State or Territory from which the minerals are extracted in accordance with the royalties regime of such State or Territory, and royalties are payable to the Commonwealth in respect of natural oil and gas won from areas outside the three nautical mile limit. Although the rates of royalties vary between the States and Territories, most States impose an *ad valorem* royalty at the mine gate or on an FOB basis, while others impose flat rate or profit-related royalties. Royalties qualify as a deduction for company income tax purposes, levied exclusively at the Commonwealth level.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Most onshore mining activities are regulated by laws enacted at the State or Territory level. Local government laws are most often applicable for planning and approvals purposes prior to the construction of plant and infrastructure at operational mines. Although Commonwealth and State laws are primarily responsible for environmental regulation, some local government laws may also be applicable to the environmental approvals process for mining projects.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Australia's membership to the World Trade Organization and a plethora of regional and bilateral trade agreements (including with New Zealand, the Association of South East Asian Nations, Chile, Singapore, Thailand, Malaysia, China, South Korea, Japan and the United States) are designed to foster economic ties within the Asia-Pacific region and have a significant impact on mining activities in Australia. Some of these arrangements provide for arbitration with reference to international law as a means to protect foreign investment from certain adverse sovereign actions of the host country in which the mining activities take place.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Each State explicitly permits the holder of a mining tenement to surrender all or relinquish a portion of the tenement, subject to certain limitations relating to the shape of the remaining tenement (in the case of partial surrender). The holder of a surrendered tenement remains liable in respect of any obligation incurred, or condition required to be performed, on or before the date of surrender of the tenement (including any accrued but unpaid rent or expenditure obligations).

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Most States impose requirements to relinquish half of the area the subject of an exploration tenement part-way through the term of the tenement, and at regular intervals thereafter. However, none of the States impose equivalent relinquishment obligations in respect of mining tenements, which are generally granted only in respect of the area of the exploration tenement required for mining operations. All mining tenements are granted for defined terms, and may be renewed in certain circumstances.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

In each of the States, the applicable Minister or mining warden is entitled to suspend, cancel or forfeit a mining tenement for failure by the holder to comply with a condition subject to which the tenement was granted (including expenditure conditions), a direction given by the Minister or mining warden, or a provision of the applicable legislation. In WA, any person may apply to the mining warden for the forfeiture of a mining tenement (although in respect of exploration tenements, the grounds for such an application are limited to failure to comply with the expenditure conditions).

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Our experience in the mining sector goes back more than 100 years. The world's major mining companies and their financiers have relied on our expertise in structuring and executing many of the highest profile mining deals in Australia, the Pacific, Africa and Asia. We have been involved in the biggest mining projects in Australia, giving us an unparalleled knowledge base on the financing and development of mining operations. Our clients draw on our expertise in project structuring, development, finance, mergers and acquisitions, marketing, competition, tax and environmental law to bring their mining projects to life. Our many decades of experience working on all aspects of mining projects in an integrated way, and leveraging our collective experience and expertise to support our clients, are recognised globally.

Canada

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Canada is a constitutional monarchy, a parliamentary democracy and a federation comprised of 10 provinces and three territories. Canada's judiciary is independent of the legislative and executive branches of government. Responsibilities and functions under this democratic structure are distributed through a federal system of parliamentary government whereby the federal or central government shares governing responsibilities and functions with the provincial and territorial governments pursuant to the division of powers under the *Constitution Act, 1867* (see question 12.1). The Prime Minister, elected by the public, is the head of Government in Canada.

Certain areas within the federal government's jurisdiction may affect a mining project, for example: Aboriginal rights; trade and commerce; railways; nuclear energy; and environmental matters that involve matters of federal jurisdiction, such as fisheries. However, most of the areas which will affect a mining project are within the provincial governments' jurisdiction.

1.2 Which Government body/ies administer the mining industry?

Pursuant to the division of powers under the *Constitution Act, 1867*, both the federal government and the provincial or territorial governments regulate mining activity in Canada (see question 12.1). Exploration, development and extraction of mineral resources, and the construction, management, reclamation and closure of mine sites are all primarily within the jurisdiction of the provinces of Canada, the Yukon and the Northwest Territories (with some exceptions). In Nunavut and certain areas of the Northwest Territories, public lands and natural resources are governed and administered by the federal government. Other than Nunavut, each province and territory has its own mining legislation and mineral tenure system, though certain mineral rights in the Northwest Territories are administered by the federal government. The provinces and territories (other than Nunavut) own the majority of the mineral rights in Canada, though mineral rights may also be held by private entities, by Aboriginal groups and by the federal government. In Nunavut, mineral rights are owned by the federal government, by Aboriginal groups or by private entities.

Federal government involvement in the regulation of mining operations is limited to those undertakings that fall within federal jurisdiction. These specific undertakings include uranium in the context of the nuclear fuel cycle (i.e., from exploration through to the final disposal of reactor and mine waste), mineral activities related to federal Crown corporations, and mineral activities on federal lands and in offshore areas. The manufacture, sale, use, storage and transportation of explosives used in exploration and mining also all fall within federal jurisdiction. These are regulated under the *Explosives Act* (Canada). Federal jurisdiction also covers the export, import and transit across Canada of rough diamonds, which is regulated under the *Export and Import of Rough Diamonds Act*. The federal *Extractive Sector Transparency Measures Act* creates stringent reporting standards for Canadian oil, gas and mining companies, in order to implement Canada's international commitments in combatting domestic and foreign corruption. All (i) entities that are listed on a stock exchange in Canada; and (ii) entities that have a place of business in Canada, do business in Canada or have assets in Canada and that meet certain thresholds must report payments including taxes, royalties, fees, production entitlements, bonuses, dividends and infrastructure improvement payments of 100,000 Canadian dollars or more, in the aggregate, to local and foreign governments, and as of 2017 this includes sums paid to Aboriginal governments.

Any mining disclosure (whether oral or written, and including presentations to investors and disclosure on a mining company's website) made available to the public in Canada is governed by National Instrument 43 101, Standards for Disclosure in Mineral Projects. This instrument was developed by the Canadian Securities Administrators and is administered by the relevant provincial and territorial securities commissions.

1.3 Describe any other sources of law affecting the mining industry.

The areas of contract law and tort law are generally regulated by the provinces pursuant to their "property and civil rights" powers delineated under the *Constitution Act, 1867*. These bodies of law are mostly "common law" (i.e., "judge-made" law, rather than law created under legislation by Parliament or legislatures). Common law can be superseded or changed by subsequent legislation.

Québec, unlike the other provinces, is governed by civil law. Civil law is a codified law that is written into statutes (ex. Civil Code of Québec) which are then strictly interpreted by the courts.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance right requirements in Canada vary by jurisdiction. In the Northwest Territories, Nunavut, British Columbia, Manitoba, New Brunswick and Prince Edward Island, both individuals and

companies are required to obtain a prospector's licence from the applicable provincial or territorial government in order to engage in prospecting for minerals, subject to certain exceptions. There are similar requirements in Ontario and Québec, though those provinces do not directly issue prospector's licences to corporations. In Nova Scotia, individuals and companies are required to register as a prospector and pay the prescribed fees, but no "licence" is required.

Prospector's licences (or their equivalent) can be obtained in the majority of jurisdictions by contacting the applicable provincial or territorial governmental authority, completing the requisite form and paying a small fee. In most cases, prospector's licences expire after a period of time (for example, one year in British Columbia), but can be renewed.

Prospectors' licence requirements differ from jurisdiction to jurisdiction. In general, the government does not have the discretion to refuse to issue a licence; prospector's licences are granted automatically if the applicant meets the statutory criteria. However, it should be noted that a prospector's licence can be cancelled or suspended for a contravention of applicable mining legislation.

In the Northwest Territories and Nunavut, a prospector may also obtain a "prospecting permit", which grants the holder exclusive rights to explore and have mineral claims recorded within the assigned boundaries of a given permit area for a specified period of time. Similarly, in Saskatchewan, holders of permits issued by the Minister of Environment are granted the exclusive right to explore the lands in question and subsequently can convert the permit into a mineral claim.

Reconnaissance right requirements are less stringent in the Yukon, Alberta, Saskatchewan and Newfoundland and Labrador, as one can conduct prospecting activities without a licence or other formal registration.

2.2 What rights are required to conduct exploration?

In Canada, any significant exploration by a prospector will require that prospector to hold the mineral rights to the area of interest. Mineral rights are obtained by "staking" a mineral claim, or "licence" or "permit" in some jurisdictions. The permitted methods for staking a claim vary from jurisdiction to jurisdiction, and include physically staking a claim on the ground, on a map or through an online computer registration system. Applicable fees and documents are often required to complete the staking and recordation process and in some jurisdictions (for example, the Yukon), there may be a requirement to notify or engage with Aboriginal groups prior to recordation.

The provinces and territories (other than Nunavut) each have their own mineral tenure system, though certain mineral rights in the Northwest Territories are administered by the federal government. Nunavut (except with respect to Inuit-owned lands) utilises a mineral titles system administered by the federal government.

With respect to federally owned lands within the provinces, the federal *Public Lands Mineral Regulations* regulate the issuance of exploration and mining rights (in the form of a lease). The federal regulations differ from the provincial systems in that they provide for a competitive bidding process for mineral claims.

In order to retain a mineral claim, prescribed amounts of work must be conducted thereon. In addition to exploration, an "assessment report" describing the exploration and its costs must be filed each year with the relevant mining recorder. If the prescribed exploration costs are not incurred, most jurisdictions permit a claim holder to pay an amount of money *in lieu* of incurring exploration costs. If the assessment report is not filed, or if money is not paid *in lieu*, the claim will be forfeited by the holder.

The duration of a claim will differ from jurisdiction to jurisdiction. In some jurisdictions (such as British Columbia), a mineral claim may be renewed indefinitely. In other jurisdictions, a mineral claim may only be held for a limited period of time. For example, in the Northwest Territories and Nunavut, a mineral claim may be held for a maximum of 10 years and after such time, it will expire, unless it has been converted into a lease or an extension has been granted by the relevant mining recorder.

In general, a mineral claim or licence only entitles the holder to the right to conduct exploration and not any additional mining operations, subject to certain exceptions. The Yukon is an exception to this general proposition.

A mineral claim holder will generally have rights of access to explore the claim; however, if the surface is privately owned, a notice to, or an agreement with, the surface owner will usually be required. The legislation in most provinces and territories provides for some form of tribunal or other dispute resolution mechanism to resolve disputes between the holders of mineral claims and surface rights owners (see question 7.2). If there are parties who hold other rights to the land, notice to such parties may also be required.

The above describes the situation where minerals are held by the applicable government. However, minerals may also be held by private entities and originate from either Crown grants or patents or freehold tenures that were issued as part and parcel of another type of grant, such as historic railway grants. The owner of such privately held minerals is entitled to conduct reconnaissance and exploration activities and develop those minerals, provided that he or she obtains the necessary surface access (in cases where the surface is separately held).

In some cases, Aboriginal groups may hold the surface rights and/or mineral rights, in which case it is necessary to negotiate with the applicable Aboriginal group the terms on which one can access the lands and conduct exploration activities thereon. Surface access may take the form of a licence or exploration lease and exploration activities may be governed by an exploration agreement.

2.3 What rights are required to conduct mining?

Generally, mineral claims must be replaced by mining leases prior to commencing mining activities, the Yukon being an exception. A mining lease is a longer term and more secure form of tenure than a mineral claim.

Mining leases permit full exploitation of the resource (subject to obtaining other required permits and authorisations for mining activities) and, depending on the jurisdiction, generally have a term of 10 to 30 years and provide that rent is payable annually to the government that issued the lease. Mining leases are renewable for further periods, provided annual rent is paid and the terms and conditions of the lease are complied with.

The same comment as set forth above regarding privately held minerals is applicable to mining activities.

A mineral operator must acquire a government permit approving the proposed mining project. For a major mining operation, the mineral operator will be required to submit a detailed mining plan and reclamation plan and may also be required to submit an environmental assessment (see question 8.1).

Where Aboriginal groups hold the surface rights and/or mineral rights, land tenure may take the form of a lease and the right to develop the minerals may take the form of a production lease. The Aboriginal group and mining company will frequently negotiate another agreement in parallel with these agreements: an impact and benefit agreement. This

agreement offers a negotiated means to mitigate detrimental impacts of the project and to provide economic benefits for the Aboriginal group and its members. It documents the basis on which the mining company has acquired its "social licence to operate".

2.4 Are different procedures applicable to different minerals and on different types of land?

Generally speaking, there are different sets of rules depending on the type of substances being mined, and there are varying requirements depending on the type of land under which the minerals are located.

The rules governing hard rock minerals (including precious metals), placer minerals, coal and industrial minerals are often set out in different legislation. The federal *Export and Import of Rough Diamonds Act* provides for controls on the export, import or transit of rough diamonds across Canada, and for a certification scheme for the export of rough diamonds, which was established to meet Canada's obligations under the Kimberley Process adopted by the United Nations General Assembly in 2000. The regulation of uranium and thorium includes additional rules with respect to their production, refinement and treatment. These rules are within federal jurisdiction for purposes of national security and to fulfil Canada's international obligations in respect of such minerals.

There are also varying regimes depending on the owner of the land under which the minerals are located. The surface land may be owned by a private entity, by Aboriginal groups, or by the Crown and may be subject to Aboriginal rights.

Where there is private ownership of the land, the recorded holder of the mineral claim will usually be required either to: (i) issue a notice of access to the surface owner; (ii) come to an agreement for access with the landowner; or (iii) obtain an order from the provincial or territorial authority. Generally, the recorded holder of the mineral claim will also be required to compensate the surface rights owner for the access granted. Depending on the jurisdiction, where the parties cannot agree, compensation may be determined either by a dispute resolution mechanism provided for in the legislation, by reference to the competent tribunal, or by application to court. Exceptionally, in Québec, where an agreement cannot be reached, the holder of mining rights will then have to resort directly to expropriation procedures.

Aboriginal groups may also own the land over which the minerals are found. Where this is the case, permission for access must be acquired from the Aboriginal group. For example, Inuit-owned lands in Nunavut require that surface access be obtained from the Regional Inuit Association and may require a licence or lease.

With respect to Crown-owned land, a recorded holder of the mineral claim or lease will generally be permitted to access the surface of the land for the purposes of mining activities, though land-use permits or leases may be required in some instances. However, where land is subject to Aboriginal rights, Crown consultation and accommodation of the affected Aboriginal groups will dictate access rights and requirements of mining proponents. The extent of consultation and accommodation will vary depending on the affected groups and their recognised rights. While consultation and accommodation is a Crown obligation, it is often the practice of mining companies to negotiate impact and benefit agreements with Aboriginal groups in order to obtain community support of the project.

2.5 Are different procedures applicable to natural oil and gas?

In Canada, oil and gas licences or leases, which provide the holder with the right to produce oil and gas, are issued by the provinces and territories (and the federal government, with respect to Nunavut) through a competitive bidding process. This differs from the first-come, first-served basis on which mineral rights are obtained.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

In jurisdictions where a prospector's licence is required, individuals who have reached the age of majority, and corporations, may generally apply for and hold such a licence. Ontario and Québec are exceptions, in that they do not directly issue prospector's licences to corporations. Some jurisdictions, such as British Columbia and Prince Edward Island, specify that partnerships may also hold a licence.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Individuals and corporations are generally entitled to hold mining rights. In some jurisdictions, however, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

Generally, there are few restrictions on mining rights being directly or indirectly owned by a foreign entity. Most jurisdictions require corporations to be registered or otherwise authorised to carry on business in the jurisdiction in order to acquire a prospector's licence (or the equivalent). The Northwest Territories previously imposed Canadian citizenship and ownership requirements on the grant of mining leases, but these restrictions no longer exist.

If an acquisition of an operating Canadian mining business exceeds certain financial thresholds, it will be subject to government review under the *Investment Canada Act* (ICA). The review threshold is 1 billion Canadian dollars in enterprise value for investments to directly acquire control of a Canadian business by WTO investors. The threshold for review is much lower for investors or vendors residing in non-WTO member countries (5 million Canadian dollars in asset value for direct investments and 50 million Canadian dollars in asset value for indirect transactions). In general, a proposed transaction that meets the review threshold cannot be completed until the federal Minister of Industry has made a determination that the proposed transaction is likely to be of net benefit to Canada. This ministerial review requirement does not apply to acquisitions of exploration properties or non-producing mines. In addition, the Canadian government has reserved the right to review any transaction if it considers that the investment could be injurious to national security.

There are special rules applicable to uranium mining. Federal government policy (the Non-Resident Ownership Policy in the Uranium Mining Sector) requires a minimum of 51% Canadian ownership in uranium mining properties which are at the first stage of production, with exemptions from the policy if the project is *de facto* Canadian controlled or if Canadian partners cannot be found.

In 2015, the federal government granted the first exemption since the policy was implemented in 1987. An Australian company was allowed majority ownership of a uranium mine in Newfoundland

and Labrador. The company was able to demonstrate that there were no Canadian partners interested in developing a proposed mining project.

Canada has signed the *Canada and European Union Comprehensive Economic and Trade Agreement* (CETA) and the new *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), which is still subject to ratification. Notwithstanding the terms of these treaties, the Non-Resident Ownership Policy in the Uranium Mining Sector will continue to apply. Canada has lodged reservations under both treaties such that exemptions from the Non-Resident Ownership Policy in the Uranium Mining Sector are only available where Canadian participants in the ownership of the property are unavailable.

3.3 Are there any change of control restrictions applicable?

The "net benefit review" and "national security review" rules discussed in question 3.2 apply in all instances where a non-Canadian acquires control, directly or indirectly, of a Canadian business.

In addition, proposed foreign investment may be subject to review by the Canadian Competition Bureau under the federal *Competition Act*. Where each of certain thresholds are met, a proposed investment requires pre-merger notification and either approval or expiry of a statutory waiting period before the transaction may go forward. The Canadian Competition Bureau also has jurisdiction to review and challenge all mergers within one year of completion on the grounds that the transaction will result in a substantial lessening or prevention of competition.

3.4 Are there requirements for ownership by indigenous persons or entities?

Please see question 9.1 regarding Aboriginal and treaty rights of the Aboriginal peoples of Canada.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Mineral processing, refining and further beneficiation will generally be subject to the same legislative regimes that apply to mineral exploration and mineral extraction, as the provincial, territorial and federal statutes regulate all stages of the mining process. If mineral processing will be undertaken at the mine site, it will have been approved through the mine permit application and the environmental assessment process, where applicable.

The majority of jurisdictions do not require mineral processing to occur within the province or territory of extraction. Nova Scotia is an exception to that general proposition, unless an exemption is obtained from the appropriate Minister. The Ontario *Mining Act* provides that, unless an exemption has been obtained, ores and minerals extracted in that province must be treated and refined in Canada. In New Brunswick and Newfoundland and Labrador, the government may make an order requiring minerals to be processed within the province. In Saskatchewan, lease holders may not export quarriable minerals in their natural or unprocessed state without the written permission of the Minister of Mineral Resources, and diamonds must be presented for valuation at facilities located in Saskatchewan before they are removed from the processing facility or sold. Some jurisdictions, such as Manitoba, encourage the beneficiation of minerals inside the province by providing tax deductions that are permitted only for the processing of minerals within the province.

Other than as noted above, there is no general prohibition on the export of un-beneficiated minerals. However, there are mineral-specific exceptions. Pursuant to the *Nuclear Non-Proliferation Import and Export Control Regulations*, uranium may not be exported unless the Canadian Nuclear Safety Commission grants a licence. Similarly, diamonds may not be exported unless they have been issued a Kimberley Process Certificate and the transaction has been reported to the federal Minister of Natural Resources.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Canada is a party to a number of international agreements relating to wastes and recyclable materials, pursuant to which it has various obligations on trans-boundary movements of hazardous wastes and hazardous recyclable materials.

In addition to Canada's international obligations, the federal *Export and Import Permits Act* provides permitting requirements and associated fees for the export of goods listed on the Export Control List (a list of controlled goods). The *Export and Import Permits Act* provides authority to the Governor in Council to establish and amend the Export Control List for certain prescribed purposes. Notably, one such purpose is to ensure that actions taken to promote the processing in Canada of a natural resource produced in Canada are not rendered ineffective by unrestricted exportation. Currently, uranium is a controlled substance on the Export Control List where certain characteristics are present. It is important to refer to the Guide to Canada's Export Controls and to the Export Control List for any amendments that may affect the products being exported.

Further, the *Export and Import of Rough Diamonds Act* restricts the export, import and transit across Canada of rough diamonds, while the *Nuclear Non-Proliferation Import and Export Control Regulations* require a licence issued by the Canadian Nuclear Safety Commission for the export of uranium.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

In general, prospectors' licences are not transferable.

Mineral claims are transferable, though the transfer is often subject to provincial, territorial, and federal legislative requirements. A general precondition to the transfer of a mineral claim is that it be in writing and executed by the holder of the claim. Several jurisdictions are more stringent and require the use of a prescribed form to validate a transfer, and in Nova Scotia, the transfer of a mineral claim is also contingent upon the consent of the Minister of Natural Resources. Transfers of mineral claims in British Columbia are completed by the transferor and transferee through the online mineral title system.

Mining leases are generally transferable. The transferability of the lease will be governed by the terms of the lease in question and applicable legislation. A common requirement is that the transfer agreement be in writing and signed by the holder of the interest. In addition, in some jurisdictions, including, for example, Ontario, government consent is required in order to transfer a mining lease.

Another general requirement related to the transfer of a mineral claim or mining lease is that the transfer must be recorded in a prescribed office. In some jurisdictions, recordation of the mining lease is not required but is permitted.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Generally speaking, in Canada, indebtedness may be secured by all types of real and personal property under the real and personal property security regimes of each of the provinces and territories and by virtue of the common law. The nature of the charge granted to secure such indebtedness, for example, whether a mortgage, charge, pledge or other, will need to be considered in each circumstance.

There is some uncertainty as to whether a prospector's licence can be charged as security for indebtedness.

It is possible to create a charge against a mineral claim or mining lease. In some jurisdictions, consent of the applicable governmental authority will be required, however, such as in Ontario, where a mining lease cannot be mortgaged, charged, or made subject to a debenture, unless the applicable Minister consents in writing to the transaction.

Security documents granting such a charge are typically registered in the applicable mining registries against the mineral claims or mining leases, whose registration will serve as notice to third parties of the grant of the charge. In many jurisdictions, registration of documents purporting to charge mineral claims or mining leases is permissive while in other jurisdictions, registration is mandatory in order to be given effect. Generally, the applicable legislation does not set a scheme of priorities for registered and unregistered charges or as between them. Whether the security document validly and effectively creates a mortgage or charge is a matter determined by the common law.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

A prospector's licence cannot be subdivided.

In some jurisdictions, a mineral claim may be subdivided. For example, in British Columbia, which uses electronic mapping for mineral claims, claims made up of two or more mineral "cells" can be subdivided into claims that are no less than one cell in size.

With respect to the subdivision of mining leases, the state of the law is not uniform across Canada. Subdivision of mining leases is not possible in British Columbia; however, an application can be made to reduce the land area subject to the lease, which will reduce the lease rental payments. Where subdivision of mining leases is permitted, the rules governing the subdivision vary by province and territory.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mining activity in Canada can be structured in a variety of ways. A common structure is through a joint venture. Joint ventures can be formed through a variety of legal vehicles, including partnerships, corporations and unincorporated joint ventures.

Partnerships are governed by provincial and territorial legislation. General partnerships are generally defined as the relationship between two or more persons carrying on a business in common with a view to profit. Limited partnerships are a type of partnership created amongst partners of different classes: limited partners, who typically are not engaged in the management or control of the business and who, subject to certain exceptions, have limited liability in respect of the debts and liabilities of the partnership; and general partners, who operate and manage the business of the partnership and have unlimited liability. In some jurisdictions, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

Parties may incorporate a corporation to conduct a joint venture project. Usually, the joint venture property and assets are transferred to, and held by, the corporation and a shareholders' agreement will govern the conduct and management of the joint venture corporation. Joint venture corporations are governed by the provincial, territorial or federal legislation under which the corporation was incorporated.

Unincorporated joint ventures are formed and governed by a contract. A benefit of the unincorporated joint venture is that parties to the contract have considerable flexibility in setting out the terms of an agreement. Typically, the joint venture property is held by one of the joint venture parties on behalf of the joint venture and operations are managed by one of the joint venture parties or in some cases, a third party. In some cases, depending on the applicable legislation, the property and/or assets may be held as tenants in common. Income and losses of the mining activity conducted by unincorporated joint ventures are computed and taxed in the hands of the individual joint venture parties.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The applicable legislation under which the mineral tenure in question has been obtained will often circumscribe the minerals that the tenure covers (e.g. hard rock minerals, placer minerals, coal, industrial minerals). For example, in British Columbia, the *Mineral Tenure Act* regulates the exploration and, in part, the development and mining of hard rock minerals and placer minerals and the definition of what constitute "minerals" is very broad. Similarly, a holder of a placer claim is entitled to explore for placer minerals. Other examples include the British Columbia *Coal Act* that regulates the exploration and production of coal, and the British Columbia *Land Act* that regulates earth, soil, sand, gravel, rock and other natural substances used for a construction purpose.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The entitlement to tailings and waste dumps depends on a determination of whether such materials belong to the mineral owner or the surface owner. Some provinces expressly address the

rights over tailings and waste dumps in legislation. For example, in British Columbia, tailings and waste dumps become part of the rights to a mineral or placer claim.

In provinces and territories where residue deposits such as tailings and waste dumps are not explicitly dealt with in legislation, the instrument that separates mineral rights from surface rights must be interpreted in order to determine the rights over such materials.

6.5 Are there any special rules relating to offshore exploration and mining?

Pursuant to international law, Canada has exclusive sovereignty over the territorial sea (12 nautical miles seaward from the low water line along the coast) and the exclusive right to explore and exploit the mineral resources of the continental shelf (the area extending beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the low water line, whichever distance is greater). Canada has made partial submissions to the Commission on the Limits of the Continental Shelf, pursuant to Section 76(8) of the *United Nations Convention on the Law of the Sea*, and has recently committed to creating a joint task force with Denmark and Greenland to explore boundary issues including the delineation of an extended continental shelf beyond the 200-nautical-mile limit in the Arctic.

The *Oceans Act* (Canada) provides that provincial laws do not apply to the territorial sea or the continental shelf with respect to minerals or other non-living natural resources, unless regulations are enacted to make provincial laws apply.

Unlike in the oil and gas sector, there is no federal legislation currently in place that provides for the issuance of offshore mining rights.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Most often, pursuant to the applicable mining legislation, the holder of a prospecting permit will automatically be permitted to access the surface where the Crown holds the underlying mineral rights. Where the surface rights are privately held, the miner will either be required to issue a notice of access, come to an agreement with the surface owner or seek a court order. A right to compensation for entry and damage caused to the property is generally provided for in the applicable mining or surface rights legislation. The applicable legislation usually contains dispute-resolution provisions to resolve disputes between a mineral rights holder and the surface owner.

In Prince Edward Island, Nova Scotia, Saskatchewan, the Northwest Territories and Nunavut (other than Inuit-owned lands), surface rights are not automatically granted as part of a mineral claim or lease. A land-use permit may be required for any work under a mineral claim. Work conducted on a lease will also require a land-use permit or a surface lease. On Inuit-owned lands, a licence or lease may be required to gain access to the surface.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

As most mining activity in Canada occurs outside of population settlements, mineral operators usually deal primarily with the Crown, rather than with private owners. In situations where a mineral operator wants to enter privately held land, the operator's obligations are set out in applicable legislation and the common law (and civil law in Québec). Generally, a mineral operator must either obtain the permission of the owner to enter their land, often in the form of a lease, or obtain an order from the prescribed authority allowing the operator to proceed without the owner's permission. However, in British Columbia, permission from the owner is not a necessary requirement. Under the *Mineral Tenure Act*, an operator cannot begin mining activity unless the operator first serves notice to the owner of the surface.

The general common law rule requires the mineral owner to use his or her property so as not to injure his or her neighbour, the surface owner. Legislation also addresses the rights as between mineral owners and surface owners. For example, in British Columbia, an operator is liable to compensate the owner of a surface area for loss or damage caused by a mining operation.

7.3 What rights of expropriation exist?

In every Canadian jurisdiction, pursuant to the applicable legislation, the Crown is authorised to expropriate lands or interests in land. Depending on the legislation of the relevant jurisdiction, this authority of the Crown may enable a mineral owner to acquire surface rights. For example, under the British Columbia *Mining Right of Way Act*, a miner has a right to expropriate private land for access to a mine site where the owner of the land, or a person with an interest in the land, does not grant a right of way.

In exceptional circumstances, mineral rights have been effectively expropriated by the Crown, though, in such cases, compensation has generally been paid.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In most Canadian jurisdictions, there are statutorily prescribed environmental assessment requirements that apply to certain classes of projects that are over a certain threshold size. Most major mining projects trigger the impact assessment requirements. For example, the British Columbia *Environmental Assessment Act* requires an environmental assessment of any proposed new mine that will have a production capacity equal to or greater than 75,000 tonnes per year of mineral ore.

While the process is not uniform across Canada, in some jurisdictions there may be a requirement for a public hearing. Other environmental authorisations or permits issued by provincial or territorial governments may be required.

In addition to the aforementioned potential environmental assessment, the federal government may also conduct an environmental assessment if a proposed project is of a prescribed type or size. In certain circumstances, the current federal legislation allows the Minister of Environment and Climate Change to make a decision on a project based upon a provincial assessment process, thus making it possible to avoid redundant assessments.

There is currently a new federal *Impact Assessment Act* under review in the Canadian Parliament. The *Impact Assessment Act*, if passed, will create a single Impact Assessment Agency with the mandate to conduct and decide upon environmental assessments on behalf of the federal government. A wider range of effects will also be considered in the impact assessment and final approval

process – including impacts to health, society, gender, climate change, Aboriginal peoples, jobs, and the economy. Further, there is a reduction in the time limit for panel-reviewed projects. Projects will be reviewed by a panel within 600 days, as opposed to the current turnaround time of 24 months. Smaller projects with fewer assessment requirements will be reviewed within 300 days.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Mining projects must comply with both provincial and federal environmental legislation. Generally, provincial legislation will set requirements for the storage of tailings and other waste products.

For example, following the failure of a tailings storage facility in 2014, British Columbia updated its *Health, Safety and Reclamation Code for Mines in British Columbia* to require mines to develop and maintain a tailings management system that includes regular audits. Managers are required to retain an engineer of record to ensure that the mine's tailings storage facility has been designed and constructed in accordance with the applicable guidelines, standards and regulations. The manager and engineer of record must report any unresolved safety issues to the Chief Inspector of Mines.

At the federal level, the Government of Canada may be responsible for regulatory decisions specific to tailings management if they involve uranium tailings, navigable waters, fish-bearing waters and fisheries, environmental matters of international and inter-provincial concern or federal lands. The Minister of the Environment and Climate Change is required by the *Canadian Environmental Protection Act* to establish and publish a national inventory of releases of pollutants, including substances that are transported to waste rock storage areas and tailings-impoundment areas.

The approval of mine closure plans to rehabilitate and restore properties after the completion of mining operations is provided for in the mining legislation of most Canadian jurisdictions. Most jurisdictions require financial security or a guarantee and an approved closure plan to be filed prior to the mine production. Certain jurisdictions require the closure plan to be filed prior to any exploration activities being undertaken.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Generally, the provincial government will need to approve rehabilitation, restoration, reclamation or closure plan submissions prior to any mining activities, pursuant to provincial mining laws and regulations. Upon the closure of operations, the approved plans must be executed so as to restore the site to an acceptable condition.

Additionally, in certain jurisdictions, the closure of mining activities may be subject to contaminated site remediation obligations.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

In most jurisdictions, the development of a mine will require mine plans to be submitted and approved. In some jurisdictions, this is done in conjunction with the environmental assessment process, but in others mine planning and permitting requires a separate process under a separate regulator.

In some jurisdictions, specific reserves for areas of land, such as agricultural or environmental reserves, will require additional authorisations or approvals for proposed undertakings that fall outside the specified uses. In circumstances where a mining project is located within the boundaries of a municipality or other local government, the applicable municipal laws such as zoning bylaws will need to be adhered to.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

In Canada, the *Constitution Act, 1982* protects Aboriginal and treaty rights of the Aboriginal peoples of Canada. Aboriginal rights themselves are not strictly defined. The Supreme Court of Canada has defined these rights in relation to a spectrum dependent on the degree of connection with the land, the highest level of right being Aboriginal title. Aboriginal rights can also be defined by treaty. Where Aboriginal rights remain undefined, they can continue to exist until a treaty is reached with the Crown or until they are proven by claimants and defined by the Courts.

A 2014 Supreme Court of Canada decision, *Tsilhqot'in Nation v. British Columbia*, provided the first declaration of Aboriginal title in Canada, over a limited area of land. The potential impact of the decision on mining companies remains unclear, given the very specific facts on which the decision was based.

In certain circumstances the Crown owes a duty to consult with the Aboriginal peoples and to accommodate them where appropriate, even where Aboriginal rights have not been proven. The extent of consultation and accommodation required of the Crown will vary depending on the circumstances. The impact of consultation obligations and Aboriginal rights with respect to reconnaissance, exploration and mining operations rights will thus depend on the individual circumstances of a given case.

In May 2016, Canada officially removed its objector status to the UN Declaration on the Rights of Indigenous Peoples and announced its intent to adopt and implement the Declaration in accordance with the Canadian Constitution. Partly in recognition of the UN Declaration on the Rights of Indigenous Peoples, the Canadian government recently launched a national engagement with Canada's Aboriginal peoples to help develop a Recognition and Implementation of (Indigenous) Rights Framework. This framework, if and when implemented, would help ensure that the starting premise for all federal government action is the recognition of Indigenous rights.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

In general, worker health and safety falls within provincial jurisdiction unless the subject matter of the undertaking falls within federal jurisdiction. For example, federal government employees are governed under the *Government Employees Compensation Act*. Generally this Act is administered by provincial and territorial workers' compensation boards and commissions.

The federal government also has jurisdiction over competency of workers dealing with uranium and thorium. The qualifications and training of certain workers who deal with uranium and thorium are governed by the federal *Nuclear Safety and Control Act*. The Act also creates offences relating to inadequate staffing and work practices at a uranium or thorium mine.

Each province and territory in Canada has its own workers' compensation board or commission, although the Northwest Territories and Nunavut have a combined workers' compensation board. These boards or commissions generally provide a preventative function by administering occupational health and safety laws, and an administrative function by administering insurance schemes for injured workers.

Some provinces and territories also have legislation and regulations that specifically apply to the mining industry in addition to workers' compensation legislation. For example, British Columbia has the *Health, Safety and Reclamation Code for Mines in British Columbia* (Code), which applies to both exploration and production mine sites in British Columbia. The Code sets out obligations for owners to develop a health and safety programme, and to establish a joint management worker health and safety committee. In addition, the Code prescribes reporting requirements for accidents, deaths and dangerous occurrences and the maximum hours of work at a mine site.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Generally, the governing health and safety legislation of the province or territory where the work is conducted will impose obligations on owners, supervisors and employees. While these obligations are not uniform across the country, in general, mine owners are obligated to ensure that applicable laws and regulations are followed, and to take all reasonable precautions to ensure the health and safety of employees. Supervisors generally have a duty to ensure that proper training is given to employees on site and to ensure the safety and well-being of employees. Employees have an obligation to inform supervisors of any potential risks or dangers on the worksite as well as to protect their own personal health and safety (see question 10.1).

11 Administrative Aspects

11.1 Is there a central titles registration office?

There is no central titles registration office in Canada. With the exception of Nunavut, which is primarily regulated by the Federal Department of Aboriginal Affairs and Northern Development Canada, and the Northwest Territories, which is regulated by both the federal and territorial governments, each of the provinces and territories is responsible for issuing prospectors' permits (if applicable) and registering mineral titles.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

All provinces and territories provide for some form of a dispute-resolution mechanism in their respective mining legislation. In general, all decisions made by a tribunal or official carrying out a statutory function are subject to judicial review by the courts in the relevant jurisdiction.

Certain provinces, including Manitoba, Ontario, Newfoundland and Labrador, and New Brunswick, have created distinct tribunals that are separate from the department in charge of administering the mining legislation. Other provinces (including British Columbia) have internal dispute resolution systems with appeals to the courts.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The jurisdictional powers of both levels of government, provincial and federal, are set out in the *Constitution Act, 1867*. The *Constitution Act, 1867* provides the federal government with the power to create laws in relation to trade and commerce, banking, navigation and shipping, sea coasts and inland fisheries as well as other matters. On the other hand, the provincial legislatures have the power to create laws in relation to property and civil rights (including laws relating to property, contracts and torts), natural resources, and local works and undertakings, among other matters. There are, however, some matters that fall within the purview of both federal and provincial jurisdictions. In such a case, each level of government may create laws in respect of a particular subject matter insofar as it relates to their jurisdiction. For example, both the federal and provincial governments have their own form of environmental legislation. The federal government may regulate approvals for a proposed mine in an effort to protect fish, and the province may regulate that same proposed mine for reasons relating to emissions that could pollute the environment. Federal and provincial statutes which deal with the same subject matter may co-exist, though if there is conflict or inconsistency between federal and provincial law, in the sense of impossibility of dual compliance or frustration of federal purpose, the federal statute prevails.

Canada's three territories, the Yukon, Northwest Territories and Nunavut, do not yet have provincial status and are at different stages in terms of devolution of powers to their territorial government from the federal government. Their legislative powers are enumerated in specific federal statutes (the *Yukon Act*, the *Northwest Territories Act* and the *Nunavut Act*). From a practical perspective, the territorial legislative powers are quite similar to those of the provinces under the *Constitution Act, 1867*, but the relevant statute must be consulted in each case.

12.2 Are there any State investment treaties which are applicable?

Please refer to question 3.2 with regard to the *Investment Canada Act*.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

In Canada, there are both federal and provincial statutes that provide a number of deductions, allowances, and credits to a taxpayer engaged in qualifying mining activities and to a taxpayer who invests in certain mining companies. A specific tax incentive that is unique to the resource sector in Canada, found in the *Income Tax Act* (Canada) (ITA), is the use of flow-through shares which enables junior mining companies to raise money for exploration and development by providing the investor with tax relief in exchange for their investment. Costs incurred for the purpose of determining the existence, location, extent or quality of an oil, gas or mineral resource in Canada are characterised as "Canadian exploration expenses" or "CEE" under the ITA. A taxpayer can deduct from their reported income up to 100% of its cumulative CEE. However, accordingly,

they are left with CEE deductions which they are unable to use. Flow-through shares allow corporations to monetise expenses that they are unable to use by entering into an agreement with an investor, whereby the investor subscribes for shares of the company and the company agrees to use the subscription proceeds to incur qualifying CEE which it then renounces to the investor. Under the ITA, the CEE are deemed to have been incurred by the holder of the flow-through shares rather than the mining company, so the investor is able to deduct the CEE from the investor's income for tax purposes.

Additionally, the ITA and certain provincial statutes offer other investment tax credits to taxpayers for certain types of mining-related expenditures. The Mineral Exploration Tax Credit (METC) is a 15% credit in flow-through shares that can be claimed on specified CEE. While the METC was initially intended to be temporary, it has recently been announced that eligibility will be extended until March 2019. In January 2017, the Canada Revenue Agency updated its "Guidelines for determining the tax treatment of certain exploration expenses" to confirm that costs associated with environmental studies and community consultations undertaken to meet a legal or informal requirement to obtain a permit are eligible for treatment as CEE.

13.2 Are there royalties payable to the State over and above any taxes?

There are a range of additional taxes imposed by the provinces and territories on mining operations within their boundaries. Ontario, Québec, Manitoba and Newfoundland and Labrador impose a profits tax ranging generally from 5% to 20%. British Columbia, Alberta, Saskatchewan, Nova Scotia and New Brunswick generally impose taxes based on a combination of net revenue, net profits, or production from mining operations. The remaining jurisdictions, other than Prince Edward Island, impose graduated royalties where the royalty rate increases with revenue, running as high as 14%. The foregoing is applicable to most minerals, but taxes or royalties on certain minerals, including coal, potash and uranium, are sometimes dealt with differently.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Generally speaking, a mining company will be governed by federal and provincial laws in respect of its projects. Provincial legislation that should be considered by mining companies has been discussed in several of the above sections. There may also be circumstances where municipal laws can affect a proposed mining project. For example, if a proposed operation is located within municipal boundaries, applicable municipal laws such as zoning laws and property taxes will need to be adhered to.

It should be noted that Québec has amended its *Mining Act* and related regulations in order to provide municipalities with more legislatively prescribed powers in relation to mining exploration and projects. If a mining company has acquired a right on municipal land, the amendments provide that a claim holder must notify the relevant municipality before beginning exploration work on the claim, and satisfy additional public consultation requirements before applying for a mining lease, subject to certain conditions. They also require mining lease holders to establish a monitoring committee in order to foster the involvement of the local community.

However, other jurisdictions have not followed suit in adopting similar laws and developments in British Columbia have taken a different direction. In a 2013 British Columbia Court of Appeal decision, municipal laws were found to be subordinate to conflicting mining legislation. The court held that municipal bylaws that frustrated the terms of the British Columbia *Mines Act* permits, issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources, were invalid.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Canada's free trade agreements reduce the costs of exporting Canadian mined minerals and related value-added products. Such agreements should be taken into account by exploration or mining companies, as they can result in incentives for establishing production in Canada.

Canada has entered into a number of bilateral *Foreign Investment Promotion and Protection Agreements* (FIPAs) aimed at encouraging reciprocal investment in each country that is party to the agreement. For example, under the Canada-China FIPA, both countries agree to a most-favoured-nation commitment, which ensures investors from both countries are not discriminated against relative to other foreign investors. The effect of this agreement in Canada is that Chinese State Owned Enterprises (SOE) seeking investment in Canada will be treated on a merit basis, with considerations of business orientation and the extent of political influence over its affairs as significant factors.

The FIPA also provides for protections to both prospective and existing investments by allowing investors to benefit from protections found in their home country. Under the FIPA, Canadian investments will benefit from Canadian protection measures against risks of investor discrimination, expropriation without compensation and arbitrary decisions from the government, among others.

As well, the FIPA provides that disputes that affect foreign investment, including those concerning resource development and environmental issues, will be dealt with through international arbitration as opposed to domestic courts.

However, the FIPA does not affect the Government of Canada's ability to review or reject investments from China for reasons of national interest. "Net benefit" decisions under the *Investment Canada Act* are expressly excluded from the FIPA.

Canada is now a signatory to the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), a multilateral trade agreement that currently includes 10 other countries: Australia; Brunei Darussalam; Chile; Japan; Malaysia; Mexico; New Zealand; Peru; Singapore; and Vietnam. In January 2017, the U.S. withdrew from the predecessor to the CPTPP, the Trans-Pacific Partnership (TPP). The remaining signatories to the TPP agreed in November 2017 on core elements of the CPTPP. The CPTPP, the text of which was finalised in January 2018, will gradually eliminate tariffs on Canadian mineral exports, and in general, increase certainty, transparency, and foreign investment protections for Canadian mining companies. The federal Government of Canada is currently undertaking steps to ratify the CPTPP.

Some legislation in Canada allows compliance with similar legislation in foreign jurisdictions to substitute for compliance in Canada. For example, the recent federal *Extractive Sector Transparency Measures Act* allows payment reporting requirements of certain other jurisdictions to be satisfied *in lieu* of compliance with the Canadian statute, at the discretion of the Minister of Natural Resources.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Generally, recorded holders may abandon mineral claims and surrender mining leases upon notice or application to the provincial or territorial governing body. The procedure by which a recorded holder may do so differs among each province and territory. For example, in British Columbia, the recorded holder wishing to abandon a claim or surrender a lease must register a discharge with the chief gold commissioner, while in Manitoba a notice of abandonment must be filed along with reports, plans and statistical data.

Further, recorded holders may also apply for a reduction of claim areas, effectively entitling them to partially abandon their claim or lease. Where such reduction is permitted, the method by which the area shall be reduced, and the requirements for a reduction, vary by province and territory. For example, in British Columbia the reduced claim area must comply with the following requirements: (i) it must consist of at least one cell; (ii) if there are two or more cells they must be adjoining; and (iii) the reduced area cannot result in open areas within the cell claim. In Saskatchewan there is also a requirement that the reduced area's total length not exceed six times its total width.

Upon abandonment or surrender, all minerals covered by the mineral claim or lease revert back to the government or the holder of the underlying rights. The recorded holder may remove chattels and fixtures from the land abandoned or surrendered; however, authorisation to do so is required in certain jurisdictions, including Prince Edward Island. Further, timelines may be imposed for the removal of such property, such as in British Columbia, where the last recorded holder must remove all property within one year after the abandonment.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

In most jurisdictions, mineral claims may be renewed indefinitely from term to term until a lease is obtained or the claim is abandoned. However, in certain jurisdictions, mineral claims extinguish upon the expiration of a defined term. In Nunavut and the Northwest Territories, for example, the duration of a mineral claim is 10 years from the date it is recorded unless it is converted into a lease (subject to certain rights of extension).

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Relevant provincial and territorial mining ministries may cancel mineral claims and mining leases where a recorded holder is in breach of an obligation under the applicable legislation.

Mineral claims and mining leases are most commonly cancelled where recorded holders either fail to complete the required assessment work, fail to make payments *in lieu* of assessment work, fail to submit reports respecting the assessment work completed, or fail to make annual lease rental payments. Generally, the cancellation of the mineral claim will take effect immediately upon the failure of the recorded holder to comply with the completion of, the reporting on, or the payment *in lieu* of, assessment work. With respect to mining leases, the provincial or territorial authority will more commonly issue a notice of cancellation, either affording the recorded holder a grace period to comply with the requirement or to enquire into the grounds for cancellation.

Additionally, mineral claims and mining leases may also be cancelled for breach of the provincial or territorial mining legislation, and on various grounds set out in such legislation. A common ground for cancellation is the misrepresentation of the assessment work performed on the claim, though additional grounds may be found in different jurisdictions. For example, in Saskatchewan, there is a further ground for cancellation of a mineral claim or mining lease where an environmental assessment determines that the development should not proceed. In such cases, the legislation itself often provides a procedure for cancellation and review of the decision. In most instances, a notice of breach will be issued first, providing the recorded holder with a grace period to comply with the requirement, following which the provincial or territorial authority may order the cancellation where the recorded holder has not complied. However, in some instances, mineral claims may be cancelled without prior notice to the recorded holder. For example, in Manitoba the provincial authority may cancel a mineral claim or mining lease without prior notice if it is satisfied the claim was recorded as a result of a material misrepresentation in the application to record the claim or lease.

Cancellation proceedings are subject to judicial review by the courts. Please refer to question 11.2 for further discussion on reviewing ministerial decisions.

Note

This chapter is not a compendium of Canadian mining law, as the topic is simply too large for the scope of this chapter. Canadian mining law is location-dependent, and there are many, many locations: 10 provinces and three territories, each with its own laws, and within each province or territory areas within Aboriginal land claim settlement areas or reserves; areas in which the surface is owned by the Crown or by Aboriginal groups or privately; and areas in which the minerals are owned by the Crown or by Aboriginal groups or privately. Canadian mining law is also commodity-dependent, with different laws applicable to hard rock minerals, coal, industrial minerals, petroleum and natural gas, uranium, etc.

As a cautionary note, all of what is set forth above is intended to be indicative only. Even where topics are discussed in some detail they are not intended to be complete, and nothing in this chapter should be relied upon as legal advice.

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Chile

Claro & Cia.

Nicolás Eyzaguirre

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mining Industry in Chile is mainly regulated by three legal bodies, which are:

i) The Chilean Constitution, which establishes the exclusive ownership of the State over all mines in the Chilean territory and provides a strong protection of property rights of the private concessionaire over its concession.

ii) The Mining Concessions Act No. 18,097, which regulates mining concessions, their constitution, acquisition, extinction and the obligations and rights of the mining concessionaire. Also, this act states which kind of substances cannot be granted in concession.

iii) The Mining Code ("MC") (Law No. 18,248), and its Regulation (Decree No. 1/1989), which establishes the regulation of the mining activity and, in particular, the minerals exploration, exploitation and benefit.

1.2 Which Government body/ies administer the mining industry?

The Government institution related to mining activities is the Ministry of Mining. Its mission is to lead the development of public policies aimed to increase the contribution of mining activity to national development, diversifying the activity to take advantage of available resources with sustainable conditions.

Furthermore, under the supervision of the Ministry of Mining, is the National Geology and Mining Service ("SERNAGEOMIN", for its Spanish acronym) which approves technical and safety issues of mining projects and supervises their accomplishment. SERNAGEOMIN is also commanded to perform geological studies of the Chilean territory in order to provide essential information and promote investment.

1.3 Describe any other sources of law affecting the mining industry.

Besides the three legal bodies mentioned in question 1.1, there are some other important regulations that may directly affect the mining industry, such as:

- Mining Safety Regulation, Decree No.132/2004.
- Design, Construction, Operation and Closure Regulations for tailings deposits Projects, Supreme Decree No. 248/2007.
- The Mining Sites and Facilities Closing Act No. 20,551, which regulates the concessionaire obligations related to the closure of the mine and its facilities.
- The Mining Activity Royalty Act No. 20,026 and No. 20,469, which establishes a special tax over mining sales.
- The Environmental Act No. 19,300, which establishes that certain projects must undergo an environmental impact assessment process (please refer to section 8).
- Environmental Impact Assessment System Regulation, Decree No. 40/2013, which regulates all the environmental obligations that the owner of mining project must comply with in order to execute the project.

Also, regarding the other commonly related aspects of this activity, some other regulations which shall apply are health and safety regulations, labour law, tax law and indigenous law.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

According to the MC, every natural person or legal entity, foreign or national, has the right to conduct reconnaissance on any lands, regardless of who the owner of the surface land is, except within the limits of an existing mining concession.

Despite that, there are some circumstances stated in the law under which reconnaissance is limited (regulated reconnaissance) or forbidden (prohibited reconnaissance).

Lands of regulated reconnaissance are those fenced or cultivated, where the landowner's authorisation is needed but can be replaced by a court order. Also, certain specially qualified lands, e.g., national parks, border areas, areas of scientific interest and beaches of authorised harbours may also need other approvals from the corresponding authorities.

On the other hand, prohibited reconnaissance occurs over lands which have houses, facilities or have been planted with trees or vines, where it is not possible to overrule the land owner's will.

To conduct reconnaissance, the right holder may impose temporary easements on surface lands. The easement's duration in this case cannot exceed six months. It will not be necessary to constitute easements to develop reconnaissance activities over state or municipal surface lands not fenced or cultivated in which there are no third parties' exploration or exploitation concessions constituted.

2.2 What rights are required to conduct exploration?

In order to conduct exploration activities that would require more invasive measures (e.g. bigger excavations, ground movements), a mining concession is required. As mentioned in question 1.1, in Chile the State owns all mines and the exploration and/or exploitation of those mines must be granted by a mining concession. Mining concessions are granted through a process before the relevant court. Once granted, the mining concession is a right *in rem*.

The exploration concession is temporary. Its duration is limited to two years (extendable for up to two years if the owner – prior to its expiration – requests an extension, upon waiver of at least half of the area originally granted). Its purpose is only to study the existence of minerals in a certain area, so it does not allow the concessionaire to exploit the minerals.

In addition, the holder of the mining concession shall require mining easements over the surface land, which are essentially transitory: they are constituted only for specific mining purposes and terminate once the mining activity finishes. The MC regulates a strong system of mining easements, which grants the necessary rights to expedite the mining exploration and exploitation over surface land.

At the same time, the MC protects the property rights of the surface land's owner by stating that the mining concessionaire shall pay compensation in order to obtain the easement.

Finally, it may be necessary to obtain the relevant environmental authorisations, as referred to in question 8.1.

2.3 What rights are required to conduct mining?

An exploitation concession is required to pursue mining exploitation activities. The exploitation mining concession has indefinite duration and it will last as long as the concessionaire pays a mandatory licence and accomplishes all requirements according to the MC.

Furthermore, mining easements will be required, and environmental authorisation may be necessary.

2.4 Are different procedures applicable to different minerals and on different types of land?

Questions 2.1, 2.2 and 2.3 above are the general applicable rules for reconnaissance, exploration or exploitation of minerals. Nevertheless, there are some substances that are considered minerals which cannot be granted in concession. This is the case for natural oil, gas, lithium, deposits placed in maritime waters under national jurisdiction, or substances of any kind located in areas that, by law, have been classified as important to national security. These substances may only be exploited by State-owned companies, through administrative concessions, or by entering into special operational agreements.

Additionally, thorium and uranium receive special treatment. These substances can be granted in concession, but because of their potential nuclear use, the State will always have a first purchase option over them.

2.5 Are different procedures applicable to natural oil and gas?

As mentioned above, they can only be explored or exploited by State-owned companies or through special operational contracts or administrative concessions.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

There is no restriction regarding the types of entity that can pursue reconnaissance or own exploration or exploitation rights. In this sense, there are no differences between national and foreign, natural persons and legal entities, with only a few exceptions as referred to in question 3.2.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

As mentioned, anyone can own mining rights in Chile, with only very few restrictions. In this sense, there are limitations for foreign entities and persons to acquire State-owned lands located 10 kilometres from the country borderline or five kilometres from the coast. These lands cannot be sold, rented or granted with any other right to foreign entities or persons.

3.3 Are there any change of control restrictions applicable?

In Chilean Mining Law, the general rule is that there are no applicable specific change of control regulations. However, there is also no restriction to agree to them through Change of Control Agreement provisions.

Also, there is a legal exception in connection with the mining property that belongs to "CODELCO", the State-owned mining company. Its concessions and mining rights are subject to restrictions to be sold, transferred, seized, encumbered or assigned to third parties.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no requirements for ownership of mining concessions by indigenous persons or entities. Nevertheless, there are limitations regarding indigenous lands, as referred to in question 9.1.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, there are no special rules that entitle the Chilean State to acquire shareholdings (please see question 2.4 above in connection with the State option to acquire thorium and uranium).

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

For Chilean law, processing, refining and further beneficiation of mined minerals are also mining activities and are regulated by its legal framework. The MC expressly recognises the right of the

concessionaire to constitute easements over the surface land in order to develop a benefit plant.

However, note that processing, refining and beneficiation facilities would require safety, health and eventually environmental authorisations (please refer to sections 8 and 10 below).

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

For most of the substances, there are no special restrictions on the exportation. However, approval from the Chilean Nuclear Energy Commission is required to perform any act regarding nuclear substances such as lithium, thorium and uranium. Thereby, this approval is required to export these substances.

Also, note that export minerals where exploitation is reserved to the State, as mentioned in question 2.4 above, will be limited by the provisions of the special operation contract or administrative concession that authorises its exploitation.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

As reconnaissance can be pursued by any person, no transfer or registration is necessary in connection with this right. On the other hand, mining exploration and exploitation concessions shall be transferred through a regulated and formal process.

These concessions can be transferred without any restriction. However, compliance with all the formal requirements established by law is necessary. In this sense, the transfer of exploration and exploitation concessions must be conducted through the execution of a public deed, which shall be recorded in the Mining Property Registry of the corresponding Mining Registrar.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Exploration and exploitation concessions can be mortgaged in the same way as any other right *in rem*. It is also possible to grant other encumbrances over these concessions, such as easements, usufructs or options.

All mortgages and encumbrances constituted on these concessions must be recorded in the registry of Mortgages and Encumbrances of the corresponding Mining Registrar.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

According to the MC, exploration and exploitation concessions are capable of being subdivided prior to authorisation of SERNAGEOMIN, which shall state that all the resulting parts of the subdivided concession fulfil the minimum legal requirements that every single concession must comply, such as the minimum surface size, shape and orientation. Once the subdivision has been approved, each of the resulting parts will be considered as independent mining concessions.

As previously stated, every person is entitled to pursue reconnaissance. As it is not a formal right, it is not possible to subdivide it.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

In Chile, when two or more persons jointly constitute or acquire an exploration or exploitation mining concession, a legal entity called the Legal Mining Company is formed by the sole effect of the law, which will own the concession. This legal entity can be transformed into a mining corporation at any time, through the agreement of its members or shareholders.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Following the Chilean Constitution and the Mining Concessions Act No. 18,097, the holders of exploration and exploitation concessions are entitled to explore and mine all the metallic and non-metallic substances that are in the concession area, except those reserved for the Chilean State as indicated in question 2.4.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The MC establishes that minerals substances located in residue deposits may be granted in concession once a prior mining concession has expired or when the owner of those mining facilities has abandoned them. Therefore, only with a new concession over the area where these mineral substances are located, a concessionaire will be entitled to exercise its rights of exploration and exploitation over residue deposits that exist on the relevant land.

In any case, the holder of these rights would not be able to explore or exploit the deposits without the relevant easement over the surface land, as mentioned in question 2.2.

6.5 Are there any special rules relating to offshore exploration and mining?

As referred above, according to Chilean law, minerals located in maritime waters of national jurisdiction can only be granted in concessions when they are reachable by tunnels from the coast. To explore and exploit these substances, the general regime of authorisations, as stated in the answers above, is applicable.

On the other hand, mineral substances under waters of national jurisdiction that are not reachable by tunnels cannot be granted in concession. They can only be exploited by State-owned companies or through administrative concessions or special operational agreements (please refer to question 2.4). In these cases, it could be necessary to obtain a maritime concession from the Ministry of Defence. In addition, other relevant authorisations according to environmental, health and labour laws shall be applicable.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

No, the property rights over exploration or exploitation concessions are different from the property rights over the surface lands where the mining concessions are located. Those concessions do not grant any right to use the surface land, but it is possible to constitute and impose mining easements over the surface land to exercise these rights.

Note that the Chilean Constitution states that surface lands shall be subject to the obligations and limitations that the law may provide with the purpose of expediting the exploration and exploitation of mines (please refer to question 2.2).

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

In the event that it is necessary to constitute an easement over the surface land in order to perform the mining activities, the holder of the exploration or exploitation concession will be compelled to compensate the owner of the surface land for the damages caused by its mining activities. The amount of this compensation must be determined before the constitution of the easement by the relevant parties or by the relevant court if such agreement is not reached.

7.3 What rights of expropriation exist?

The exploration and exploitation concessionaires do not have any expropriation rights over the surface lands in order to develop their mining operations. However, as mentioned in the answer to question 2.2, the MC regulates a strong system of mining easements which grants the necessary rights to expedite mining exploration and exploitation over the surface land.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The Environmental Act and its Regulation distinguish between exploration, prospection and exploitation for the purposes of environmental assessment of mining activities. According to this regulation, exploration does not require an environmental assessment. However, note that prospection requires such assessment. The difference between one and the other is that prospections are works and actions performed with the purpose of reducing geological uncertainties related to mineral concentrations in a mining project and which require more than 40 platforms (or 20 platforms in certain regions). Explorations, on the other hand, need fewer platforms than prospections. Finally, mining exploitation would require an environmental assessment when its purpose is to mine one or more deposits of which the mineral extraction capacity is over 5,000 tonnes per month.

Also, mining waste and tailings disposals of mining exploitation projects that need environmental authorisation will need to undergo an environmental assessment (tailing dams will also require an environmental assessment due to their capacity or dam size, as stated in question 8.2 below).

It should also be considered that after a project obtains its environmental authorisation, it must obtain all other necessary legal authorisations from sectorial authorities, such as authorisations for construction, waste management, water treatment, exploitation of native forest, wildlife capture, excavation in archaeological sites, etc. Note that the relevant authorities cannot deny such authorisations for environmental reasons.

For those projects or activities that do not require an environmental assessment, each specific authorisation or permit must be requested directly before the corresponding sectorial authority.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

In addition to what it is mentioned in question 8.1 above, Decree No. 248/2007, with regard to approval, design, construction, operation and closure of tailings deposits states that an approval from SERNAGEOMIN is needed to build and operate any waste or tailing dump. Also, any amendment to the approved project during construction or operation has to be authorised by SERNAGEOMIN before its implementation.

Tailing dumps need the authorisation of the General Water Bureau, when their capacity is of 5,000 m³ or more, or its wall is taller than five metres.

Finally, to shut down tailings or waste deposits, a Closure Plan, including safety and environmental measures, must be filed and approved by the SERNAGEOMIN.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The Mining Sites and Facilities Closing Act No. 20,551 and its Regulation, which specifically regulates the process and requirements for the closure of a mining exploration or exploitation site, and their facilities, compels every person who wants to develop exploitation (and in certain cases, exploration) mining activities, to have a Closure Plan approved by SERNAGEOMIN before starting such mining operations. The Closure Plan shall also be periodically updated as the mining exploration or exploitation project is executed.

A Closure Plan is a document that contains all the actions and measures that shall be taken in order to mitigate the negative effects generated during the operation at the closure of the mine. It has to consider every facility of the mining operation in order to ensure physical and chemical stability in accordance with environmental applicable regulations. The execution of this actions and measures has to safeguard life, health, population's safety and the environment.

Mining companies must provide a warranty to ensure the complete and timely fulfilment of the obligations stated in the approved Closure Plan. The amount of the warranty shall be estimated according to the criteria stated in the law.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

The MC establishes that to pursue mining activities some authorisations will be required under certain circumstances due to zoning reasons. For example, pursuing mining activities:

- within cities or towns, cemeteries, beaches of habilitated harbours, potable water extraction points require the authorisation of the corresponding Governor;

- within national parks, national reservoirs or natural monuments, this requires the authorisation of the corresponding "*Intendente*";
- within zones declared as border areas for mining purposes, this requires the authorisation of the Border and Limits Department of the Foreign Affairs Ministry;
- within military zones and facilities like harbours and aerodromes, this requires the authorisation of the Defence Ministry; and
- within zones declared as scientific interest for mining purposes, this requires the authorisation of the President of the Republic granted through the Ministry of Mining.

Also, according to the Urbanism and Construction General Law (Decree No. 458/1976) every activity (including mining activities) has to be performed in accordance with zoning and territory planning regulations. Mining reconnaissance, exploration and exploitation activities are subject to these regulations.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Native property is protected by the Indigenous Act (No. 19,253). According to this regulation, no indigenous land can be transferred, seized, encumbered, nor subjected to a statute of limitations, except between indigenous people or communities of the same ethnicity. Nonetheless, the National Corporation for Indigenous Development ("CONADI" for its Spanish acronym) may authorise its encumbrance when it does not include the family's house and necessary land for their livelihood.

In this sense, it is possible to have mining exploration or exploitation concessions located within indigenous lands; but, as mentioned in the answer to question 2.2, the concessionaire shall obtain a mining easement over such surface land, for which purpose the approval of CONADI is needed.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Decree No. 132/2004 and Decree No. 248/2007 are the relevant regulation regarding health and safety matters in mining. The aim of these regulations is to protect the life and health of those who work in and are related to the mining activities, and to safeguard the facilities and infrastructure of the mining projects.

Additionally, there are other relevant regulations regarding this subject that are compulsory for the mining industry, such as the Labour Code, the Sanitary Code and Decree No. 594/1999 that establishes the necessary sanitary and safety conditions for working places.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Applicable regulations impose several relevant obligations on mining employers regarding health and safety. For example, the obligation to: train the workers to safely operate the mining machinery and equipment; inform them of the risks associated with the work they perform and the preventive measures they must observe; provide the necessary personal protection equipment to its workers; and permanently maintain a first aid kit and provide transportation for the injured workers. Generally, the mining company as a direct or indirect employer shall pursue every action to guarantee the safety and physical integrity of its workers, its facilities, equipment and machinery.

On the other hand, there are obligations imposed upon workers, such as following the rules and internal regulations regarding health and safety, checking the good condition and proper functioning of the machinery and equipment, permanent use of personal protection equipment, etc.

Furthermore, there are also obligations imposed upon managers, such as supervising the workers and enforcing the safety rules.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Chile has local Mining Registrars where exploration and exploitation mining concessions are registered. According to the MC, the judgment granting a mining concession shall be registered in the corresponding Mining Registrar. In addition, such Registrar shall note concessions transfers, incorporation of mining corporations, share transfers, mortgages, liens, interdictions, prohibitions and lawsuits related to the mining concessions registered on its registries. In addition, certain acts, agreements and contracts related to mining concessions shall also be registered.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

According to Chilean public law rules, all the administrative decisions are subject to review before the authority who issued the decision or before its superior (in the case that it exists) and after this, they may be claimed before ordinary courts.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

As stated in the answer to question 1.1, the Chilean Constitution provides the legal grounds for the mining regulation.

The Constitution states that all mines belong exclusively to the State of Chile, and any person or company may be granted exploration and exploitation rights over minerals and substances through mining concessions. These mining concessions must be granted through a judicial proceeding. The Constitution grants the concessionaire with property rights over them.

Also, as mentioned in the answer to question 7.2, the Chilean Constitution states that surface land is subject to the obligations and limitations that the law may provide with the purpose of expediting the exploration and exploitation of mines.

12.2 Are there any State investment treaties which are applicable?

Chile has signed several bilateral and multilateral free trade agreements with other countries, such as the United States, Canada,

Mexico, China and the European Union. In addition, Chile is part of the Trans-Pacific Partnership treaty and has signed numerous double taxation treaties. To consult a specific treaty, please visit the following link: https://www.leychile.cl/consulta/tratados_por_pais.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

As a general rule, mining activity in Chile is subject to the general tax regime applicable to all companies. Therefore, Corporate Tax is applied on profits, after acquittal of the specific mining tax (see the answer to question 13.2 below), and a Withholding Tax of 35% shall be deemed to any distributions or dividends remitted abroad. Please note that the Corporate Tax paid may be partially or totally deducted from the Withholding Tax, depending on the tax regime elected and the domicile of the person/legal entity receiving the distribution.

In special cases, mining companies may apply for special Value-Added Tax exemptions.

In addition, an annual payment of a mining licence is required to keep the mining concessions in good standing.

Also, holders of a Foreign Investment Contract signed before December 1st, 2004, are protected by a general tax stability and/or a stability pact under the Foreign Investment Statute, and shall not be affected by this specific mining tax for as long as their stability pact lasts.

13.2 Are there royalties payable to the State over and above any taxes?

Mining companies are subject to additional taxation (locally referred to as "mining royalty") depending on the annual sales amount. This tax is applicable for mining companies with sales of minerals over which concessions may be granted and for sales of over 12,000 metric tonnes of fine copper. The value of a metric tonne of fine copper is used as a measure to determine the amount of the tax. The tax rate of this "mining royalty" may vary from exempt to 14% for companies with annual sales exceeding 50,000 metric tonnes of fine copper. For the purposes of calculating the annual sales, the ones made by related entities must be considered.

This "mining royalty" is a deductible expense for Corporate Tax purposes.

The taxable base is determined upon the net taxable income of the company (according to the general provisions of the Chilean Income Tax Law), with some specific adjustments.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Despite specific regulations regarding territory zoning and planning that were referred to in question 8.4 above, there are no regional, provincial or municipal laws to be taken into account.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The concessionaire has the right to abandon by unilaterally relinquishing, totally or partially, its exploration and exploitation mining concessions. Nevertheless, it shall never affect third-party rights. The abandonment must be performed by public deed, and will only produce its effects with the cancellation of the registration of the mining concession.

However, this possibility of abandonment must be addressed considering the possible mining projects that may be running in the concession, since, in relation to them, there is an obligation to implement closure measures and there are associated sanctions in case of abandonment without their implementation.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Our law establishes a case of mandatory relinquishment of mining concessions only in connection with exploration concessions. It settles that the exploration concession is granted for two years and that at the end of this period, the concession's owner is entitled to request an extension for two more years. If such extension is requested, the concessionaire will be forced to abandon, at least half of the original concession area. The exploration concession will be extinguished in the relinquished part and extended only for the remaining area.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The holder of a mining right or concession is bound to an annual payment for either exploration or exploitation concessions. Non-payments or partial or late payment enables the Treasury Department to initiate a process before courts in order to sell the mining concession at a public auction. Only in the event that there is no bidder will the judge declare the concession extinct, ordering the cancellation of its registration.

In addition, the exploration concession has a special rule regarding this matters, which establishes that a judge must declare the expiration of an exploration concession when the concessionaire starts mining within the limits of the concession.

As it can be noted, in both cases the cancellation process is conducted before a judge and not before the administration, thus ensuring a process without arbitrariness or discrimination.

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China

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mineral Resources Law ("**MRL**") is the national law governing the prospection for and extraction of mines in China and the registration of mining rights. The MRL was promulgated by the Standing Committee of the National People's Congress on March 19, 1986 and amended in 1996 and 2009, respectively.

1.2 Which Government body/ies administer the mining industry?

The Ministry of Natural Resources ("**MNR**") and its local bureaus are the primary governmental bodies administering the mining industry together with other ministries and departments that regulate other aspects of the mining industry. For example, the Ministry of Ecology and Environment ("**MEE**") is responsible for environmental protection, and the Ministry of Commerce is responsible for regulating the import and export of mineral products.

1.3 Describe any other sources of law affecting the mining industry.

Other sources of law affecting the mining industry include: rules, regulations and guidelines by the State Council, for example, the Measures for the Administration of Transfer of Mineral Exploration Rights and Mining Rights; by local People's Congresses and their standing committees at various governmental levels, for example, the Administrative Regulations on Mineral Resources in Beijing; and by central-level ministries, commissions, and agencies under the direct supervision of the State Council, for example, the Administrative Rules on Shanghai Mining Rights Market.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

In China, mining rights are divided into prospection rights and extraction rights. Under Chinese law, prospection rights are similar to the concepts of reconnaissance and exploration rights.

2.2 What rights are required to conduct exploration?

See question 2.1.

2.3 What rights are required to conduct mining?

The extraction right is required to conduct mining.

2.4 Are different procedures applicable to different minerals and on different types of land?

Yes. For example, procedures for prospecting for and extracting oil and natural gas are different from those for solid minerals. Such differences are elaborated under question 2.5.

Procedures differ depending on whether the land used for mining is urban land or agricultural land.

On a very high level, for example, the procedures for applying to use land for mining are as follows:

For urban land, a holder of mining rights must submit an application to the local land resources administrative body for a land use permit. After a preliminary review, the local land resources administrative body will forward the application to the local government for consideration and approval. Once the local government approves the application, it will issue a land use permit.

For agricultural land, a holder of mining rights must submit an application to the local land resources administrative body. Then the administrative body will formulate a land conversion plan (to convert agricultural land into construction land because agricultural land in China cannot be directly expropriated by the government), a land expropriation plan, a land supply plan, and a farmland provision plan. All these plans must be approved by the local government. After such approvals are issued, the local government will issue a land use permit.

2.5 Are different procedures applicable to natural oil and gas?

Yes. In addition to the materials necessary for prospecting for and extracting solid minerals, an applicant that wants to extract oil and natural gas must obtain approval from the State Council for the establishment of an oil company or for prospecting for or extracting oil and gas. The applicant must also have the legal person certificate. In addition, mining rights for oil and gas can only be granted by the MNR as opposed to local land resources bureaus for other types of minerals.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Mining rights can only be owned by corporate entities.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes to both questions. A foreign entity can own mining rights in China. However, foreign investors are prohibited from investing directly or indirectly in prospecting for or extracting tungsten, molybdenum, tin, stibonium, fluorite, and rare earth and radioactive minerals. They are allowed to invest in prospecting for and extracting oil and natural gas (including coalbed gas but excluding kerogen shale, oil sands and shale gas) only in the form of equity or co-operative joint ventures with Chinese entities (there are no restrictions on equity ratios for foreign investors).

3.3 Are there any change of control restrictions applicable?

Except for the restrictions mentioned in question 3.2, there are no other restrictions on foreign ownership.

3.4 Are there requirements for ownership by indigenous persons or entities?

This is not applicable in China.

3.5 Does the State have free carry rights or options to acquire shareholdings?

Ownership of mineral resources is vested in the State.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are certain restrictions on the extraction and processing of mineral resources, which are primarily set out in the 2011 Industrial Structure Adjustment Catalogue (the "**Catalogue**"). This Catalogue categorises various construction projects into three categories: encouraged projects; restricted projects; and obsolete projects. According to the Catalogue, no investment is allowed in new restricted projects. Restricted projects include but are not limited to: (i) production of certain petrochemical products, such as certain pesticides and nitrogen fertilisers; (ii) extracting and smelting tungsten, tin and antimony; and (iii) smelting of gold ores by pyrometallurgy with a daily processing amount below 100 metric tonnes.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

According to the 2018 Export License Catalogue, an exporter of phosphorus ore, coal, crude oil, and refined oil (excluding lubricating oil) must first apply to the Quota & License Administrative Bureau of Commerce (the "**Bureau**") for an export quota and then apply to the Bureau for an export licence after the export quota is approved; an exporter of rare earth minerals, tin and tin products, tungsten and tungsten products, molybdenum and molybdenum products, antimony and antimony products, indium and indium products, coke, lubricating oil, and fluorspar must apply to the Bureau for an export licence.

Generally, customs duties apply to the export of mineral resources. Consignors of exported goods must pay customs duties.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The following conditions must be met before transferring a prospection permit:

1. Two years have passed since the permit was granted, or mineral resources were found.
2. A certain level of minimum investment has been made.
3. There is no dispute over transfer rights.
4. Consideration for the rights has been paid.
5. Any other conditions stipulated by the MNR.

The following conditions must be met before transferring an extraction permit:

1. One year has passed since extraction was commenced.
2. There are no disputes over transfer rights.
3. Consideration for the extraction right has been paid.
4. Any other conditions stipulated by the MNR.

Additionally, the transferee must meet the same qualification requirements that the applicant for the prospecting for or extraction of the mineral resources is subject to.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes. Mining rights can be mortgaged. According to the Tentative Regulations on the Administration of Assignment and Transfer of Mining Right (the "**Tentative Regulations**"), to set a mortgage on mining rights, mining rights holders must submit application materials, including but not limited to, the mortgage contract and mining permits, to the permit issuance bureau and go through certain record filing procedures.

It should be noted, however, that the Tentative Regulations do not specify the record filing procedures and requirements, which leaves a gap for interpretations by local authorities. We recommend that foreign investors pay special attention to local implementation rules and policies in the provinces where their mining projects are located.

For example, Gansu Province and Shandong Province do not accept applications for record filings of mortgages for the benefit of third parties, which means that mortgagors must be mining rights holders in these two provinces. In addition, in certain provinces, mortgagees must be banks (in Shandong Province, mortgagees must be state-owned banks) or other qualified financial institutions. Finally, requirements for application materials also differ significantly from region to region.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Mining rights cannot be subdivided in China.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mining rights cannot be held in undivided shares in China.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Currently, there are no laws or regulations on the exploration or mining of secondary minerals.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

A mining rights holder has more of an obligation than a right to deal with residue deposits, tailings and mine dumps. A mining rights holder must register with the local environmental protection bureau for pollution discharge, formulate a pollution control plan, and install certain facilities in order to ensure that residue deposits, tailings, and mine dumps do not pose considerable risks to the public and the environment. A mining rights holder failing to comply with these obligations may be fined or forced to temporarily shut down the mine.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes. The Law on the Exploration and Development of Deep Seabed Resources regulates the prospecting for and extraction of resources located at the seabed, ocean floor and subsoil outside the jurisdiction of China and other countries. The Regulations on Sino-Foreign Cooperation in the Exploration of Offshore Petroleum Resources regulates the exploration and extraction of offshore petroleum resources through cooperation between China National Offshore Oil Corporation and foreign entities.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

No, a mining rights holder does not automatically own the right to use the land's surface. In fact, mining rights and the right to own and use land are two separate and independent rights and are regulated under different legal regimes.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

A mining rights holder cannot encroach on the rights of the landowner or lawful occupier.

7.3 What rights of expropriation exist?

As mentioned under question 2.4, if a piece of land used for mining is agricultural land, the mining rights holder must apply to the local government for the expropriation of that piece of land.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

An environmental impact assessment ("**EIA**") must be conducted for construction projects affecting the environment. An EIA is subject to approval or filing procedures from local bureaus of MEE.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

China implemented a restoration fund system in November 2017. A holder of mining rights may use the fund at its own discretion in accordance with the restoration plan formulated prior to the issuance of the mining permit.

The new system is expected to give holders of mining rights more discretion on how to use the funds and reduce their financial burdens. In the meantime, the government has strengthened enforcement on the supervision and inspection of the restoration of the mine's geological environment; those who do not comply with these regulations will face more stringent consequences. Consequences for failing to comply with environment restoration obligations include but are not limited to: fines; rejections for extensions of mining permits; being black-listed on the "Credit China" website; and environmental public interest lawsuits.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The following procedures must be completed:

1. filing an application for closing the mine with the same governmental authority which originally approved the establishment of the mine ("**Approving Authority**");
2. submitting for approving the geological report of the mine to be closed to Approving Authority; and
3. after the geological report is approved, preparing, compiling and submitting a mine closing report to Approving Authority.

After the mine closing report is approved, the following work must be completed:

1. classifying and sorting out the geological, survey, and mining information, and submitting the geological report and mine closing report and other related materials; and
2. completing remaining work related to labour safety, water and soil conservation, land reclamation and environmental protection pursuant to the approved mine closing report, and paying in full any outstanding charges.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

There are zoning and planning requirements for the prospecting for and extraction of mineral resources at the national, provincial, municipal and county levels. The exercise of mining rights must comply with the zoning and planning requirements at all levels.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

This is not applicable in China.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Health in mining is mainly regulated under the Mine Safety Law and Regulations for the Implementation of Mine Safety Law. Safety in mining is mainly regulated under the Law on the Prevention and Control of Occupational Diseases.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Yes.

As to safety, holders of mining rights must have in place facilities that can ensure safety in production, establish a system of safety management, take effective measures to improve working conditions for workers and staff, and strengthen safety control in mines. Managers must be responsible for safe production in mines and must have special knowledge and the capability to ensure safe production and handle accidents. Employees must possess specialised knowledge of and experiences in work safety.

As to health, employers must ensure that working conditions meet national standards and requirements for occupational health and take measures to ensure that workers are protected from occupational diseases.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The MNR is the central titles registration authority.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is no appeals system specifically promulgated for mining matters only. Those wishing to challenge administrative decisions can either seek an administrative review or an administrative lawsuit in the usual manner where an actionable cause of action arises.

However, according to the Law of Administrative Review, if the subject matter is about ownership of natural resources or the right to use natural resources, an administrative review must first be initiated.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Mineral Resources Law covers all of these rights.

12.2 Are there any State investment treaties which are applicable?

No. As of the publication of this chapter, we are not aware of any investment treaties that China has joined which specifically address mining investment matters. However, there are a few bilateral investment treaties between China and other countries covering mining activities and investments in the mining industry, such as the Agreement on the Promotion and Mutual Protection of Investment between China and Canada, the Free Trade Agreement between China and the Republic of Chile, and the Free Trade Agreement between China and the Republic of Peru.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Basic resource tax rates for some mineral resources are as follows:

- crude oil: 6% of gross sales;
- natural gas: 6% of gross sales;
- coking coal and other coal: 2%–10% of gross sales;
- iron (concentrate): 1%–6% of gross sales;
- gold (bullion): 1%–4% of gross sales;
- copper (concentrate): 2%–8% of gross sales;
- nickel (concentrate): 2%–6% of gross sales;
- graphite (concentrate): 3%–10%;
- diatomite (concentrate): 1%–6%; and
- kaolin (ore): 1%–6%.

13.2 Are there royalties payable to the State over and above any taxes?

According to the Mineral Royalties Reform Plan promulgated on April 20, 2017, an applicant for mining rights must pay mineral royalties to the State.

Royalties are calculated as follows:

i. the price offered by the winning bidder if the mining rights are assigned by auction;

ii. the price (not necessarily the highest) offered by the winning tenderer if the mining rights are assigned by tender; or

iii. the valuation of the mining rights or the market benchmark price for mining rights of similar conditions (whichever is higher) if the mining rights are assigned by written agreements between the permit holder and government authorities.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes. Local legislatures have the authority to stipulate special rules and regulations governing local activities. See also the discussion in question 1.3.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

This is not applicable in China.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

We are not aware of any provisions in Chinese mining laws entitling rights holders to surrender these rights in part or in their entirety. Having said that, under Chinese law, any rights, unless otherwise prohibited by law, can be abandoned in part or in their entirety. Therefore, we are of the view that mining rights can be surrendered, provided that the surrender of rights does not result in a failure to fulfil the obligations assumed at the time such rights are granted. Additionally, a holder of mining rights intending to abandon those rights or close a mine must follow the procedures discussed in question 8.3.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Please see our answers under questions 15.1 and 8.3.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes. Among others, any of the following circumstances may lead to the revocation of exploration or extraction permits: (i) a failure to pay royalties or register changes to the range of mines or major minerals or name of the mining entity; (ii) refusal to cooperate with governmental authorities on supervision and inspection; or (iii) acts of fraud.

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Jincheng Tongda & Neal (JT&N) was founded in Beijing in 1992. With more than two decades of experience, JT&N has distinguished itself as a leader in multiple areas of legal practice, both international and domestic, focused on furnishing first-class legal services efficiently, economically, and with the highest standard of performance. Today, JT&N has grown to become one of the largest and most respected full-service law firms in China, with hundreds of highly qualified and talented attorneys in nine offices located in key urban centers across the country, including the provincial capitals of Chengdu, Hefei, Jinan, Shenyang, and Xi'an, as well as the major metropolitan commercial centers of Shanghai and Shenzhen, and our main office in Beijing.

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Congo – D.R.

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The main national legislation governing the mining industry in the DRC is (i) Law no. 007/2002 of 11 July 2002 as amended by Law no. 18/001, dated 9 March 2018 (the "2002 Mining Code"), and (ii) the Mining Regulation (kindly note that the answers to the questionnaire have been drafted before the adoption of the revised Mining Regulation, by Decree no. 18/24, of 8 June 2018) enacted by Decree no. 038/2003, of 26 March 2003 (the "2003 Mining Regulation"). In addition, there is a set of Decrees and Ministerial Orders to be considered.

1.2 Which Government body/ies administer the mining industry?

The mining industry is administered by the following public representatives/bodies:

- The President of the Republic, who notably exercises classification and declassification authority in relation to minerals and prohibited areas for mining activities.
- The Minister of Mines, who has, *inter alia*, powers and jurisdiction over the granting, refusal and cancellation of mining rights.
- The Mining Registry, supervised by the Minister of Mines and the Minister of Finance, which has the main goal of conducting administrative proceedings in relation to the application for and registration of mining rights, as well as their cancellation and expiry.
- The Congolese Environmental Agency, the main role of which is to handle the evaluation and approval of environmental and social studies, also follows up on their implementation, by taking into account the environmental protection during the mining project.
- The Directorate of Geology, the Directorate of Mines and the Directorate of Protection of the Mining Environment. The Mining Regulation will determine the functions of these entities.
- The Provincial Governor, who has the authority to issue trading cards with respect to artisanal mining production.

1.3 Describe any other sources of law affecting the mining industry.

In addition to the 2002 Mining Code, the mining industry is also regulated by the country's tax legislation, notably regarding VAT, Customs Code, the Labour and Immigration legislations, Law no. 11/009 of 9 July 2011, establishing the basic environmental protection principles, and various other laws dealing with contractual and corporate matters (i.e., the OHADA Uniform Acts).

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The carrying out of reconnaissance (*prospection* in French) allows anyone to investigate, to take samples in order to find out about the existence of a mineral deposit. Before the 2018 reform, any person or entity planning to engage in a reconnaissance process had to submit a prior declaration to the Mining Registry. A Reconnaissance Certificate (*attestation de prospection* in French) was subsequently granted by the Mining Registry within five days and valid for a non-renewable period of two years. From now on, a declaration to the Directorate of Geology must be made, and the result of the *prospection* must be transferred to said entity.

2.2 What rights are required to conduct exploration?

An exploration permit (*permis de recherche* in French) is required in order to conduct exploration in the DRC.

2.3 What rights are required to conduct mining?

To conduct mining operations, a particular permit category is required, depending on the nature of the operations envisioned and may be a production permit (*permis d'exploitation* in French), a small mine permit (*permis d'exploitation de petite mine* in French), or a waste management licence (*permis d'exploitation des rejets* in French).

2.4 Are different procedures applicable to different minerals and on different types of land?

Specific procedures apply to minerals formally declared and classified as "reserved substances".

2.5 Are different procedures applicable to natural oil and gas?

Yes, different procedures are applicable to natural oil and gas, as set out in Law no. 15/012, of 1 August 2015, establishing a general

legal framework for hydrocarbons, and Decree no. 16/010, of 19 April 2016, which establishes the hydrocarbons regulations.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Please see the answer to question 3.2.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Under the 2002 Mining Code, as revised in 2018, no distinction is made between mineral rights that may be acquired by (i) Congolese legal persons, and (ii) foreign legal persons. However, artisanal digging and trading can only be performed by nationals. Furthermore, before engaging in the DRC's mining industry, foreign companies must fulfil certain administrative obligations (e.g. elect a domicile with an authorised Congolese mining agent, acting as such company's intermediary; and incorporate locally).

3.3 Are there any change of control restrictions applicable?

Any direct or indirect change of control of a mining company is subject to the prior approval of the Congolese State.

3.4 Are there requirements for ownership by indigenous persons or entities?

Since the 2018 revision, 10% (ten per cent) of the mining company's share capital must be held by Congolese natural persons.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The State has free carry rights and mining companies, wishing to acquire a production permit must transfer 10% (ten per cent) of their share capital for free. Furthermore, 5% (five per cent) of the mining company's share capital must be transferred to the State for free at each renewal of the exploitation permit.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Yes, there are special regulatory provisions relating to processing and refining performed not by a mineral permit holder, but by another entity dedicated to those activities. Additionally, the construction and operation of processing plants are subject to environmental regulatory provisions.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The export of raw minerals is closely controlled and can only be performed under strict conditions. For instance, the export or sale of minerals is subject to the State's right to determine the production quotas to be exported according to the needs of local industry. The export of tradeable mining commodities (i.e., processed minerals) must also comply with several legal requirements (e.g., minimum humidity rate, full traceability and certification). The export of certain concentrates may be restricted or prohibited. As a final note, the export of minerals is subject to 10% (ten per cent) taxation, pursuant to the Customs Code.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Exploration and production permits can be wholly or partially assigned, subject to the conditions attached to the assignment, such as the transferee's obligation to assume all of the permit holder's obligations to the State, and also the obligation to register any transfer at the Mining Registry, among others.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Production permits can be mortgaged, once a positive cadastral and technical evaluation has been issued by the Directorate of Mines, followed by the approval of the Ministry of Mines.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Exploration permits are automatically subdivided when renewed. Production permits may be subdivided when partially waived or assigned by their holders.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The Mining Code does not provide for jointly-owned exploration and production permits.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The holder of rights to explore for or mine a primary mineral is entitled to explore or mine for secondary minerals, provided that such permit holders, when applying for an extension of their initial rights, also include secondary minerals in the application form.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The holder of a right to conduct mining operations is entitled to also exercise rights over any residue deposits on the land concerned, provided that this is not explicitly prohibited in the respective production permit, and subject to the holder having specifically applied for such additional right.

6.5 Are there any special rules relating to offshore exploration and mining?

To the best of our knowledge, there are no such special rules in force, except in relation to operations regarding mine waste.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Exploration or production permits do not grant their holders an automatic right to use the surface of the land. However, the Governor of the relevant province, further to an opinion issued by the Mines Administration, may grant the right to the permit holders to occupy the land necessary for their activities within their mining perimeter. Under specific circumstances, the consent of the respective landowner or lawful occupier may also be required.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Pursuant to Article 279 of the 2002 Mining Code (Restrictions on occupation of the land), the holder of an exploration or production permit must obtain the authorisation of the landowner or lawful occupier in order to occupy land located less than 1,000 metres from houses, 800 metres from tilled lands, or 800 metres from farms with cattle, a water tank, dam or private water reserve. Furthermore, any land occupation by the holder of exploration or production permit, preventing its use by those entitled to enjoy said land, gives the latter the right to receive compensation.

7.3 What rights of expropriation exist?

Expropriation rights can only be granted by the State under exceptional circumstances and for reasons of public interest, but are always subject to fair compensation.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Many environmental requirements apply to exploration and production operations, as outlined in the numerous annexes of the Mining Regulation dedicated to environmental issues. With respect to exploration, we highlight the need to submit for the approval of the relevant authorities a mitigation and rehabilitation plan describing the measures taken to limit and remedy any environmental damage caused by exploration works. Furthermore, anyone applying for a production permit is required to submit an environmental impact study and a draft environmental management plan, which must contain a description of the "greenfield" ecosystem and of the measures envisioned to limit and remedy any damage caused to the environment throughout the duration of the project. Also, the right holder must declare any archaeological discoveries and publish safety warnings. Furthermore, the importation, marketing, transportation, storage and use of explosives are all subject to special rules.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

In order to close and remediate a mining project, production permit applicants are requested, when applying, to submit to the relevant authorities a draft rehabilitation plan for the site post-closure, alongside the application form. Later, the decision to close a mining site must be promptly notified to the relevant authorities.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Holders of exploration or production permits are required to provide a financial guarantee in an amount sufficient to cover any necessary environmental rehabilitation. The terms and conditions according to which this guarantee must be set up are detailed in Annex II to the Mining Regulation.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

To the best of our knowledge, there are no zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Subject to the answer to question 7.2, the holding of native title or other statutory surface use rights does not have any direct impact on the rights granted under an exploration or production permit. That being said, we emphasise that artisanal mining production is reserved solely to Congolese individuals by law.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Mining Code establishes that mining operations are subject to hygiene, security and protection measures enacted by special regulations. Mineral permit holders must also comply with all measures ordered by the Administration to prevent or eliminate the causes of dangers to public health and safety.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Mining Code provides that mineral permit holders must publish safety regulations with regard to their mining operations. These regulations are disclosed to the relevant authorities, as well as to all employees. Any other persons having access to the site must also be duly informed. Moreover, as previously mentioned under the answer to question 8.1 above, activities related to explosives are subject to special regulations.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mining Registry is the central office in charge of registering mineral permits. It notably processes the applications for such titles, grants the related rights and keeps records thereof.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

To challenge administrative decisions relating to mining activities, the 2002 Mining Code makes reference to the resources provided by the ordinary laws governing the judicial system and court proceedings, except for the applicable time limits, which are reduced.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The DRC's constitution expressly provides that the State has unlimited sovereign powers over its soils and subsoil.

12.2 Are there any State investment treaties which are applicable?

The DRC has entered into bilateral investment treaties with several countries and also ratified treaties for the avoidance of double taxation, namely with the Kingdom of Belgium and the Republic of South Africa.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The Mining Code provides for an exhaustive tax and customs regime applicable to mineral permit holders' activities. This regime is exclusive of any other present or future taxation, except more favourable ones.

13.2 Are there royalties payable to the State over and above any taxes?

The Mining Code sets a mining royalty which is owed from the date on which the mining operations effectively start and is calculated based on the value of the sales made. The rate of the mining royalty varies according to the mineral substances in question (e.g., 1% for iron or ferrous metals, 3.5% for non-ferrous metals, 3.5% for precious metals, 6% for precious and colour stones, 1% for industrial minerals, etc.) and 10% for strategic substance. The Mining Regulation or complementary additional ministerial orders determines the elements that will be considered as "strategic substance".

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes, depending on the province and, without prejudice to the stabilisation clause provided by the Mining Code regarding taxes and customs duties, this is applicable to permit holders. This clause, which used to provide a 10-year warranty, has been modified. The stability clause is now valid for only five years.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

The DRC has been implementing the EITI Standard since 2007 and became a full member in 2014. The DRC is also a State Party to the Kimberley Process, as well as to the Pact on Security, Stability and Development in the Great Lakes, which includes its Protocol against the Illegal Exploitation of Natural Resources.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The Mining Code provides for the total or partial abandonment of mining exploration or production permits, performed by means of a declaration sent to the competent Minister. The permit holder does not have any right to compensation and remains liable to the local community for any environmental damage and/or any breach of its obligations.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

When the holder of an exploration right applies for the renewal of the respective permit, the holder automatically relinquishes 50% of the territory covered by said permit. Furthermore, the holder of a mining right must transfer 5% of its shares to the state for free at each renewal of its mining right.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Subject to compliance with the formal procedures established by the 2002 Mining Code, the State is empowered to cancel an exploration or production permit: (i) if the holder does not fulfil its obligation to start exploration or construction within one year from the date on which the permit was issued; (ii) when the permit holder fails to pay the applicable surface duty (*droit superficiaire par carré* in French) on time; (iii) when the permit holder fails to correct a formal notice within 60 days; and (iv) when a permit holder fails to comply with social obligations set out in the Mining Regulations.

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Ethiopia

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The mining sector in Ethiopia is principally regulated by the following legal texts:

- the 1995 Constitution of the Federal Republic of Ethiopia (which places the ownership of all natural resources in the State and people of Ethiopia);
- the Federal Income Tax Proclamation n°979/2016;
- Proclamation n°678-2010 to promote sustainable development of mineral resources dated 4th August 2010, amended by the Mining Operation (Amendment) Proclamation n°816/2013 ("**Proclamation n°678-2010**"); and
- the Council of Ministers' Regulations on Mining Operations n°182-1994 amended by Regulation n°27/1998 and Regulation n°124-2006 ("**Regulation n°182/1994**").

1.2 Which Government body/ies administer the mining industry?

The principal body that administers the mining industry is the Ministry of Mines and Energy.

1.3 Describe any other sources of law affecting the mining industry.

Other sources of law affecting the mining industry include the Environmental Impact Assessment Proclamation n°299/2002 (which provides that an environmental impact assessment has to be carried out for activities that may have adverse consequences on the environment – i.e. including mining), the Labour Proclamation n°377/2003 (which, *inter alia*, obliges employers to take health and safety measures in work places and employees to comply with health and safety rules), and the Commercial Registration and Business Licensing Proclamation n°686/2010 (which is applicable to any person who intends to engage in the mining sector).

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

In order to conduct reconnaissance, a reconnaissance licence is required. The Licensing Authority may grant a reconnaissance licence, which is not renewable, for a period that shall not exceed eighteen (18) months (article 16 of the Proclamation n°678-2010).

Procedure:

An application must be submitted to the Licensing Authority. Where the latter is satisfied with the application, it registers the application and gives a receipt to the applicant. The Licensing Authority, after registering the application, publishes it to third parties through widely accessible mass media:

- If a person objects to the granting of the licence within seven (7) days as from the date of publicity, the Licensing Authority initiates negotiations between the parties concerned in order to resolve the objection. If the parties fail to resolve the objection, the Licensing Authority hears the presentations of both parties and decides on the upholding or rejection of the objection within fifteen (15) working days.
- If no objection to the application has been filed at its office, the Licensing Authority, following verification of all information submitted in connection with the application, and upon payment of the fees and rentals, grants the licence to the applicant.

2.2 What rights are required to conduct exploration?

The Licensing Authority may grant an exploration licence to an applicant (i) who has demonstrated that it has the financial resources and technical ability to conduct the exploration operations in question in accordance with the work programme, (ii) whose estimated exploration expenditure is in accordance with the prescribed minimum exploration expenditure and the exploration work programme, (iii) whose environmental impact plan has been approved, and (iv) who is not in breach of any obligation in the reconnaissance licence (article 17 of the Proclamation n°678-2010).

An exploration licence is granted for a period that cannot exceed three (3) years, renewable twice for a period not exceeding one year each. It is to be noted that the Licensing Authority may allow further extensions of renewal if the licensee proves the necessity to undertake exploration activity beyond the initial work programme. However, such period shall not exceed five (5) years.

Procedure:

The applicable procedure is the same as that described in question 2.1 above.

2.3 What rights are required to conduct mining?

In order to conduct mining, the holder of an exploration licence must apply for a mining licence. There are two types of mining licence: the large-scale mining licence; and the small-scale mining licence.

- ***Large-scale mining licence***:

  The large-scale mining licence regime applies to any mining operation for which the annual run-of-mine ore exceeds, *inter alia*, the following limits:

  For gold, platinum, silver and other precious and semi-precious minerals:

  - 100,000 m^3 for placer operation; and
  - 75,000 tonnes for primary deposit mining.

  For metallic minerals such as iron, lead, copper and nickel:

  - 150,000 tonnes for open pit mining; and
  - 75,000 tonnes for underground mining operation.

  A large-scale mining licence shall not exceed twenty (20) years, and is renewable provided that the new period does not exceed ten (10) years (article 27 of the Proclamation n°678-2010).

  Procedure:

  The applicable procedure is the same as that described in question 2.1 above.

- ***Small-scale mining licence***:

  The small-scale mining licence regime applies to any mining operation of which the annual run-of-mine ore does not exceed the above-mentioned limits.

  The small-scale mining licence shall not exceed ten (10) years, and is renewable provided that the new period does not exceed five (5) years (article 29 of the Proclamation n°678-2010).

  Procedure:

  The applicable proceeding is the same as that described in question 2.1 above.

  Rights and obligations:

  The holder of a small-scale or large-scale mining licence shall have, *inter alia*, the following rights and obligations:

  - the right to market and sell minerals produced;
  - to commence mining operations within two (2) years as from the date of the licence; and
  - to comply with the terms and conditions of the licence.

- ***Artisanal mining licence***:

  The artisanal mining regime applies to any mining operation carried out by individuals or small and micro enterprises that is mostly of a manual nature and does not involve the engagement of employed workers.

  The licence is granted for a period specified in the licence that shall not exceed two (2) years and may not be renewed.

  Procedure:

  The applicable proceeding is that described in question 2.1 above.

  Rights and obligations:

  The holder of an artisanal mining licence shall have, *inter alia*, the following rights and obligations:

  - to undertake mining operations in accordance with environment, health and safety standards;
  - to comply with the terms and obligations of the licensee; and
  - to have a preferential treatment regarding the licensee where the latter shows that it has the necessary technical and financial resources to engage in advanced exploration and mining.

- ***Retention licence***:

  The Licensing Authority can grant an exclusive retention licence to the applicant if:

  - the latter has demonstrated that the discovery of a mineral deposit within the exploration area is potentially of commercial significance; and
  - the mineral deposit cannot be developed immediately because of adverse market conditions, other economic factors, or unavailable processing technologies, which are of a temporary character.

  The retention licence is granted for the period specified in the licence but cannot exceed three (3) years. The licence can be renewed once for a period not exceeding three (3) years where the licensee demonstrates that the above-mentioned conditions still prevail.

  Procedure:

  The applicable procedure is the same as that described in question 2.1 above.

  Rights and obligations:

  The holder of a retention licence shall have, *inter alia*, the following rights and obligations:

  - the right to be granted a mining licence in respect of the retention area a mineral in question prior to expiry of the licence;
  - to submit an annual progress report to the Licensing Authority indicating:
    - the prevailing market conditions and technical factors, the effect thereof and the need to hold such retention licence over the mineral and land in question; and
    - efforts undertaken by it to ensure that mining operations commence before the expiry of the duration of the licence.

2.4 Are different procedures applicable to different minerals and on different types of land?

Please see question 2.3 above.

2.5 Are different procedures applicable to natural oil and gas?

Procedures regarding natural oil and gas are not covered by the Proclamation n°678-2010 and Regulation n°182/1994 but are overseen by the same governmental body; namely, the Ministry of Mines.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

Reconnaissance operations may only be conducted by Ethiopians who have a licence, whereas foreigners are not permitted to conduct reconnaissance operations at all. Further, only Ethiopian nationals can apply for, and obtain, artisanal mining licences.

3.2 Are there any change of control restrictions applicable?

Article 40 of the Proclamation n°678-2010 provides that in order to transfer a large-scale mining licence, the prior consent of the Licensing Authority is required. The application to transfer or assign a large-scale mining licence must include specific information and documents listed under article 40 as, for example, the nature, nationality, legal form, and capital of the proposed transferee, etc. Other than that, there is no change of restriction control applicable under the mining laws.

3.3 Are there requirements for ownership by indigenous persons or entities?

As indicated above, Ethiopian nationality is required for obtaining artisanal mining licences. In addition (and as stated in the answer to question 3.4 below) the government is entitled to a 5% equity participation.

3.4 Does the State have free carry rights or options to acquire shareholdings?

It is to be noted that the government may acquire a free participation interest of 5% of any large-scale or small-scale mining investment. An additional equity participation of the government may also be provided by agreement. The latter will specify the percentage, the timing, the financing, the resulting rights and obligation, and any other details of the government participation.

3.5 Are there restrictions on the nature of a legal entity holding rights?

It is to be noted that there is no restriction on the type of legal entity that may hold rights in the mining sector. In this way, mining activities may be carried out by a legal entity in the form of a sole ownership, partnership or company (whether share or private limited company).

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The holder of a small-scale or large-scale mining licence shall have the right to market and sell minerals produced (article 30 of the Proclamation n°678-2010).

It is to be noted that the holder of a mining licence obtains a title to the minerals specified in the licence upon their extraction (article 42 of the Proclamation n°678-2010).

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The holder of an exploration licence must obtain the prior consent of the Ministry of Mines to export samples of minerals for testing, and it is to be noted that such minerals remain the property of the Government of Ethiopia (article 42 of the Proclamation n°678-2010).

The holder of a mining licence has the right to sell locally or to export the minerals in relation to which he obtained a title specified in the licence upon their extraction. In order to export, however, it is necessary to obtain a competency certificate from the Ministry of Mines as well as a business licence from the Ethiopian Ministry of Trade.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Any licence other than reconnaissance or retention licences may be transferred subject to the prior consent of the Licensing Authority. However, no licence may be transferred to a company in liquidation or insolvency (article 38 of the Proclamation n°678-2010).

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

This is not covered under the Proclamation n°678-2010 and Regulation n°182/1994. However, as mentioned under question 5.1 above, the transfer of any licence is possible, subject to the prior consent of the Licensing Authority. We are therefore of the view that these rights may be mortgaged, subject to the prior consent of the Licensing Authority, except for a reconnaissance licence which may not be mortgaged.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

These rights may be subdivided except for reconnaissance or retention licences, and provided that this is approved and registered by the competent government authority.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

It is to be noted that reconnaissance, exploration and mining shares can be held by companies through a joint venture agreement, a private limited company or share company.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The holder of a mining licence can amend his licence to include other minerals that are not specified in the licence, or to include other areas outside his licenced area where he believes that the licenced area does not include the entire deposit of minerals (article 33 of the Proclamation n°678-2010).

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

It is to be noted that before being able to conduct reconnaissance, exploration or mining over residue deposits, a new licence will be required (and following the termination, revocation or expiry of the previous licence over the land in question).

6.5 Are there any special rules relating to offshore exploration and mining?

Ethiopia is a landlocked country and there is therefore no specific legislation governing offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The holder of a licence has the right to (i) bring into the licensed area any plant, machinery or equipment and build and construct any surface or underground infrastructure required for the purposes of the envisaged mining operations, (ii) use, subject to the relevant water laws, water from any water body, situated on, or flowing through, such land or sink a well or borehole required for mining operations, and (iii) subject to the applicable law regarding the cutting of timber and reforestation, cut and use, within the licenced area and the area of lease, timber which is necessary for mining operations (article 33 of the Proclamation n°678-2010).

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a mining licence must take proper precautions not to interfere with other legitimate occupants of the licenced area, the land covered by a lease and the adjacent land (article 34 of the Proclamation n°678-2010).

7.3 What rights of expropriation exist?

Article 59 of the Proclamation n°678-2010, as amended, provides that the Licensing Authority may expropriate any immoveable property on any land. However, in return for this expropriation, the licence holder will be entitled to receive fair compensation.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In order to conduct reconnaissance, exploration and mining operations, the applicant must: (i) obtain, from the Environmental Protection Authority, a permit regarding the management of waste (article 3 of the Proclamation n°300-2002); (ii) have an the environmental impact study report approved by the Environmental Protection Authority; and (iii) have authorisation from the concerned body of an urban administration engaging in collection, transportation, use or disposal of solid waste (article 4 of the Proclamation n°513/2007).

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The holder of a small-scale or large-scale mining licence must apply to the Licencing Authority for a mine closure certificate within one hundred and eighty (180) days prior to revocation of the licence, termination of the mining operations, relinquishment of the whole or any portion of the licence area or abandonment of the mine (article 61 of the Proclamation n°678-2010).

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The owner of any solid waste disposal shall be liable for any damage caused to the environment, human health or property in the course of its operation and after its closure within two years as from the date on which the damage was known. An exemption from this liability is granted when it is either the victim himself, or a third party for whom the owner of the solid waste disposal site is not responsible who has caused the damage (article 16 of the Proclamation n°678-2010).

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Whilst, in principle, any land in Ethiopia is available for mining, and unless the national interest is not served, it is to be noted that exploration, retention and mining licences will not be issued for certain areas that are specifically reserved, such as religious sites and cemeteries, or national parks.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No it does not, except with regards to the issue of property located on the area that is required for the mining activities (where procedures for expropriation and the payment of consideration will apply).

10 Health and Safety

10.1 What legislation governs health and safety in mining?

There is no specific legislation which governs health and safety in mining. That being said, however, it is to be noted that the Labour Proclamation n°377/2003 obliges employers to take measures to ensure occupational health and safety in the workplace. See the answer to question 10.2 below.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

As a general obligation, the holder of a mining licence must conduct mining operations in such manner as to ensure the health and safety of his agents, employees and other persons, and comply with the applicable laws pertaining to environmental protection (article 34 of the Proclamation n°678-2010).

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Licensing Authority establishes and maintains a Registry of Licences and Leases (article 15 of the Proclamation n°678-2010).

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

In accordance with the Proclamation n°678/2010, administrative remedies are to be used up first before applying to a competent court for a review of the decision that has been made. In addition, the Proclamation n°678/2010 provides that any disputes are first to be referred to negotiation. If that fails, the matter will then go to arbitration and, from there, an appeal against the decision of the arbitrators may be submitted before the competent court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The 1995 Constitution does not restrict the right to carry out mining provided that the exercise of such right does not bring into operation the expropriation and compensation provisions of the Constitution.

12.2 Are there any State investment treaties which are applicable?

It is to be noted that Ethiopia has signed Bilateral Investment Treaties ("**BITs**") with 29 countries: Algeria; Austria; Belgium-Luxembourg Economic Union; China; Denmark; Egypt; Equatorial Guinea; Finland; France; Germany; India; Iran; Israel; Italy; Kuwait; Libya; Malaysia; the Netherlands; Nigeria; Russian Federation; South Africa; Spain; Sudan; Sweden; Switzerland; Tunisia; Turkey; the United Kingdom; and Yemen. Investors that come to Ethiopia from one of the aforementioned countries will have favourable treatment in accordance with the terms of their respective BITs.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

It is to be noted that the Federal Income Tax Proclamation n°979/2016, provides, *inter alia*, that a business income tax rate of 25% is applicable to licensees (article 37). Further, a licensee effecting payment to a non-resident subcontractor shall withhold and transfer to the tax authority ten (10%) of the payment.

13.2 Are there royalties payable to the State over and above any taxes?

Yes. The rate depends on the different kind of minerals. Thus, for precious minerals the rate is 8%, for semi-precious minerals 6%, for metallic minerals 5%, for industrial minerals 4%, for construction minerals 3%, for salt 4%, and for geothermal 2%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes. It is to be noted that regional state governments are empowered to administer the land and natural resources in accordance with the federal laws of the country. Artisanal and small-scale mining are usually governed by regional laws.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The holder of a mining licence may relinquish all or part of the licence area by giving prior written notice (of at least 12 months) to the Licensing Authority and upon fulfilment of all obligations of the licence (article 33 of the Proclamation n°678-2010).

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Upon the renewal of an exploration licence, it is to be noted that the holder is obliged to relinquish a portion of not less than one quarter of the licensed area.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The Licensing Authority may partially or fully suspend mineral rights where it believes that the activity of the licensee is likely to become an imminent danger to the local community, the environment or its employees (provided that such suspension is the only remedy under the prevailing circumstances), and it may revoke the licence altogether in the following circumstances:

- the licensee fails to comply with the financial obligations prescribed in the Proclamation n°678-2010, regulations or directives;
- the licensee conducts mining operations in a grossly negligent or wilfully improper manner;
- the licensee breaches any material term or condition of his licence;
- the licensee is not conducting his mining operations in accordance with the work programme;
- the licensee is in breach of the approved environmental impact assessment, and safety and health standards;
- the licensee has submitted false or fraudulent information in connection with any matter required to be submitted under the proclamation, regulations or directives;

- the licensee fails to maintain complete, accurate and current books and records or other documents or materials required or fails to file reports or other documents or fails to give notices required; or
- the licensee fails to grant a duly authorised official of the Licensing Authority access into the licenced area, the area covered by a lease or to any other site or premises of the mining operations or to his books, records, other documents or materials, or fails to carry out a lawful order or instruction of such official (article 44 of the Proclamation n°678-2010).

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Gabon

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Since 29 May 2015, mining law in Gabon has been regulated by the 2015 Mining Code enacted by Law No. 17/2014 of 30 January 2015, replacing the former 2000 Mining Code. This law provides for the legal, institutional, technical, economic, customs and tax regimes of the Gabonese mining sector; this Mining Code is due to be amended in 2018 to notably accommodate the current market conditions and develop the attractiveness of the code to foreign investors. A draft mining code was adopted by the Council of Ministers in June 2018 to be approved, hopefully before the end of 2018, by the Gabonese Parliament.

In the meantime, and as at 1 August 2018, the 2015 Mining Code still applies to all mining activities and operations, in particular prospecting, exploration, appraisal, exploitation, development, construction, operation, extraction, storage, treatment, processing, cargo, transportation and marketing of mineral substances (mines and quarries), save for liquid or gaseous hydrocarbons or gaseous and underground waters which are regulated by other specific Gabonese legislation.

This 2015 Code is aimed at, notably:

- ensuring automatic State participation in the share capital of mining companies in production;
- promoting industrial responsibility;
- promoting social responsibility;
- ensuring compliance with health, safety and environment rules;
- ensuring compliance with human rights;
- promoting local SMEs and national preference;
- giving priority to local employment satisfying mining needs;
- developing local communities of surrounding areas of mining operations;
- requiring good governance and transparency in the operation and management of mining activities;
- ensuring non-discrimination between operators;
- promoting and protecting mining investments; and
- providing incentives for mining investments.

This 2015 Mining Code will be completed by implementation decrees yet to be adopted, but some of its provisions are sufficiently detailed to be already implemented with thanks to, in particular, a mining convention to be negotiated with the State.

1.2 Which Government body/ies administer the mining industry?

Under the 2015 Mining Code, several State actors may be involved in the mining industry:

- **The Ministry of Mines**

  The mining industry is placed under the supervision of the Ministry of Mines which is in charge of the conception and the implementation of the Government policy regarding exploration and exploitation of mines and quarries, optimisation and valuation of the mining potential, the application of the mining regulations and the control of the conduct of the mining activities by mining operators. The Ministry of Mines is also in charge of the acquisition and sale of movable and immovable assets of the State mining portfolio.

- **The regulatory authority**

  The regulatory authority is notably aimed at:

  - ensuring independent, transparent and non-discriminatory measures in the mining industry;
  - ensuring safe competition between operators;
  - contributing to the implementation of tariffs regulations and free access of third parties to transportation, storage and loading facilities;
  - receiving and instructing claims in the mining sectors and applying penalties;
  - ensuring validity of the tendering process;
  - analysing costs of mineral substances of operators to preserve State interests and equal treatment of operators;
  - ensuring compliance with QHSE rules;
  - collecting any economic, legal and tax information of the mining sector; and
  - auditing.

- **The national operator, *Société Equatoriale des Mines* (SEM)**

  The national operator is the State-owned company named *Société Equatoriale des Mines*, acting in the name of the State in the competitive sector of mines but according to the national mining strategy.

- **Industrial liability fund**

  The industrial liability fund is aimed at:

  - covering damages linked to mining activities faced by persons, assets and the environment;
  - organising expertise and studies relating to risks and damages linked to the exploitation of mines; and

- in the event of default of an operator or in the event of public order emergencies, managing closure and restoration of sites.

- **The stabilisation funds for the revenue of the extractive industries**

  The resources of the stabilisation funds are aimed at attenuating the impact of the instability of the raw material's prices on the international market.

- **Consulting bodies**

  Special commissions and committees to be established by regulatory texts may also assist the State in the implementation of its mining policy.

1.3 Describe any other sources of law affecting the mining industry.

Obviously, other additional sets of Gabonese legislation will have to be combined with the 2015 Mining Code when dealing with a mining project, such as environmental law, sustainable development law, land law, general business law, labour law, companies law, foreign exchange regulations and administrative law.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

According to article 8 of the 2015 Mining Code, in the Gabonese Republic, nobody can begin prospecting, exploration, promotion, exploitation, transformation, holding, detention, transportation, storage or marketing of mineral substances if he has not been authorised beforehand by the State.

Each step of mining (mines and quarries) activities is therefore subject to the prior authorisation or the granting of appropriate mining permits from the State to a person who has shown to have sufficient technical and financial capabilities.

Reconnaissance rights over mines correspond under Gabonese law to prospection authorisation, which is granted by the Minister in Charge of Mines for one year, non-renewable.

This authorisation is not considered a mining title and cannot be assigned and transferred. No priority rights benefit a holder, save if he applied for an exploration permit before the end of his prospecting authorisation.

2.2 What rights are required to conduct exploration?

Exploration of mines is allowed in Gabon by any legal entity holding an exploration permit granted by Order of the Minister in Charge of Mines for a three-year period, renewable twice for further three-year periods.

Any exploration permit holder can only hold three exploration permits, save for in the case of diamonds where it is limited to two diamond exploration permits.

Exploration permits are limited to a surface of 1,500 km^2 each, but can be up to 5,000 km^2 for diamonds.

If some deposits are known, the State may decide that the granting of the exploration permit will be after a tendering process.

The exploration permit has to be completed within three months of its granting by a mining convention, providing for, notably: technical, legal, tax, economic, customs and financial conditions; commitments of parties regarding in particular minimum work; and budget commitments and restoration of sites, according to a model of the mining convention complying with the 2015 Mining Code.

In the event of commercial discovery of mineral substances within the scope of the exploration permit, only its holder can be granted an exploitation permit or a concession.

2.3 What rights are required to conduct mining?

The exploitation of mines in Gabon is done according to a mining title, which differs according to the size of the mines discovered and the expected duration of the mine's operation:

- exploitation permit for 10 years of exploitation, renewable for a period of five years; and
- concession for 25 years of exploitation, renewable for a period of 10 years.

Each of these exploitation titles is granted by a Presidential Decree for maximum surface areas of 1,500 km^2 in conditions to be detailed within implementation decrees (yet to be adopted) and in any case after feasibility and environmental impact studies.

The exploitation permit and the concession have to be completed within three months of their granting by a mining convention providing for, notably: technical, legal, tax, economic, customs and financial conditions; commitments of parties regarding in particular minimum work and budgets commitments; and restoration of sites, according to a model of mining convention complying with the 2015 Mining Code.

Effective exploitation of the mine has to begin within five years following the signature of the mining convention, save if an extension is granted by the Mines Administration.

2.4 Are different procedures applicable to different minerals and on different types of land?

The above process may be completed by additional modalities for exploration and exploitation when mineral substances are qualified as precious, radioactive or strategic resources according to the Mining Code.

2.5 Are different procedures applicable to natural oil and gas?

Natural oil and gas is out of the scope of the 2015 Mining Code and is regulated by a new Law No. 11/2014 of 28 August 2014 (please refer to the Gabon chapter of *The ICLG to: Oil & Gas Regulation 2018* and *2019*).

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Any person who can demonstrate his technical and financial capabilities is entitled to apply for mining authorisation and titles. However, an applicant for a mining title (exploration permit, exploitation permit or concession) needs to incorporate a local subsidiary in Gabon, but the law (or implementation decrees to be adopted) does not yet impose any type of legal entity. However, it is likely that private and public companies by shares will be preferred.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Small mines are reserved to national companies and companies which are controlled by Gabonese persons, while others are offered to any applicant who can demonstrate his technical and financial capabilities.

There is, however, a requirement for any applicant to a mining title to incorporate a local subsidiary in Gabon and any foreign investor controlling a mining company is requested to apply for an investment authorisation to be granted by the Gabonese Minister in Charge of Finances, as well as submit a prior declaration for foreign investment according to foreign exchange regulations applicable in Gabon.

3.3 Are there any change of control restrictions applicable?

There is no explicit provision within the Mining Code providing for restrictions on change of control of a mining operator. However, based on the general requirement for a prior authorisation from the Ministry of Mines for any agreement, protocol or contract whereby the holder of a mining title undertakes to merge, transform, lease, farm, transfer or sell totally or partially its rights and obligations, we would not be surprised that the implementation decree to be adopted to complete the 2015 Mining Code will provide for some conditions for any change of control of a mining holder.

Regulations on foreign investment provide in any case that the direct or indirect change of control of a mining company for the benefit of a foreign investor is subject to a prior authorisation from the Minister in Charge of Finances.

3.4 Are there requirements for ownership by indigenous persons or entities?

Requirements for ownership by indigenous persons or entities only apply for small mines.

3.5 Does the State have free carry rights or options to acquire shareholdings?

According to article 6 of the 2015 Mining Code, natural resources, in particular any mineral substances contained in the ground, the continental waters and in the marine domain of the national territory, remain the property of the State. As such, the State benefits from a free automatic participation of 10% in the share capital, free from all encumbrances and which cannot be diluted, of any mining company in the exploitation phase, save for the State's right to waive its rights for marginal projects or depending on the economic environment.

The State also benefits from an optional participation for cash consideration in the share capital up to 25%.

In the event of transfer of mining titles to a third party, the State has also a pre-emptive right for a period of 60 days. Failure to reply is a deemed to be approval by the State.

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

In order to develop local content, the 2015 Mining Code provides that mining conventions to be signed with the State have to provide for a plan for local processing of extracted mineral substances as well as using, as a priority, local SMEs in order to further the industrialisation of the mining sector. Some specific tax and customs advantages may be granted to incentivise local content.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The 2015 Mining Code provides that, in order to promote local content and processing of mineral substances, export of some mineral resources is liable for exit duties at a rate of between 0 and 5% on a reverse sliding scale basis, depending on the level of local processing.

The list of mineral resources which have to be processed locally and which may face the above-mentioned exit duties have to be provided by an implementation decree (not yet adopted).

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Reconnaissance/prospection authorisations are not transferable.

Exploration, production permits and concessions may be assigned. While conditions of assignment of an exploration permit are not explicitly provided within the Mining Code but need to be provided within the exploration mining convention (likely with the prior authorisation from the Ministry of Mines), the Mining Code provides that exploitation permits, as well as concessions can be assigned with the prior authorisation from the Minister in Charge of Mines, according notably to the legal, financial and technical capabilities of the proposed assignee.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

According to the 2015 Mining Code, exploitation permits and concessions are considered a real estate property, as well as any assets used for the mining exploitation. They can therefore be mortgaged.

Residue deposits and products coming from the processing of mineral resources can also be pledged.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Reconnaissance/prospection authorisations, exploration and exploitation permits, as well as concessions, are granted for specific mineral resources provided within the relevant authorisation or the mining title in question.

They cannot be legally subdivided and the superposition of mining titles is prohibited. However, as there is a general requirement for a prior authorisation from the Ministry of Mines for any agreement, protocol or contract whereby the holder of a mining title undertakes

to merge, transform, lease, farm, transfer or sell totally or partially its rights and obligations, we could imagine that certain lease and/or farm-out agreements of certain areas and/or substances could theoretically be allowed by the Minister in Charge of Mines.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

As any exploration permit is granted to a legal entity or several legal entities forming an incorporated entity, the direct undivided holding of a mining title by several entities seems to be prohibited, while the undivided holding of shares of a mining company holding a mining title is not.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Reconnaissance/prospection authorisations, exploration and exploitation permits, as well as concessions, are granted for specific mineral resources provided within the relevant authorisation or the mining title in question. If some secondary minerals not listed in the authorisation or the mining title are found during exploration and/or exploitation, they need to be declared to the Mining Administration and a new application for such substances may be submitted by the person who found them.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Only the holder of an exploitation mining title can also exploit residue deposits. If he does not want to exploit them, he needs to waive the right on such exploitation by notifying such a waiver to the Minister in Charge of Mines. Exploitation of such residue deposits will be possible by signing an exploitation of residue deposits convention between the holder of the exploitation mining title and the interested person for the exploitation of residue deposits. This convention is subject to authorisation by the Minister in Charge of Mines.

If residue deposits exist outside of an exploitation area, the right of exploiting such deposits is subject to an authorisation granted by the Minister in Charge of Mines.

The exploitation authorisation for residue deposits is granted for the life of the exploitation mining title, or for five years, renewable as long as necessary and as long as the exploitation mining title is valid.

6.5 Are there any special rules relating to offshore exploration and mining?

The 2015 Mining Code remains silent on specific rules regarding offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Under the Mining Code, the holder of an exploration or mining title is authorised to use the surface of lands for the purpose of its mining operations by using forestry products, raw materials he found on land and constructing facilities, bridges and roads, subject to applicable law.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

When the holder of an exploration or mining title is using products or infrastructures or facilities of a landowner or lawful occupier, it needs to negotiate with him conditions of use and inform the Minister in Charge of Mines if specific rights of way are necessary. If he creates damages to a lawful occupier, he needs to indemnify it. A specific mediation commission is provided within the Mining Code to solve such types of disputes.

7.3 What rights of expropriation exist?

As some facilities to be erected by a mining title holder may be declared of public utility according to the 2015 Mining Code, expropriation could be facilitated under Gabonese expropriation rules, if needs be.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Prior to undertaking a mining activity, the investor must draft an environmental impact assessment (E.I.A.) of the project (exploration or mining of a mineral deposit) and wait for technical approval from the Environmental Committee. The E.I.A. shall present the main aspects of the project and its impact on the environment and local population. It may also be considered a classified installation which needs to be authorised, in particular during the mining phase.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Under the Mining Code, an environmental management plan needs to be established by any holder of a mining authorisation or title. We assume therefore, in the absence of implementations decrees issued as of today, that it is such a management plan which should provide for terms and conditions of the storage of tailings and other waste products.

Under the Mining Code and the legislation on classified installations, mines need to be dismantled.

In order to take account of obligations resulting from the rehabilitation of sites and the protection of the environment, mining companies are allowed to deduct from their net operating income as a result of the balance sheet a provision for environmental protection.

Procedures for the establishment of this provision, not subject to time restriction, are specified in the Mining Convention.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The holder of a mining licence may undertake early rehabilitation and development site security. General rehabilitation of the

operating site must intervene progressively during the production phase or immediately after the end of mining according to the initial closure programme established for the application of the production mining title.

The holder of a mining title also has to prepare a plan for the follow-up and the control of quality of rehabilitation of the production site.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

When the public interest requires, a Decree of the President of the Republic, upon proposal of the Minister in Charge of Mines, may prohibit or authorise exploration or mining within and around certain specific areas under such mining titles.

Exploration or mining in any form whatsoever, whether on the surface or deeper, within a radius of 100m from a dependency of the State, can be performed after authorisation by joint order of the Minister in Charge of Mines and the Minister responsible for that dependency.

However, it is prohibited to undertake, within a 100-yard radius of the dwelling, places of burial, sacred places and religious buildings, an exploration, mining gallery or surface work without the consent of the holder of the property or occupant in good faith.

If the mining area is within a national park, specific requirements may also apply.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The holder of a mining title who, by mining activities, causes damage to the holder of title to land is required to compensate. However, the Constitution provides that property is an inviolable and sacred right and, therefore, no-one can be deprived except where public necessity, legally ascertained, obviously requires it, and with the condition of a just and prior indemnity.

To comply with this requirement, the Government has instituted several laws governing expropriation for public utility and a mediation commission to solve any dispute regarding damages made to neighbours.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Mining Code provides for general principles of QHSE and also refers to international practices. It is also supplemented by the Labour Code and the Decree establishing general rules of health and safety in the workplace and other regulations, such as protection against ionising radiation.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Every holder of a mining licence shall continue research diligently and according to the rules of the art used in the international mining industry. The mining agreement also lays down specific duties and obligations of the holder of the mining title and determines which steps must be taken to protect the environment during and after completion of the development of the mining title.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The 2015 Mining Code provides for a centralised mining title registration office ("*cadastre minier*") to which any authorisation and mining titles regularly granted have to be transmitted and registered.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Appeal against mining administrative decisions follows the general rules of filing claims against any administrative decision: a prior claims needs to be filed in from of the issuing administration or its upper authority before any claims can be made in front of the competent administrative court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Under the Constitution, mining is an activity which needs to be regulated by an Act of Parliament; this is how mining codes are adopted and amended from time to time in Gabon.

12.2 Are there any State investment treaties which are applicable?

The CEMAC Investment Charter regulates direct foreign investment and direct investment abroad in the CEMAC zone.

Through the Gabonese Investment Charter, the Gabonese Government guarantees to every person, whose investment is presented or performed in accordance with current legislation, the protection of investments.

Depending on the origin of the investor, some bilateral investment treaties may also be applicable.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Mining companies carrying on mining activities in Gabon are subject to both specific mining fixed rate fees and royalties and duties which may vary in accordance with the mining activity phase and types of mineral resources in question.

Mining companies are also liable to the common tax regime (corporate income tax, withholding tax, distribution tax, VAT, land contributions, tax on wages, stamp and registration duties, harbour fees, etc.), although the Mining Code may provide specific rules and may provide for certain tax holiday periods.

Some specific mining taxes apply to both exploration and mining titles (fixed fees and surface royalty payments), while others apply only to mining titles (proportional mining tax) according to rates which vary with the substances in question and the period in question.

13.2 Are there royalties payable to the State over and above any taxes?

As part of social responsibility and local content requirements, the 2015 Mining Code also requires a mining title holder to contribute to certain funds:

- mines support fund financed by the provision for mining investments;
- training fund for the personnel of the Mining Administration;
- provisions for social responsibility (local content, protection of environment, promotion of SMEs, etc.); and
- provision for diversified investments,

which need to be completed by implementation decrees (to be adopted).

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Usually, some municipal taxes may apply in certain mining areas, provided they are listed in the Finance Act of the year in question.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Cemac Mining Code

Since the end of 2017, the Economic and Monetary Commission of Central African States (CEMAC) officially has a draft of the CEMAC Mining Code, but it has not been approved and is not yet in force. We do not know at the moment, whether such a draft CEMAC Mining Code will be directly applicable to each of the six Member States of CEMAC (including Gabon) or whether it will be just be a directive to be used by each CEMAC Member State to elaborate their own Mining Code.

Other regional regulations applicable to mining projects

Other regional rules may apply to certain aspects of a mining project in Gabon.

For the purpose of their mining activities, mining companies may import some equipment unavailable in the local market and benefit from the special customs regime provided by the regional CEMAC Customs Code applicable in Gabon.

The customs regime applicable under the exploration title refers to the normal temporary admission customs regime (*Admission Temporaire Normale* – ATN) that applies to duty-free importations of plant, material, supplies, machinery and equipment, and commercial vehicles (except vehicles used for staff transportation) imported by the mining company and its subcontractors, subject to be re-exported at the end of their local utilisation.

The customs regime applicable under the mining title provides that companies carrying out activities under the exploitation phase may benefit from (i) the Special Temporary Admission Regime (ATS), allowing partial payment of customs duties for the machinery, equipment and commercial vehicles (except for vehicles used for staff transportation) used for the implementation of the exploitation until the first sale, which are used and imported into Gabon, and (ii) the 5% reduced customs duty applicable to definite imports of goods, equipment and their spare parts destined for the exploitation of the deposit while this is no longer provided within the 2015 Mining Code.

Some goods and consumables needed for local processing may be fully exempted from customs duties. Other material and equipment, including those used directly and definitely for the mining exploitation and consumables destined for exportation, are subject to the common customs duties.

The CEMAC Act on foreign exchange regulations also needs to be considered for any financial flux and investment within and towards Gabon, in particular when it provides for certain restrictions on the opening of a local foreign currencies account, borrowings outside Gabon and repatriation of export proceeds through local bank account(s).

OHADA regulations, common to 17 Subsaharan African States (including Gabon), may also impact mining projects as far as notably incorporation of mining companies, business law, arbitration and mediation law, security instruments, accounting, transportation by roads are concerned.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The holder of an exploration permit, an exploitation permit or a concession is entitled to totally or partially abandon his rights, provided it is done before the end of the term of the title in question and is notified to the State at least three months before the end of the activities.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

The 2015 Mining Code does not provide for any minimum period of time of activities before a holder of a mining title may decide to relinquish his rights.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Non-compliance by a mining title holder with his obligations may lead to sanctions which vary from mere penalties to withdrawal of the title in question, in conditions listed in the 2015 Mining Code.

The withdrawal is, however, effective only after the failure of the mining title holder to comply with obligations in question in a one-month period as far as exploration permits are concerned, and two months as far as exploitation permits and concessions are concerned.

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Jean-Pierre has extensive experience of projects and project financing throughout North, West and Central Africa, in particular as far as energy and mineral resources are concerned. Over the course of his career, he has developed strong expertise in negotiation and drafting State contracts (production sharing contracts, establishment convention, mining conventions, BOT and concession agreements), in legal and tax structuring of projects in Africa, in particular for utilities, transportation infrastructures, mines and oil and gas. He graduated from Exeter University (UK) with an LL.M. in international business transactions and from Rennes University (France) with a postgraduate degree in business law.

The leading experience of Jean-Pierre Bozec in Gabon has been consistently recognised by *Chambers Global*, the *World's Leading Lawyers*, the *International Who's Who of Mining Lawyers*, and the *International Who's Who of Business Lawyers*.

PROJECT LAWYERS

Project Lawyers is an independent and registered Gabonese law firm, established in 2011 by Jean-Pierre Bozec, a legal advisor registered in Gabon and Avocat at the Paris Bar in France.

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Ghana

Fui S. Tsikata

Reindorf Chambers

Dominic Dziewornu Quashigah

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Minerals and Mining Act, 2006 (Act 703) (as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900) and the Minerals Commission Act, 1993 (Act 450) are the principal enactments setting out the framework of mining law. They express the basic position that minerals in their natural state are owned by the state. They also outline the licensing scheme for mineral operations, the incidents of the various mineral rights and the powers of the principal regulatory institutions. The following pieces of subordinate legislation add detail in specific areas to the regime set out in the principal legislation: (a) Minerals and Mining (General) Regulations, 2012 (L.I. 2173); (b) Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174); (c) Minerals and Mining (Compensation and Settlement) Regulations (L.I. 2175); (d) Minerals and Mining (Licensing) Regulations, 2012 (L.I. 2176); (e) Minerals and Mining (Explosives) Regulations, 2012 (L.I. 2177); and (f) Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182).

1.2 Which Government body/ies administer the mining industry?

The sector Minister, currently the Minister for Lands and Natural Resources, and the Minerals Commission are the government bodies with primary responsibility for administering the mining industry.

1.3 Describe any other sources of law affecting the mining industry.

Environmental legislation, including that relating to forest protection, water bodies and water use, tax legislation, customary law relating to land tenure, the law of corporations, contract law and administrative law principles concerning the exercise of governmental power, are all relevant to the mining industry.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

(a) A reconnaissance licence; and (b) a restricted reconnaissance licence to engage in reconnaissance in relation to an "industrial mineral", i.e. "basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, slate talc, salt and other minerals as the Minister may from time to time declare, by notice published in the Gazette, to be industrial minerals".

2.2 What rights are required to conduct exploration?

The rights required are: (a) a prospecting licence; and (b) a restricted prospecting licence to engage in prospecting for industrial minerals.

2.3 What rights are required to conduct mining?

The rights required to conduct mining are: (a) a mining lease; (b) a restricted mining lease to engage in mining for an industrial mineral; and (c) a small-scale mining licence for the conduct of small-scale mining. The mining lease permits its holder to engage in reconnaissance and prospecting.

2.4 Are different procedures applicable to different minerals and on different types of land?

No, although there are different eligibility criteria for different rights. In particular, non-Ghanaians are prohibited from engaging in small-scale mining. The threshold for engaging in industrial mineral operations is higher for non-Ghanaians than for Ghanaians.

2.5 Are different procedures applicable to natural oil and gas?

Yes, there are.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Save for small-scale mining rights which can be granted to individual Ghanaians, only corporate bodies incorporated in Ghana under Ghanaian law can hold mineral rights.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign entities cannot directly hold mineral rights, though entities they incorporate in Ghana can hold mineral rights. The Ghana Investment Promotion Centre Act, 2013 (Act 865) has minimum investment requirements for non-Ghanaians. Where the foreign investor has a Ghanaian partner, the foreign investor is required to contribute at least US$200,000 to the equity of the entity and the Ghanaian partner must hold not less than 10% of the equity. A foreign investor in a business that it solely owns is required under Act 865 to invest a minimum of US$500,000. The minimum capital requirement may be met in cash or capital goods relevant to the investment. A foreign investor cannot engage in operations relating to industrial minerals unless it commits in its proposed programme to invest at least US$10 million in the operations.

3.3 Are there any change of control restrictions applicable?

A person who intends to become the controller of an entity which directly or indirectly holds mineral rights is required to obtain a "no objection" notice from the Minister of Lands and Natural Resources before becoming such controller. A controller is defined to mean "a person who, either alone or with an associate or associates, is entitled to exercise, or control the exercise of more than twenty per cent of the voting power at any general meeting of the mining company or of another company of which it is a subsidiary". The entity and the exiting shareholder are also required to notify the Minister, respectively, of the change in control of the company or of ceasing to be controller.

3.4 Are there requirements for ownership by indigenous persons or entities?

A small-scale mining licence may only be granted to a citizen of Ghana who is at least 18 years old, and is registered by the office of the Minerals Commission in an area designated as a small-scale mining area.

A person who is not a citizen may not apply for a mineral right in respect of industrial minerals unless the proposed investment in the mineral operations is US$10 million or above.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The State is entitled to 10% free carried interest in an entity engaged in mining. This does not preclude the Government from any other or further participation in mineral operations that may be agreed with the holder of the mineral.

Additionally, the Minister may by notice in writing to a mining company require the company to issue to the State a "special share" in the company for no consideration. The special share is meant to give the Government, *inter alia*, the power to veto decisions relating to the liquidation of the company or disposal of the whole or a material part of its assets. To the best of our knowledge, since this provision was first introduced, the special share has only been taken on one occasion in the context of the state reducing its interest in a company in which it previously held majority shares.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The Minerals and Mining Act requires a licence from the Minister for the sale, export or other disposal of a mineral. Under the Minerals and Mining (General) Regulations, 2012 (L.I. 2173), an application by a holder of a mining lease for a licence to export, sell or dispose of gold or other precious minerals produced by the holder must be accompanied by a refining contract and a sales and marketing agreement.

Holders of small-scale licences for mining precious minerals are required to export their minerals through the Precious Minerals Marketing Company (PMMC) or any other licensed exporter.

An application by a person other than a holder of a mining lease to purchase and export, sell or dispose of gold or other precious minerals requires the applicant to satisfy the Minister that the minerals will be refined or polished in Ghana or that only refined or polished minerals will be purchased for export, or that a percentage of the minerals will be supplied to local users. In practice, as there is very little refinery capacity in Ghana, this requirement is hardly enforced.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Shipment of diamonds is subject to certification under the Kimberley Process Certificate Act, 2003 (Act 652).

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

A transfer, assignment, mortgage, or encumbrance of a mineral right or any dealing in relation to a mineral right requires the prior written approval of the Minister. The approval should not be unreasonably withheld or given subject to unreasonable conditions. Further, the Minister is required to communicate a decision on the application within 30 days of receipt of the application; otherwise, the Minister upon request from the applicant must give reasons for failing to do so.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

A reconnaissance, prospecting or mining right may be mortgaged or secured, subject to the approval of the Minister. If the mortgagor defaults and the mortgagee forecloses, the mortgagee acquires the mineral rights subject to the approval of the Minister.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Reconnaissance, prospecting and mining rights may be subdivided with the approval of the Minister.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mineral rights may be held in undivided shares. However, given the requirement of local incorporation referred to in response to question 3.1 above, the general practice is for those jointly involved in the venture to be allotted shares in the corporate entity which holds the mineral rights.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

A holder of a mineral right cannot explore for or mine a mineral that is not the subject of the mineral right. If the holder desires to explore for or mine any other mineral, the person must apply to the Minister to amend the right to include such other mineral.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

A mineral right holder is only entitled to exercise rights in respect of the minerals to which its licence relates. To exercise rights over residue deposits (tailings), additional rights are required.

6.5 Are there any special rules relating to offshore exploration and mining?

No, there are not.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The holder of a mineral right is entitled to enter onto the land for the conduct of the mineral operations. However, it is required to exercise its rights subject to the surface rights of the owner or occupier of the land.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a mineral right is required to exercise the rights granted subject to the surface rights of the owner or occupier of the land. The owner or lawful occupier of land retains the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.

The holder of a mineral right is also required to compensate the owner or lawful occupier for the disturbance of the surface rights of the owner or lawful occupier. The compensation may be monetary or by way of resettlement, the cost of which shall be borne by the mineral right holder. Where people have to be displaced, there is a constitutional obligation to resettle them.

7.3 What rights of expropriation exist?

Where land is required to secure the development or utilisation of a mineral resource, the President may acquire the land or authorise its occupation and use subject to the prompt payment of fair and adequate compensation.

Act 703 also gives the Minister a power of pre-emption in respect of all minerals raised, won or obtained in Ghana. The exercise of this power is subject to the constitutional provisions regulating expropriation and to the terms of agreements entered into with mineral rights holders. In any case, that power has not, to the best of our knowledge, been exercised in more than 30 years.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

An environmental permit is required in order to undertake reconnaissance, exploration and mineral operations.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The manager of a mine is required to comply with the provisions of L.I. 2182. These contain obligations relating to the construction and location of tailings and waste product storage facilities.

L.I. 2182 contains provisions relating to mine closure. These include obligations to ensure that tailings storage facilities are stabilised in the long term.

The Environmental Assessment Regulations, 1999 (L.I. 1652) require that there be (a) a reclamation plan, and (b) a bond to secure implementation of the work plan approved by the Environmental Protection Agency.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

A reconnaissance or prospecting licence requires the holder to comply with terms which typically include an obligation to rehabilitate the land. In respect of a mining lease, the holder is required, before closing a mine site, to satisfy the Chief Inspector of Mines that each source of potential pollution and component of the mining operation that is to be closed is designed to be stable in the long term.

The holder of a mining lease is required to: (a) ensure that discharge/emission of polluted water, air or dust does not occur from the closed mine site; (b) submit a mine closure plan to the Inspectorate Division of the Minerals Commission for approval; and (c) within 12 months after the closure of the mine, rehabilitate mining areas which are no longer required for the mining operations.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

In respect of mining, the Local Governance Act, 2016 (Act 936) prohibits the carrying out of any physical development without a permit granted by the District Planning Authority. A "physical development" is defined under Act 936 as "carrying out of building, engineering, mining or other operations on, in, under or over land, or the material change in the existing use of land or building and includes sub-division of land, the disposal of waste on land including the discharge of effluent into a body of still or running water and the erection of advertisement or other hoarding".

In the standard mineral right agreement, the holder is prohibited from conducting any operations in a sacred area. It further requires the written consent of the Minister to conduct its operations: (a) within 100 metres of any forest reserve, river, stream, building, installation, reservoir or dam, public road, railway or area appropriated for a railway; (b) within 30 metres of a pylon; and (c) in an area occupied by a market, burial ground, cemetery or Government office, or situated within a town or village or set apart for, used, appropriated or dedicated to a public purpose.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

In Ghana, land is mostly owned by individuals, extended families and communities presided over by chiefs who hold the land in trust for their members. These members are entitled to exercise surface rights over and appropriate portions of these lands in accordance with customary law. They must be compensated by the mineral rights holder for interference with their rights. The right to compensation includes compensation for: (a) deprivation of the use or particular use of the natural surface of the land or part of the land; (b) loss of or damage to property; (c) loss of earnings or sustenance suffered by the owner or lawful occupier of land under cultivation having due regard to the nature of their interest in the land; and (d) loss of expected income, depending on the nature of crops on the land and their life expectancy. But no claim for compensation lies in respect of the value of a mineral.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182).

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Yes. Some of their obligations are summarised below:

(1) The owner of a mine, manager of a mine or a holder of a small-scale mining licence is required to ensure that changing rooms are provided: (a) near to man riding shafts on the surface of an underground mine; (b) at locations near to a work area of a surface mine, with separate provisions for males and females; and (c) are proportionate in size to the number of persons employed in the mine. The holder of a mining or restricted mining lease is also required to, with the approval of the Chief Inspector and prior to the commencement of mining operations, appoint a certified manager for the mine.

(2) Persons working in a mine are required to co-operate with the manager of the mine or the holder of a small-scale mining licence in respect of the mine in the discharge of the relevant obligations under L.I. 2182. However, an employee is not liable for a contravention of L.I. 2182 where the employee acts at the direction of a supervisor.

(3) Employees are also required to remove other persons whom they are aware of having been unknowingly exposed to excessive amounts of toxic gas or fumes, dust or harmful temperatures and immediately inform the manager of the mine of the circumstances of the exposure. The manager is required to take further steps necessary to ensure the safety and health of each person who has been or may subsequently be exposed to the conditions specified and to rectify and prevent a recurrence of those conditions.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Minerals Commission is required to and does maintain a register of mineral rights in which it records applications, grants, variations and dealings in assignments, transfers, suspensions and cancellations of mineral rights. The register is open to public inspection on payment of a prescribed fee and members of the public may, upon request to the Commission and on payment of the prescribed fee, be provided a copy of the records.

Further, the interest in minerals conveyed by a grant is required to be stamped and registered within 21 days of being granted with either the Land Registry or the Land Title Registry (depending on the area in which the mineral right is located). Copies of the stamped and registered documents are required to be provided to the Minerals Commission.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The prerogative remedies known to the administrative law of common law jurisdictions are available under Ghanaian law. These are available to enforce constitutional duties of candour and fairness imposed on public officers.

In addition, there are specific statutory appeal mechanisms applicable in defined circumstances.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Yes. Under the Constitution, 1992, "every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana…" and is vested in the President who holds them on behalf of, and in trust for the people of Ghana.

Grants of rights to exploit minerals are subject to ratification by Parliament.

The Constitution also requires "international business or economic transaction[s] to which the Government is a party" to be approved by Parliament prior to their coming into force. Transactions involving assurances to foreign investors who establish mining ventures in Ghana are affected by this requirement.

12.2 Are there any State investment treaties which are applicable?

Ghana has signed and ratified investment treaties with China, Denmark, Germany, Malaysia, the Netherlands, Switzerland and the United Kingdom. Generally, these provide protection to the investments of persons from the contracting parties.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Yes, these rules are provided under sections 77 to 86 of the Income Tax Act, 2015 (Act 896). Act 896 treats income from mineral operations separately from other sources of income and imposes a mineral income tax at the rate of 35% on profits from mineral operations. In ascertaining the assessable income of a person from mineral operations, (a) each separate mineral operation is treated as an independent business, and (b) the tax liability for the business is required to be calculated independently for each year of assessment. For income tax purposes, a mineral operation pertaining to each mine and a mineral operation with a shared processing facility constitute separate mineral operations which are required to be taxed separately.

13.2 Are there royalties payable to the State over and above any taxes?

Yes, royalties are payable at the rate of 5% of gross revenue.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Property rates are chargeable by local government bodies under the Local Governance Act, 2016 (Act 936).

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

The ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector prescribes a set of rules and guiding principles to member states of the Economic Community of West African States. Further, the ECOWAS Common External Tariff, which is scheduled to the Customs Act, 2015 (Act 891) as amended by the Customs (Amendment) Act, 2015 (Act 905) exempts machinery, appliances, apparatus designed for use in mining and dredging from the payment of Value Added Tax on importation.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

There is provision for the surrender (abandonment) of a mineral right whether in whole or in part. A holder of a mineral right who wishes to surrender the land subject to the mineral right is required to apply to the Minister for a certificate of surrender no later than two months before the date on which the holder wishes the surrender to take effect. A certificate will not be granted, *inter alia*, if the holder (a) is in default of its obligations, or (b) does not satisfy the Minister that it will surrender the area in a condition which is "safe and accords with good mining practice".

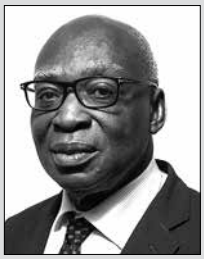
15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

In respect of an exploration or prospecting licence, the holder is required, prior to or at the expiration of the initial term, to surrender no less than half the number of blocks of the prospecting area so long as a minimum of one hundred and twenty-five blocks remain subject to the licence and the blocks form not more than three discrete areas, each consisting of (a) a single block, or (b) a number of blocks each having a side in common with at least one other block in that area. Relief may be granted either in whole or in part against this requirement if the holder of the prospecting licence satisfies the Minister that delay by a government institution or agency in the issuance of permits or in carrying out a lawful activity resulted in delay by the holder in the discharge of an obligation under the prospecting licence. The period of the relief shall not exceed 12 months and shall be subject to such other conditions that the Minister thinks fit.

A block is equivalent to 21 hectares or 0.21 square kilometres.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The State has a right to cancel or suspend a mineral right for the holder's non-compliance with law or obligations under the agreement granting the mineral right. Prior to exercising a right to suspend or cancel a mineral right, the Minister is required to give notice to the holder requiring the holder to remedy the breach complained of within a reasonable period, not being less than 120 days in the case of a mining lease or restricted mining lease or 60 days in the case of another mineral right. Where the breach cannot be remedied, the holder is required to show cause to the reasonable satisfaction of the Minister why the mineral right should not be suspended or cancelled.



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Greenland

WSCO

Bo Sandroos

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law in Greenland is first of all governed by the Mineral Resources Act (MRA) which came into force on 1 January 2010, and which contains rules on ownership of mineral resources, licensing procedures and terms, requirements for the applicant/licensee, work programmes, taxation, environmental protection, public hearings, pre-hearings and public involvement in the approval process for projects and individual activities. The MRA also contains obligations to perform environmental impact assessments (EIAs) and social sustainability assessments (SSAs, or social impact assessments (SIAs)) and enter into impact benefit agreements (IBAs).

The MRA is to a large extent based on the Danish Subsoil Act, but with a number of specific adjustments due to the demands of operating in an Arctic environment. In addition, the Greenland Working Environment Act governs health and safety aspects of mining activities. See also the answer to question 1.3 below.

1.2 Which Government body/ies administer the mining industry?

The Mineral Licensing and Safety Authority is responsible for strategy-making, policy-making, legal and geological issues and marketing of mineral resources in Greenland. The MLSA is the overall administrative authority for licences and mineral resource activities, and is the authority for safety matters including supervision and inspections.

The Ministry of Industry, Labour and Trade is the authority for issues concerning industry and labour policy including SSAs and IBAs for mineral resources and similar related socio-economic issues.

The Environmental Agency for Mineral Resource Activities is the administrative authority for environmental matters relating to mineral resources activities, including protection of the environment and nature, environmental liability and EIAs.

1.3 Describe any other sources of law affecting the mining industry.

Sources of law other than the MRA include the Working Environment Act, the Income Tax Act, and minerals model licences and standard terms that have been issued by the authorities and which serve as models for mining licences. General Greenlandic law – the penal code, civil procedure, the Competition Act, the Act on Processing of Personal Data, the legal principles for disclosure of misconduct through internal and external corporate whistleblowing in general, etc. – also applies. In addition, for mining operations, a number of special regulations exist regarding the use of explosives, radioactive materials, chemicals, etc.

Also, anti-corruption provisions of Danish and Greenlandic law apply (Greenland Criminal Code), as well as the anti-corruption policy of the Ministry of Mineral Resources and its subordinate institutions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance (prospecting) can be carried out if the applicant obtains a prospecting licence in accordance with section 15 of the MRA. The licence is granted for periods of up to five years at a time. The granting of the non-exclusive licence does not exclude that a similar licence may be granted to others for the same area. The authorities may stipulate terms for the licence, including terms on payment of consideration. Standard terms for prospecting licences have been issued by the authorities, including fees for application, granting and transfer.

2.2 What rights are required to conduct exploration?

Under section 16 of the MRA, the authorities may, for a specific area and on specific terms, in particular a work programme, grant an exclusive licence for exploration and exploitation of one or more mineral resources. Licences may be granted separately for exploration and exploitation, respectively. Under section 29(1) of the MRA, exploration licences under section 16 are granted for a period of up to 10 years or, if special circumstances exist, for a period of up to 16 years.

A licence may be extended with a view to exploration by up to three years at a time. An extension for more than 10 years may also be granted under special circumstances. Standard terms for exploration licences have been issued by the authorities, including the condition for transitioning from exploration to exploitation/mining and the payment of fees on the basis of, among others, the size of the exploration licence acreage.

2.3 What rights are required to conduct mining?

Under section 29(2) of the MRA, a licensee who, under a licence under section 29(1), has discovered and delimited commercially

exploitable deposits that the licensee intends to exploit, and who has otherwise met the terms of the licence, is entitled to be granted an exploitation licence. The licence is granted for those parts of the area that contain commercially exploitable deposits, which the licensee intends to exploit.

The licence is granted for a period of 30 years, unless a shorter period has been laid down as a condition for granting the licence. Simultaneously with the application for exploitation licence, a closure plan must be submitted. Under section 16(3) of the MRA, for non-small-scale licences, only a limited company can be granted an exploitation licence, and certain financial conditions apply (taxation, trading, capital, etc.). See also question 3.1 below.

2.4 Are different procedures applicable to different minerals and on different types of land?

As a starting point, no; however, the royalty/tax and financial terms are different for rare earth elements, uranium, gemstones, and other minerals, respectively. Specifically for uranium, the Greenlandic and the Danish governments have, in January 2016, signed a number of agreements that will ensure that Greenland can proceed with plans to build its mining industry and prepare future exports of uranium while Denmark can live up to its international obligations and the highest standards in the uranium area on behalf of Greenland. Whenever uranium may be explored for or occur as a by-product to eventual exploitation, the rules and procedures contained therein should be carefully examined.

2.5 Are different procedures applicable to natural oil and gas?

Mining licences do not cover oil or natural gas that is discovered in the area covered by the licence. Exploration and production of oil and natural gas are, however, governed by the MRA under different terms and conditions, which are not detailed here.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Under the MRA, an exploitation (mining) licence can only be granted to limited companies. As an exploitation rights holder, the company may only perform activities covered by licences granted under the MRA and must not be taxed jointly with other companies, unless joint taxation is compulsory.

It should be noted that as a main rule, the company must have its registered office in Greenland. There are also financial and operational covenants: the company must not be more thinly capitalised than the group of which the company forms a part of, but the company's loan capital may always exceed the shareholders' equity up to a ratio of 2:1. The company must generally trade at arm's-length prices and on arm's-length terms.

The licensee must have the mining expertise and financial background required for the exploitation activities in question. As a main rule only Greenland domiciled companies will be considered for exploitation licences.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes; however, see the answer to question 3.5 below. In addition, under section 18 of the MRA, a licensee must use Greenlandic labour and use Greenlandic enterprises for its supplies and contract work unless such enterprises are not technically or economically competitive. It is also the main rule that enterprises working under the MRA and which are holders of an exploitation licence must be registered as Greenlandic enterprises.

3.3 Are there any change of control restrictions applicable?

Under section 88 of the MRA, direct or indirect transfer of a licence under the MRA to a third party requires approval by the authorities, and the authorities may set forth conditions for their approval.

3.4 Are there requirements for ownership by indigenous persons or entities?

No, there are no such requirements.

3.5 Does the State have free carry rights or options to acquire shareholdings?

As a starting point, no; however, under the MRA, the Greenland Government may require that a government-controlled entity join as a participant in the licence. The Government may specify further terms for such participation. No such government-controlled entity is currently in existence to participate in mining activities.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

A licence holder may expect specific conditions to be set forth in individual licences. Processing and further beneficiation of mined minerals require the approval of the authorities which may set forth conditions for the approval. Specifically, the authorities may require in concrete licences where processing, etc. takes place in Greenland, unless such processing would result in significantly higher costs or will be impractical.

A licence may stipulate the extent to which the licensee must keep exploited mineral resources in Greenland and sell them to natural persons who are permanently residing and fully liable to pay tax in Greenland.

A licence may also determine the extent to which the licensee must conduct surveys and prepare and implement plans to ensure that exploration or exploitation of mineral resources is socially sustainable and the authorities must approve such surveys and plans.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Export of production may only take place with the approval of the Greenland Government – see the MRA section 2(2). Further terms may be set forth in the individual licence or the individual permit. See also the answer to question 4.1 above.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Under section 88 of the MRA, direct or indirect transfer of a licence under the MRA to a third party requires approval by the authorities, which may reject or set forth conditions for the approval. Typically, a transfer requires that the new owner can demonstrate technical and financial capability to meet commitments and potential liabilities. As a main rule, only Greenland domiciled companies will be considered for exploitation licences.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Licences granted under the MRA cannot be the subject of prosecution and can therefore principally not be pledged for security according to section 88(2) of the MRA. In any event, any mortgage will require the approval of the authorities.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes, provided a direct or indirect transfer of a licence or a licence right to a third party is carried out and has been approved by the authorities. The authorities may, however, reject a transfer where conditions are not met. A subdivision may also require amendments to other permits and may require additional consultations with the public.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

As a starting point, the answer is yes. The concept of undivided shares is considered a common law concept which does not apply in Greenland; however, under Greenlandic law, rights can be held in undivided shares (a corporation).

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

An exploration licence will cover all mineral resources except hydrocarbons and radioactive elements, unless otherwise stipulated in the licence.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The MRA or the standard terms do not address the issue of residue ownership directly. Under Greenlandic law, a licensee holding exploration or mining rights will have no rights over residue deposits which existed in the area covered by his licence.

6.5 Are there any special rules relating to offshore exploration and mining?

Offshore exploration and mining for minerals are also governed by the MRA. Offshore activities, however, principally only relate to hydrocarbons, and the rules governing hydrocarbons are different from the mining regulations and are not covered here.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Reconnaissance (prospecting) rights are non-exclusive, whereas exploration or mining (exploitation) rights are exclusive to the rights holder. The following activities may be carried out without prior approval from the authorities: geological and geochemical investigations, as well as sampling using handheld equipment, provided samples from each location do not exceed three tonnes and provided the total weight of the samples does not exceed 10 tonnes per year; drilling with handheld equipment; and geophysical investigations carried out without the use of explosive materials.

Activities other than those indicated in the foregoing may be carried out, provided that they have been approved by the authorities. Such activities include: use of explosive materials; drilling excluding drilling as indicated previously; sampling exceeding what is indicated previously; use of equipment containing radioactive sources; use of vehicles, bulldozers, etc.; levelling of the terrain; construction of installations, buildings, etc.; and construction of shafts, drifts, ramps, etc.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Activities other than those indicated in the foregoing may be carried out, provided that they have been approved by the authorities. Such activities include use of explosive materials, drilling excluding drilling as indicated previously, sampling exceeding what is indicated previously, use of equipment containing radioactive sources, use of vehicles, bulldozers, etc., levelling of the terrain, construction of installations, buildings, etc., and construction of shafts, drifts, ramps, etc.

7.3 What rights of expropriation exist?

Under section 93 of the MRA, the authorities have powers of compulsory acquisition of real property with a view to activities under the MRA.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The Greenland Government places a large emphasis on environmental protection and environmental requirements are prominent in both the MRA and the standard terms, both in terms of nature protection, the environment and the climate. Best environmental practices (BEP) and best available technologies/techniques (BAT) must be employed. In addition, the licence holder must prepare an EIA and an SSA/SIA. These will contain a baseline study and the expected impact of the activities on the environment and the social sustainability in the areas affected.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Please see the answer to question 8.3 below.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

In the MRA, specific provisions are laid down in licences regarding the licensee's obligations on the termination of activities to remove facilities, etc. established by the licensee and to clean up, monitor, etc. the affected areas. More detailed rules are contained in the standard terms, according to which all facilities, etc. must be removed unless non-removal has been approved by the authorities. A dedicated closure plan and special provisions for financial security may also be required. In the event of non-compliance, the authorities may clean up the site, etc. at the licensee's cost, e.g., by drawing on the financial security provided.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Zoning plans must be observed and special zoning permits may apply depending on where the mining activities are carried out.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The MRA contains rules on the pre-hearing of projects as well as other public hearings as described under question 7.2 above. In addition, small-scale mining of surface materials and collection of loose minerals are allowed for the local population and others within certain thresholds. Otherwise, there are no special native title or statutory surface use rights.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Greenland Working Environment Act governs health and safety in minerals prospecting, exploration and mining activities. The act contains rules on the health and safety aspects of planning and execution of work in Greenland, including workplace layout, bringing the level of risk at work to a level as low as reasonably practicable, the protection against noise, emissions and hazardous substances and the use of personal protective equipment.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Working Environment Act imposes health and safety obligations on owners, employers, managers and employees. For owners and employers, there are strict requirements for planning and supervision, whereas employees' obligations are reporting and the implementation of management's plans in the health and safety area.

11 Administrative Aspects

11.1 Is there a central titles registration office?

A list of all valid licences can be obtained from the authorities at www.govmin.gl. This website is generally a good source of information regarding Greenland's mining sector and contains copies of all applicable legislation, standards and guidelines for mining in Greenland.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is no special system of appeals in terms of the relevant mining legislation. Beyond the normal administrative recourse through the Ministries, a party will, as in other mining jurisdictions, have to resort to the Greenlandic courts and ultimately the Danish Supreme Court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Danish constitution of 1953 applies in Greenland; however, beyond provisions for the protection of private property, the Danish constitution has no direct bearing on the rights to conduct reconnaissance, exploration and/or mining.

12.2 Are there any State investment treaties which are applicable?

Greenland is a part of the Danish Unity of the Realm and holds only a limited foreign policy capacity. Foreign policy for Greenland is principally carried out by the Danish Government in consultation with the Greenland Government. As such, a number of treaties and conventions signed and ratified by Denmark also become relevant for, and applicable to, Greenland.

For instance, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) both apply to Greenland. In addition, protocols and recommendations adopted in the Arctic Council, in which Greenland/Denmark is a member, may also apply in Greenland. The Arctic Council is a means for promoting co-operation and interaction among the Arctic states, in particular within sustainable development and environmental protection in the Arctic.

Greenland is not a member of the European Union (EU) but has the status of an associated territory in the EU. Therefore, EU rules do not apply to Greenland apart from the special rules on association of overseas countries and territories (OCT) of the EC Treaty.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Taxation of income from minerals exploration and extraction is governed by the Greenlandic Income Tax Act and the minerals model licence which contain rules on royalties, the payment of fees for the granting of licences, etc., and the reimbursement of the Authorities' expenses in connection with the licensee's activities. Taxation of mining companies is 30%, which is slightly lower than other companies. In addition, dividends tax is 36%, whereas other companies will pay 42–44%, and mining companies can carry forward losses without the time limit of five years that applies to other companies.

13.2 Are there royalties payable to the State over and above any taxes?

A sales royalty was introduced in 2014 for new licences. For minerals other than rare earth elements (REE), uranium or gemstones, the sales/turnover royalty will be 2.5%. For REE and uranium, the rate is 5%, and for gemstones, 5.5%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, except that local zoning regulations may apply. In addition, the MRA's rules on public involvement and consultation will impact exploration and mining activities.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Generally, in the Arctic – as opposed to Antarctica – there is not a single regulatory treaty, convention or international agreement governing the Arctic, as the Arctic consists of states where national laws apply. International public law, however, applies to the relations between Denmark/Greenland and the other states in the Arctic. Bilateral agreements have been entered into, and as stated under question 12.2 above, co-operation also takes place in international fora such as the Arctic Council and the UN.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

A licence must stipulate the extent to which the licensee's obligations remain upon termination of the licence, according to section 91 of the MRA, which includes termination by expiry, abandonment and lapse of withdrawal. This section must be read in conjunction with the Minerals Model Licence regarding obligations at termination of the activities and obligations at termination of the licence.

Further, section 88 of the MRA contains a provision for the transfer of a licence. A licence can only be transferred with the approval of the Greenland Government. The approval will in most circumstances not be unreasonably withheld, unless the basis for meeting the obligations under the licence will be weakened by the transfer.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Please see questions 2.2 and 2.3 above for duration and approval of extensions. Further, please see question 15.3 below on revocation.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Section 89 of the MRA states that licences must stipulate under which circumstances a licence is forfeited or may be revoked by the Greenland Government. This section must be read in conjunction with § 16 in the Minerals Model Licence, which contains regulations regarding revocation. Revocation of a licence will often be the case of failure to fulfil exploration commitments, a breach in the terms of the licence, fraud, or bankruptcy.

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Indonesia

Woody Pananto

Freddy Karyadi

Ali Budiardjo, Nugroho, Reksodiputro

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law in Indonesia is governed by the Law on Mineral and Coal Mining No. 4 of 2009, dated 12 January 2009 ("**Mining Law**"). The Mining Law provides general provisions regarding coal and mineral mining activities in Indonesia. Further, a number of implementing regulations have been subsequently enacted by the Government (both central and regional) as an implementation of the provisions of the Mining Law. The implementing regulations are in the form of, among others, Government Regulations, Minister of Energy and Mineral Resources ("**MEMR**") Regulations, and Director General of Mineral and Coal ("**DGMC**") Regulations.

The main implementing regulations of the Mining Law are, among others, as follows:

a. Government Regulation No. 22 of 2010 regarding Mining Areas ("**GR 22/2010**");

b. Government Regulation No. 23 of 2010, as amended by Government Regulation No. 24 of 2012, Government Regulation No. 1 of 2014, Government Regulation No. 77 of 2014, Government Regulation No. 1 of 2017 and Government Regulation No. 8 of 2018 regarding the Implementation of Mineral and Coal Business Activity ("**GR 23/2010**");

c. Government Regulation No. 55 of 2010 regarding the Fostering and Supervision of Implementation of Mineral and Coal Mining Business Management;

d. Government Regulation No. 78 of 2010 regarding Reclamation and Mine Closures ("**GR 78/2010**");

e. MEMR Regulation No. 11 of 2018 as amended by MEMR Regulation No. 22 of 2018 regarding Procedures of Granting of Area, Licensing and Reporting in Mineral and Coal Mining Business Activities ("**MEMR Regulation 11/2018**");

f. MEMR Regulation No. 26 of 2018 regarding the Implementation of Good Mining Rules and Supervision of Mineral and Coal Mining ("**MEMR Regulation 26/2018**");

g. Decree of the Minister of Energy and Mineral Resources No. 1827 K/30/MEM/2018 regarding Guidelines of Good Mining Rules Implementation;

h. MEMR Regulation No. 43 of 2015 regarding Procedures to Evaluate the Issuance of Mining Business Licenses ("**MEMR Regulation 43/2015**");

i. MEMR Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business ("**MEMR Regulation 25/2018**"); and

j. MEMR Regulation No. 9 of 2017 regarding Procedures for Shares Divestment and Mechanism to Determine the Price for Shares Divestment in the Minerals and Coal Business Activity ("**MEMR Regulation 9/2017**").

1.2 Which Government body/ies administer the mining industry?

According to the Mining Law, different Government bodies have the authority to administer the mining industry, as follows:

a. The Regent/Mayor has the authority to issue, among others:

(i) a Mining Business Licence (*Izin Usaha Pertambangan* or "**IUP**"), if the mining area is located within one regency/city;

(ii) a Mining Services Business Licence (*Izin Usaha Jasa Pertambangan* or "**IUJP**"), if the services are rendered within one regency/city;

(iii) a Production Operation IUP specifically for the transportation and sale, if the transportation and sale activities are conducted within one regency/city; and

(iv) a Production Operation IUP specifically for processing and refining, if the mining products to be processed are supplied by the holder(s) of a Production Operation IUP issued by the Regent/Mayor, and/or the location of the processing activity is located in one regency/city.

b. The Governor (head of a province) has the authority to issue:

(i) IUPs, if the mining area crosses the boundaries of regencies/cities in one province based on recommendation of the Regent/Mayor pursuant to the relevant laws and regulations;

(ii) IUJPs, if the services are rendered within two or more regencies/cities in one province;

(iii) Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within two or more regencies/cities in one province; and

(iv) Production Operation IUPs specifically for processing and refining, if the mining products to be processed are supplied by the holder(s) of a Production Operation IUP issued by the Governor and/or the holder(s) of a Production Operation IUP for which the mining area(s) is/are located in different regencies/cities, but within one province, and/or the location of the processing activity crosses two or more regencies/cities in one province.

c. The MEMR has the authority to issue, among others:

(i) IUPs, if the mining permit area crosses the boundaries of provinces based on the recommendation of the Governors and the Regents/Mayors pursuant to the relevant laws and regulations;

(ii) IUJPs, if the services are rendered within two or more provinces;

(iii) Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within the Indonesian territory or for export purposes;

(iv) Production Operation IUPs specifically for processing and refining, if the mining products to be processed are imported and supplied by holder(s) of Special Production Operation IUPs, holder(s) of Production Operation IUPs issued by the MEMR, or holder(s) of Production Operation IUPs for which the mining area is located in different provinces; and

(v) all the above licences, if the applications are submitted by a foreign investment ("**PMA**") company (this is an Indonesian entity, the shares of which are owned in whole or in part by foreign shareholders).

The old Mining Law has inherited the form of Coal Contract of Works ("**CCOW**") from coals and Contract of Works ("**COW**") for minerals. CCOWs and COWs are different from IUPs. An IUP is a licence issued by the relevant Government. CCOWs and COWs provide rights to mine coal and minerals granted to mining companies based on mining contracts entered into by (central) Government with the mining companies for a certain period. Pursuant to the Mining Law, all CCOWs and COWs will continue to be valid until their respective expiration, subject to adjustment pursuant to the Mining Law within one year as of the enactment of the Mining Law. MEMR Regulation No. 11/2018 further provides that the mining stages of the CCOW and COW must be adjusted to become: (i) the exploration stage which consist of general survey, exploration and feasibility study; and (ii) the production operation stage which consist of construction, mining, processing and/or refining and the transport and sale.

As per January 2018, there are 31 COW companies and 68 CCOW companies which have conducted negotiation for amendment with the Government, and out of that 22 COWs and 68 CCOWs have reached agreements for the amendment of the COWs and CCOWs with the MEMR.

Pursuant to MEMR Regulation 11/2018, the authority of the Regent/Mayor to issue the IUP has been completely removed and such authority is only given to the MEMR and the Governor with the following details:

The MEMR has the authority to issue:

a. Exploration IUP for mineral and coal, in the following Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan* or "**WIUP**"):
   i. a WIUP which crosses the boundaries of provinces;
   ii. a WIUP which is located on seabed more than 12 miles from a coastline and/or archipelagic water; or
   iii. a WIUP which has direct boundary with other countries.
b. Exploration IUP for PMA companies.
c. Exploration IUP and Production Operation IUP for public companies which own more than one IUP for metal minerals or coal and the WIUP is located in more than one province.
d. Special Mining Business Licences (*Izin Usaha Pertambangan Khusus* "**IUPK**") for Exploration and Production Operation for minerals and coal.
e. Production Operation IUP if the mining location, the processing and/or refining location and the special terminal location (i) crosses the boundaries of provinces, or (ii) has a direct boundary with other countries.
f. Production Operation IUP if the applications are submitted by PMA companies.
g. Production Operation IUPs specifically for processing and refining if:
   i. the mining commodities are supplied from other areas outside the location of processing and refining;
   ii. the mining commodities are imported;
   iii. the location of processing and refining crosses the boundaries of provinces; and
   iv. the application is submitted by a PMA company.
h. IUJPs (i) if the services are rendered throughout Indonesian territory, and for (ii) PMA companies.

   The Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*, or "**BKPM**") also has the authority to issue a mining-related licence to PMA companies based on delegation from the Minister.

The Governor has the authority to issue:

a. an Exploration IUP for metal minerals and coal in the WIUP which is located within one province or on seabed more than 12 miles from the coastline and/or archipelagic water;
b. Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within one province;
c. Production Operation IUPs specifically for processing and refining, if: (i) the mining products are supplied from the same province of the processing and refining facility; and/or (ii) if the processing and/or refining facility are located within the same province; and
d. IUJPs if the services are rendered within one province.

1.3 Describe any other sources of law affecting the mining industry.

The source of law affecting the mining industry in Indonesia consists of the following:

a. the Indonesian 1945 Constitution, as amended ("**Constitution**");
b. the Law (*Undang-Undang*)/Government Regulation in Substitution of Law;
c. Government Regulations;
d. Presidential Regulations;
e. Ministerial (and its sub-divisions) Regulations; and
f. Regional Regulations (*Peraturan Daerah*).

In theory, some other legal sources may also affect the mining industry, such as decisions of the Constitutional Court and other court decisions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

An Exploration IUP is required to be obtained for a mining company to conduct the reconnaissance phase activity. The Exploration IUP is required not only to conduct the exploration activities, but also the general survey and feasibility study or other reconnaissance activities.

2.2 What rights are required to conduct exploration?

As mentioned in question 2.1 above, an Exploration IUP is required to be obtained for a mining company to conduct exploration activities. An application to obtain an Exploration IUP may only be submitted by legal entities or individuals who have obtained the WIUP through a tender process for metal minerals and coal WIUP conducted by, and through, submission of an application for non-metal minerals and rock WIUP to the MEMR or Governor (according to its authority) (see question 1.2 above).

Metal Minerals and Coal WIUP

Before the Government opens the tender process, the Government has to first determine the mining area in consultation with Parliament and the regional Governments. The mining area is an area which potentially has minerals and/or coal, which is not restricted by the Government's administration and constitutes part of the national zoning. Part of the Mining Area will be granted as a Mining Business Area (*Wilayah Usaha Pertambangan* or "**WUP**"), which has the data, potential and/or geological information available. Currently, the Government is still in the process of determining the mining area throughout the Indonesian territory. Therefore, to date, the Government has not yet opened any tender process and, consequently, no new IUP under the Mining Law has been issued to date.

Once the winner of the WIUP tender is selected, the relevant governmental bodies (depending on their authorities) will then issue the Exploration IUP to the winner of WIUP tender for the specific mineral and coal upon application by the tender winner. Further, a mining company which has completed the feasibility study in the exploration stage can apply for a Production Operation IUP. The holder of a Production Operation IUP is permitted to conduct activities of construction, mining, processing and refining/smelting, as well as hauling/transportation and sale.

Non-metal and Rock WIUPs

The application for obtaining non-metal minerals and rock WIUPs is not conducted through a tender process, but through a direct application from the applicant to the relevant governmental bodies (depending on their authorities) as follows:

a. the MEMR, with a prior recommendation from the relevant Governor; and

b. the Governor, with a prior recommendation from the relevant Regent/Mayor.

However, pursuant to Law No. 23 of 2014 regarding the Regional Government as amended by Law No. 2 of 2015 and No. 9 of 2015 on Stipulation of Government Regulation *in lieu* of Law No. 2 of 2014 on Amendment to Law No. 23 of 2014 regarding the Regional Government ("Law 23/2014"), the authority of the Regent/Mayor to issue the WIUP has been completely removed and is only given to the MEMR and the Governor, as follows:

The MEMR has the authority to issue:

a. a Mining Area (*Wilayah Pertambangan* "**WP**") as part of a national spatial plan, which consists of a WUP, People's Mining Business Area (*Wilayah Pertambangan Rakyat* "**WPR**"), State Reserves Area (*Wilayah Pencadangan Negara* "**WPN**") and Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* "**WUPK**");

b. a WIUP for metal minerals, coal and a Special Mining Business Licences Area (*Wilayah Izin Usaha Pertambangan Khusus* "**WIUPK**"); and

c. WIUP for non-metal minerals and rocks which crosses boundaries of provinces and/or on seabed more than 12 miles from the coastline.

The Governor has the authority to issue a WIUP for non-metal minerals and rocks within one province and/or on seabed more than 12 miles from the coastline.

2.3 What rights are required to conduct mining?

It is required that an IUP is obtained before a mining company can conduct any mining business activity/operation. Please refer to the process described in question 2.2 above for a mining company to obtain a Production Operation IUP.

2.4 Are different procedures applicable to different minerals and on different types of land?

Yes, the procedures will be based on the type of minerals. Please refer to the process described in question 2.2.

With respect to the types of land, the procedure for obtaining land rights would be different based on the type of land concerned. For example, if the mining area is located in (i) a forest area (which is not a protected forest area), the mining company must obtain or borrow a used permit from the Ministry of Forestry, (ii) a forest area on which area there is a forest concession, an agreement with the forest concession company is required, (iii) an area which is owned by another party, an agreement with the land owner is required, or (iv) an area which is owned or occupied by another parties or local communities, a land relinquishment must be conducted.

2.5 Are different procedures applicable to natural oil and gas?

Yes. The procedures applicable for natural oil and gas are not within the scope of the Mining Law, and therefore they are different from the procedures for mining.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

The Mining Law provides three categories of mining licences as follows:

1. IUPs, which can be granted to (i) business entities (including State-owned companies, region-owned companies and PMA companies), (ii) cooperatives (*koperasi*), and (iii) Indonesian individuals;
2. IPRs which can be granted to (i) Indonesian individuals for a maximum 1 (one) hectare, (ii) community groups (*kelompok masyarakat*) for a maximum 5 (five) hectares, and (iii) cooperatives (*koperasi*) for a maximum 10 (ten) hectares; and
3. Special Mining Business Licences (*Izin Usaha Pertambangan Khusus* or "**IUPK**"), which can be given to Indonesian legal entities, either in the form of State-owned entities, region-owned entities, or private entities. State-owned entities and region-owned entities shall have priority in obtaining the IUPK.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign investors must have an Indonesian vehicle to conduct mining business activities in the form of a PMA company pursuant to Law No. 25 of 2007 on Investment.

Shares in a PMA company are subject to divestment requirements with the following progressive divestment:

Years after commencement of production	Minimum divestment (as a percentage of the total shares)
6	20%
7	30%
8	37%

Years after commencement of production	Minimum divestment (as a percentage of the total shares)
9	44%
10	51%

Based on GR 23/2010, a PMA company holding a Production Operation IUP is required to gradually divest its shares based on the table mentioned above (counted from the date of issuance of the Production Operation IUP). The divestment process will apply to the Indonesian participant(s) in the following sequential order: (i) the Central Government; (ii) the Provincial or the regional/ municipality Government; (iii) a State-owned company ("**BUMN**"); (iv) a Region-owned company ("**BUMD**"); and (v) a national privately-owned company. However, there is an exception in regards to this obligation. MEMR Regulation 9/2017 provides that a PMA company holding the Production Operation for Processing and Refining is not required to divest its shares.

3.3 Are there any change of control restrictions applicable?

The change of shares ownership, including the change of control (acquisition), can only be conducted with prior approval from the Government (depending on its authority to issue the IUP).

GR 23/2010 provides that any change of shareholding in a PMA company can only be conducted if:

a. the foreign share ownership is not more than 75% for a company holding an Exploration IUP and IUPK;

b. the foreign share ownership is not more than 49% for a company holding a Production Operation IUP and IUPK but the processing and/or refining activities are conducted by third parties;

c. the foreign share ownership is not more than 60% for a company holding a Production Operation IUP and IUPK and conducting the processing and/or refining activities; and

d. the foreign share ownership is not more than 70% for a company holding a Production Operation IUP and IUPK and conducting underground mining.

3.4 Are there requirements for ownership by indigenous persons or entities?

As elaborated in question 3.1 above, based on GR 23/2010 jo. MEMR Regulation 9/2017, a PMA company holding a Production Operation IUP (save for the Production Operation for Processing and Refining) is required to gradually divest its shares to be owned by the Indonesian participant(s) (counted from the date of issuance of the Production Operation IUP).

3.5 Does the State have free carry rights or options to acquire shareholdings?

There is no free carry right of the Government to acquire shareholdings in a mining company, including PMA companies.

Please refer to the explanation on options given to the Government or Government-related entities in question 3.2 above in shares divestment stages. The shares of a PMA company to be divested will be offered to the Government, where the central Government has a priority to acquire the offered shares. If the Government indicated that it is not interested in the offered shares or fails to respond to the offer within 60 calendar days, the shares will be offered to BUMNs and BUMDs by auction.

The price for the divestment shares offered to an Indonesian participant shall be determined based on the fair market value without calculating the minerals and coal stock when the divestment of shares is conducted. The price for the divestment shares shall be the highest price for the offer of the shares divestment to: (i) the Central Government; and (ii) the Provincial or the regional/ municipality Government. This price is the floor price for the offer of the shares divestment to: (i) a BUMN; (ii) a BUMD; and (iii) a national privately-owned company which is conducted through auction.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The Mining Law and GR 23/2010 provide that mining companies are obligated to conduct processing and refining activities of their (ore) mining products domestically. In other words, mining companies can only export the mining products which have been processed and/or refined in Indonesia.

The following regulations govern the activities of processing, refining and further beneficiation of mined minerals:

a. GR 23/2010;

b. MEMR Regulation 11/2018;

c. MEMR Regulation 25/2018;

d. Minister of Trade Regulation No. 01/M-DAG/PER/1/2017 on the Provision for Exporting Mining Products Resulting from Processing and Refining ("**MOT Regulation 01/2017**");

e. Minister of Trade Regulation No. 09/M-DAG/PER/2/2017 on Procedures for Determining the Export Benchmark Price of Processed Mining Product Subject to Export Duties ("**MOT Regulation 09/2017**");

f. MEMR Regulation No. 7 of 2017 concerning Procedures on Stipulation of Benchmark Price for Metal Mineral and Coal as amended by MEMR Regulation No. 44 of 217 and MEMR Regulation No. 19 of 2018 regarding on Procedures of Stipulation of Benchmark Price for Metal Mineral and Coal;

g. Minister of Trade Regulation No. 39/M-DAG/PER/7/2014 as amended by Minister of Trade Regulation No. 49/M-DAG/ PER/8/2014 and Minister of Trade Regulation No. 52 of 2018 on the Provisions for Exporting Coal and Coal Products;

h. Minister of Trade Regulation No. 04/M-DAG/PER/1/2015 as amended by Minister of Trade Regulation No. 67/M-DAG/ PER/8/2015 on Provisions to Use a Letter of Credit for Exporting Certain Commodities ("**MOT Regulation 4/2015**");

i. Minister of Trade Regulation No. 26/M-DAG/PER/3/2015 of 2015 on Specific Provisions on the Implementation of Using a Letter of Credit for Exporting Certain Commodities;

j. Bank Indonesia Regulation No. 16/10/PBI/2014 dated 14 May 2014 as amended by Bank Indonesia Regulation No. 17/23/ PBI/2015 dated 23 December 2015 on the Receipt of Export Proceeds and Withdrawal of Foreign Exchange from External Debt (Offshore Borrowings) ("**BI Regulation 16/2014**");

k. Minister of Finance Regulation No. 13/PMK.010/2017 on the Stipulation of Export Goods that Are Subject to Export Duty and Export Tariff ("**MOF Regulation 13/2017**"); and

l. Ministry of Energy and Mineral Resources Circular Letter No. 03.E/30/DJB/2015 of 2015 on the Requirement to Obtain Technical Consideration for the Exemption of Payment Using L/C.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In brief, the regulations referred to in question 4.1 provide the following provisions:

a. Ferrous mining companies (holders of Contract of Work/ Production Operation IUPs) which have conducted ferrous mining activities can export in certain quantities upon fulfilment of the minimum processing and refining/smelting specifications, as provided in Attachment I of MEMR Regulation 25/2018.

b. It is not permitted to export raw materials/ores or unprocessed minerals.

c. Certain minerals (i.e. nickel, bauxite, ore, gold, silver, and chromium) can only be exported after they have been purified with the minimum content, as specified in Attachment 1 of MEMR Regulation 25/2018. The minimum content of these minerals is high (95% or above). However, based on MOT Regulation 01/2017 for the nickel with the content of < 1.7% and bauxite with the content of ≥ 42% are excluded from the obligation to satisfy the minimum requirement of processing and refining, prior to be exported if (i) the owner of the IUP or IUPK nickel has utilised nickel with the content of < 1.7%, at maximum of 30% from the total input capacity of its processing and refining facility, and (ii) the owner of the IUP or IUPK nickel or bauxite has or is in the process of constructing the refining facility independently or working together with other parties.

d. Certain other minerals (e.g. copper, iron sand, iron ore, zinc, lead, and manganese) can only be exported after they have been processed or purified with the minimum content, as specified in Attachment I of MEMR Regulation 25/2018.

e. MOT Regulation 09/2017 set out the procedures for determining Export Benchmark Prices (*Harga Patokan Ekspor* or "**HPE**") for processed mining produces. HPE is the basis for the Minister of Finance to calculate and impose export duties.

f. MOT Regulation 4/2015 requires the exporter to use a Letter of Credit ("**L/C**") as a mandatory payment instrument when exporting certain commodities (i.e. mining products), for which the price stated on the L/C must at least be equivalent to the global market price for the relevant exported commodities. Pursuant to Article 3 of MOT Regulation 4/2015, payment under an L/C must be made to a domestic foreign exchange bank (*bank devisa*) or to an export financing institution formed by the Government. However, based on the Minister of Trade Regulation No. 26/2015 on Special Provisions on the Use of Letter of Credit for the Export of Certain Goods, in case the exporter is not yet able use the L/C, the exporter is allowed to request for a postponement of the use of L/C to the MEMR.

g. Under BI Regulation 16/2014, the receipt of the Export Exchange (*Devisa Hasil Eksport* or "**DHE**") is obligated to be reported at the latest by the end of the third month after the registration month of the Export Declaration (*Pemberitahuan Eksport Barang* or "**PEB**").

h. MOF Regulation 13/2017 stipulates that export tariffs on processed mineral products for exporters that are involved in construction of refining/smelting facilities or cooperate in the construction of refining/smelting facilities shall be grouped by the progress level of mineral refining/smelting facility construction on an absorption costing percentage basis, namely as follows:

Stages of Physical Construction of Refining Facility	Description	Export Tariff from 2017–2022
First Stage	Physical construction has reached up to 30% of the total construction	7.5%
Second Stage	Physical construction has reached 30%–50% of total construction	5%
Third Stage	Physical construction has reached 50%–75% of total construction	2.5%
Fourth Stage	Physical construction has reached more than 75% of total construction	0%

MOF Regulation 13/2017 further stipulates the export tariff of 10% for export of (i) nickel with Ni content of < 1.7%, and (ii) washed bauxite with Al2O3 content of ≥ 42%, for export that is conducted from 2017 to 2022.

Further, in order to conduct export activities, exporters of mineral products must obtain a Recommendation from the DGMC and/or Export Approval from the Ministry of Trade. However, pursuant to MOT Regulation 01/2017, there are a few mining products which have satisfied the requirement content after being processed and refined that can be exported without the Export Approval and only required to undergo verification and technical search. The lists of the mining products are attached as Schedule I of this regulation.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

GR 23/2010 and MEMR Regulation 11/2018 provide that a holder of an IUP and IUPK is not permitted to transfer its IUP and IUPK to another party. GR 23/2010, however, allows the transfer of certain part of Operation Production WIUP or WIUPK that is held by a state-owned company (BUMN) to another entity where 51% or more of the shares of such entity are owned by the BUMN. This partial transfer of WIUP or WIUPK can only be conducted with a prior approval from the MEMR.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The IUP cannot be imposed with a security right to secure finance. Security rights can, however, be created over the assets of the IUP holder, such as land, building, equipment, stocks, receivables, as well as other contractual security rights, to secure finance. In addition, a security right can also be created over shares of a mining company to secure finance. However, please note that the holder of Production Operation IUP and Production Operation IUPK are not allowed to encumber the shares which are subject to divestment.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The rights to conduct the mining activities stated in the IUP are not separable or transferable. An IUP holder may, however, assign a mining services company which holds an IUJP to perform certain mining activities, among others (i) exploration (in the framework of consultation, plan, and execution), and (ii) mining (in the framework of consultation and plan) but limited to stripping overburden and transportation of minerals and coal. Specifically for the holder of Production Operation IUP or Special IUP of Production Operation using closed-pit (underground) mining method may assign the work for making access of tunnel/shaft towards vein ore/seam coal, stream, and ventilation to the holder of IUJP in mining construction field, sub division of tunnelling.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The rights to conduct reconnaissance, exploration and mining under the IUP are attached to the IUP holder. The IUP holder can be in the form of a PMA (joint venture) company. Indonesian law only recognises the IUP holder as the party that has rights to conduct reconnaissance, exploration and mining.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Pursuant to Article 40 of the Mining Law, the IUP shall only be granted for 1 (one) type of mineral. If any metal mineral and/or coal is discovered in a mining area which is different to the primary mineral and/or coal which is prospected to be mined, the MEMR will stipulate a new mining area or special mining area based on the application submitted by the holder of the IUP whose mining area is discovered different or not associated metal mineral and/or coal. Any IUP holder which is willing to mine the new stipulated mining area shall establish a new business entity. If the IUP or Special IUP holder does not intend to mine such different or non-associated mineral products, the opportunity to mine such products is given to another party through tender process. The other party which obtains the mining area through the tender process shall coordinate with the holder of IUP or Special IUP facilitated by the MEMR or Governor in accordance with their authorities.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The law is silent on the rights over residue deposits on the land used for mining activities. However, the IUP holder is still entitled to exercise rights over such residue deposits during the period of the IUP. In the event that the period of the IUP has lapsed, the IUP holder shall no longer be entitled to exercise rights over such residue deposits.

6.5 Are there any special rules relating to offshore exploration and mining?

The prevailing law and regulations on mining do not provide different rules or procedures for offshore exploration and mining. The Regional Government Law and Regulation of Minister of Energy and Mineral Resources No. 43 of 2015 concerning Evaluation Procedure of the Issuance of Mineral and Coal Mining Business Licence ("**MEMR Regulation 43/2015**") only provide a division of authorities issuing IUPs and determining mining area. For mining areas located on the seabed (i) which are more than 12 (twelve) miles from the coastline, the MEMR will issue the IUP and stipulate the IUP area of non-metal mineral and stone, and (ii) up to 12 (twelve) miles from the coastline, the Governor will issue the IUP and stipulate the IUP area of non-metal and stone. These provisions are further regulated under MEMR Regulation 11/2018. MEMR Regulation 11/2018 also stipulates that in the event that a mining area is located on the seabed between 2 (two) provinces less than 24 (twenty-four) miles from the coastline, the governance of such seabed shall be divided equally.

To date, the Mining Law and GR 23/2010 still regulate the authority of Regent/Mayor to issue the IUPs. With reference to the Regional Government Law as well as MEMR Regulation 43/2015 and MEMR Regulation 11/2018, hence the Mining Law and GR 23/2010 should be adjusted to be in line with those regulations.

In addition to the above, the operation and ownership of vessels (including vessels used for offshore mining activities) must comply with the requirement of Law No. 17 of 2008 on Shipping, which stipulates, among others, that the vessel operation must be based on a specific shipping licence issued by the Minister of Transportation. The majority foreign share ownership of a PMA company holding a vessel is restricted, as the shares in this company must be majority (51% or more) owned by local shareholder(s).

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Unlike in other jurisdictions, Indonesian land titles do not extend beneath the surface of the land and therefore the land title holder has no right to conduct mining activities on the land in the absence of an IUP. On the other hand, Article 134 of the Mining Law states that the right of IUP holders does not include the surface of land.

On the right of an IUP holder over the surface of land, the Mining Law does not stipulate a requirement for the IUP holder to acquire ownership of the land over which the mining will be conducted under the valid IUP. The Mining Law imposes an obligation on IUP holders to enter into a "settlement" with people holding land titles within the mining area. The purpose of this "settlement" is to compensate the land title holders for the disruption to their utilisation of the surface of land caused by the mining activities. A settlement only needs to be reached with land title holders in the mining areas which are actually to be affected by mining activities. Settlement of land titles may be conducted in stages based on the needs for land by the IUP holder. There is no requirement to compensate every land title holder whose land is overlapping with the mining area under the IUP.

Although it is not a requirement, mining companies sometimes choose to acquire land title ownership of the underlying land, particularly for strategic land areas. This is to avoid any dispute in the future in respect of whether compensations have been adequately provided and to provide legal certainty on the right to conduct activities in such land areas.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Please refer to our explanation in question 7.1 above.

7.3 What rights of expropriation exist?

IUP holders and the State do not have the right of expropriation for mining activities. The IUP holder using the land for mining activities must conduct a settlement with the land title holders as explained in question 7.1 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The prevailing Environmental Law (Law No. 32 of 2009 on Environmental Protection and Management) stipulates the following criteria of business/activities which may have a substantial environmental impact:

- the change of form of land and landscape;
- the exploitation of natural resources, whether renewable or non-renewable;
- the processes and activities which may potentially cause environmental pollution, and/or damage, and squandering and degradation of natural resources in their utilisation;
- the processes and activities which may result in an effect on the natural environment, artificial environment and socio-cultural environment;
- the processes and activities which will affect the preservation of natural resources conservation areas and/or cultural heritage protection;
- the introduction of types of plantations, animals and micro-organisms;
- the production and utilisation of biological and non-biological resources;
- the activities which are high-risk, and/or affect national defence; and/or
- the application of technology which may potentially affect the environment.

Any business/activity which meets the above criteria must prepare AMDAL documents (*Analisis Mengenai Dampak Lingkungan* or Environmental Impact Analysis) which consist of:

a. Term of Reference (*Kerangka Acuan*). This Term of Reference shall be the basis on drafting ANDAL and RKL-RPL;

b. an Environmental Impact Assessment (*Analisis Dampak Lingkungan* or "**ANDAL**");

c. an Environment Management Plan (*Rencana Pengelolaan Lingkungan Hidup* or "**RKL**"); and

d. an Environmental Monitoring Plan (*Rencana Pemantauan Lingkungan* or "**RPL**").

In relation to the mining activities, the Mining Law stipulates that every mining company that applies for an IUP must attach AMDAL documents as one of the requirements.

Furthermore, Government Regulation No. 27 of 2012 regarding Environmental Permits also provides that all businesses and/or activities that are required to have AMDAL documents are required to have an Environmental Permit from the relevant Government Institutions.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Pursuant to GR 78/2010, which is further regulated under MEMR Regulation 26/2018, the IUP holder is required to conduct reclamation and post-mining activities. The Exploration IUP holder must: (i) formulate a reclamation plan on the basis of environmental documents in accordance with the provisions of laws and regulations in the field of environmental protection and management; and (ii) complete a feasibility study prior to the submission of the application for approval of reclamation and post-mining from the relevant mining authority.

Meanwhile, the holder of Production Operation IUP is required to: (i) place a reclamation guarantee at the production operation stage and post-mining guarantee in accordance with the stipulation of the MEMR or Governor in accordance with their authorities; (ii) submit a reclamation plan at the production operation stage periodically; (iii) conduct reclamation at production operation stage and post-mining; and (iv) submit a report of reclamation implementation of production operation stage and post-mining.

Furthermore, Government Regulation No. 101 of 2014 concerning Management of Hazardous and Toxic Material Waste ("**GR 101/2014**") stipulates that wastes which are sourced from mining activities are classified as hazardous and toxic material wastes. In order to be able to store the tailing and other waste products, GR 101/2014 stipulates that the producer of hazardous and toxic material wastes obtains a licence to manage hazardous and toxic material wastes for the storage of hazardous and toxic material waste activities.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

As mentioned above, every IUP holder is obligated to conduct reclamation and post-mining activities. Upon the closure of mining operations, the mining company must immediately conduct the reclamation and post-mining activities based on the reclamation and post-mining plans which have been approved by the mining authority.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes, there is a zoning requirement which is regulated under Law No. 26 of 2007 concerning the Spatial Plan. In general, the Spatial Plan is divided based on the system, main function of the area, administrative territory, the area's activity and the strategic value of such area. The national Spatial Plan issued by the Government shall be applicable for a period of 20 years, but it may be evaluated every five years.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

As explained in section 7 above, the IUP holder is required to resolve the agreement to relinquish and settle the land that will be used for mining operations with the land title holders. In practice, however, the settlement process will need to be made not only with the land title holders, but also with those occupants or (local) people holding certain "un-certificated" land or community land title.

In practice, most mining companies will only relinquish the land (*pembebasan tanah*) for parts of the mining area that will be used for the actual mining and related activities. For example, a mining company may have an area of 1,000 hectares under its IUP, but the area where it actually conducts mining operations and other activities (roads, housing, etc.) may only be for an area of 500 hectares; the mining company will then only process the land relinquishment for such 500 hectares. There is no obligation of the mining company to relinquish the remaining 500 hectares that will not be used for mining activities.

As explained, a mining company is not required to relinquish the whole area under the IUP, and the relinquishment process can be done in stages, depending on the needs of the company.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

In general, provisions of health and safety in mining are regulated under the following regulations:

a. the Mining Law and its implementing regulations;
b. Law No. 1 of 1970 regarding Safety;
c. *Staatsblad* No. 341 of 1930 regarding Mining Occupational Safety Regulations;
d. Government Regulation No. 19 of 1973 regarding Admission and Supervision of Occupational Safety in the Field of Mining;
e. MEMR Regulation 26/2018;
f. MEMR Regulation 11/2018; and
g. Head of Nuclear Supervision Board Decree No. 12/Ka-BAPETEN/VI-99 Regarding Provisions of Mining Occupational Safety and Purifying of Radioactive Extractives.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The holder of Exploration IUP, Special IUP for Exploration, Production Operation IUP, and Special IUP for Production and Operation in implementing the provision of health mining shall: (i) provide any equipment, tools, self-defence services, personnel, and fees which are required for the implementation of mining safety provisions; and (ii) establish and stipulate organisation of mining safety by taking into account the number of employees, nature, or size of working area. Under MEMR Regulation 26/2018, the provision of mining safety covers:

a. the mining safety and health, which consist of at least:
   - Mining work safety covering, among others:
     - risk management;
     - a work safety programme which covers prevention of accident, fire, and other dangerous events;
     - education and training of work safety;
     - work safety administration;
     - emergency management;
     - work safety inspection; and
     - prevention and investigation of accidents.
   - Mining work health covers the employee health programme, hygiene and sanitation, ergonomic, food and beverage management, employee's nutrition and/or diagnostic and examination of occupational diseases.
   - Mining work environmental which cover company regulation, assessment, measurement and control over the work environmental condition.

b. The mining operation safety, which consists of at least:
   - System and implementation of facility and infrastructure maintenance, installation and mining equipment as follows:
     - to plan the maintenance of facility and infrastructure, installation and mining equipment maintenance;
     - to appoint the person in charge in the facility and infrastructure, installation and mining equipment maintenance; and
     - to conduct maintenance of facility, infrastructure, installation and mining equipment in accordance with laws and regulations as well as acknowledged national or international standard.
   - Installation security.
   - Technical personnel in the field of operation safety who is competent.
   - Facility, infrastructure, installation and mining equipment worthiness by conducting feasibility testing and maintenance.
   - Evaluation of report of mining technical study result.
   - Mining facility safety.
   - Safety of explosive and detonation.
   - Exploration safety.
   - Open-pit mining safety.
   - Closed-pit (underground) mining safety.
   - Dredger safety.

The holder of Exploration IUP, Special IUP for Exploration, Production Operation IUP, and Special IUP for Production Operation shall conduct the provision of mining safety based on Feasibility Study, Environmental Documents and Annual Work and Budget Plan which have been approved in accordance with the laws and regulations.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mining Law does not recognise a "central title registration office". However, article 4 of MEMR Regulation 43/2015 stipulates the DGMC or Governor of relevant Province is authorised to conduct evaluation on the issued IUP. In case of incompliance, the DGMC or the Governor has the authority to revoke or amend such IUP. The result of the evaluation will be reported to the DGMC and will be used as recommendation for a Clear and Clean IUP.

In regard to the Clear and Clean status, MEMR Regulation 11/2018 further regulates that upon the effectiveness of the regulation on 21 February 2018:

a. the Clear and Clean status and/or Clear and Clean certificates that have been issued shall remain valid;

b. non-metal mineral IUPs and rock IUPs that have been issued prior to the enactment of the MEMR Regulation 11/2018 do not require Clear and Clean status and/or Clear and Clean certificates; and

c. IUPs that have been issued prior to the enactment of MEMR Regulation 11/2018 do not require Clear and Clean status.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes, there is. The appeal system towards administrative decisions must follow the judicial proceedings of the State Administrative Court (*Pengadilan Tata Usaha Negara*) as stipulated under Law No. 5 of 1986 concerning the State Administrative Judicial System, as lastly amended by Law No. 51 of 2009. A State administrative decision that can be appealed to the State Administrative Court must complete the following 4 (four) elements, as follows:

a. a written decision;

b. issued by a State administrative institution;

c. issued based on specific provisions in the prevailing laws and regulations; and

d. the decision must be valid, final and causes a legal implication on a specific person or entity.

If the decision falls under the above elements (examples: licences, permits, etc.), the appeal of an administrative dispute can be taken at the State Administrative Court and State Administrative High Court. The highest judicial power, within the sphere of the State Administrative Judicial System, is vested in the Supreme Court as the highest State court. If the claim is upheld by the court, the court may invalidate and instruct the Government to revoke the decision concerned.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

There is no specific clause in the Constitution which has a direct impact upon the right to conduct reconnaissance, exploration and mining. The Constitution does, however, state, in Article 33(3), as a general provision that the land and waters as well as the natural riches therein are controlled by the State and exploited for the greatest benefit of the people.

12.2 Are there any State investment treaties which are applicable?

Yes, there are. In an endeavour to attract foreign investment, Indonesia has concluded a number of bilateral and regional investment treaties, both with developed and developing countries. The agreements contained in the treaties in general contain similar provisions for the purpose of investment protection. The treaties usually provide general investment protections, such as issues on nationalisation, capital repatriation, subrogation, dispute settlement, etc. However, there are treaties that expressly cover investment protection for specific business sectors. For example: in the agreement between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Promotion and Protection of Investments, dated 16 February 2005, which has been ratified by Presidential Regulation of No. 6 of 2006, dated 1 February 2006, the term "investments" shall mean any kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, though not exclusively:

a. movable and immovable property as well as other property rights, such as mortgages, liens or pledges;

b. shares, stocks, debentures and similar interest in companies;

c. claims to money or to any performance under contract which has an economic value;

d. intellectual property rights (including, but not limited to, copyrights and neighbouring rights, trademarks, patents, industrial design, layout design of integrated circuits and rights in plant varieties), know-how, trade secrets, trade names and goodwill; and

e. business concession conferred by law or under contract, including concessions to search for, or exploit, natural resources.

In the Investment Support Agreement between the Government of the Republic of Indonesia and the Government of the United States of America, dated 13 April 2010, which has been ratified by Presidential Regulation No. 48 of 2010, dated 19 July 2010, there is no specific sector referred in the Agreement. The term "Investment Support" refers to any debt of equity investment, any investment guarantee and any investment insurance, reinsurance or coinsurance which is provided by the issuer (or, in the case of coinsurance, is provided by the issuer and commercial insurance companies ("**Coinsurers**") under coinsurance arrangements under which the issuer acts both for itself and for such Coinsurers) in connection with a project in the territory of the Republic of Indonesia.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Pursuant to the Mining Law, there is no special rule applicable to taxation of exploration and mining companies. Every Indonesian mining company shall pay the taxes within the authority of the Government under the general laws and regulation on taxation. The taxes imposed on mining companies are among others (i) Income Tax, which is governed under Law No. 7 of 1983, which has been last amended by Law No. 36 of 2008 ("**Law 36/2008**"), and (ii) Value-Added Tax, which is governed under Law No. 8 of 1983, which has been last amended by Law No. 42 of 2009.

However, there are still various mining companies which are subject to a certain tax regime governed by CCOW and COW. The type of CCOW and COW are differentiated based on the year of execution of such CCOW. The tax provisions in CCOW and COW generally overrule the normal tax regulations.

The table below sets out information on the income tax that is imposed for services provided in every step of the mining activities under Law 36/2008: (i) Ministry of Finance Regulation No. 141/PMK.03.2015 concerning the Type of other Service Referred to in Article 23 Paragraph (1) Letter C Point 2 of Law 36/2008; and (ii) Government Regulation No. 51 of 2008 on Income Tax on Income from Construction Services, which has been amended by Government Regulation No. 40 of 2009:

Mining Phase	Income Tax	Percentage of Tax Imposed
1. General survey	■ Article 23	2%
	■ Article 26	20%
2. Exploration	■ Article 23	2%
	■ Article 26	20%
3. Feasibility study	■ Article 23	2%
4. Construction	■ Article 4 paragraph 2	■ 2% (if construction engineering is executed by service providers having the qualification of small-scale business)
		■ 4% (if construction engineering is executed by service providers not having qualifications)
		■ 3% (if construction engineering is executed by service providers other than those which have the qualifications of a small-scale business or not having qualifications as mentioned above)
		■ 4% (if construction planning or supervision is executed by service providers which have business qualifications)
		■ 6% (if construction planning or supervision is executed by service providers which do not have business qualifications)
5. Exploitation	■ Article 23, or Article 26	2%
		20%
6. Reclamation	■ Article 23	2%

The income tax of Article 23 is imposed if the company which provides the aforementioned services is a resident taxpayer or a permanent establishment in Indonesia. However, if the company which provides the services is a non-resident taxpayer, then it will be responsible for paying income tax under Article 26. The rate of the income tax of Article 26 mentioned above may be affected by a relevant applicable tax treaty.

Pursuant to Law No. 28 of 2009 on Regional Taxes and Retributions, a mining company exploiting non-metal and rock materials is subject to regional tax, the rate of which will depend on the regional Government regulation, but may not exceed 25% of the sale value of the material.

Furthermore, the land where any mining company conducts its business activities is subject to Land and Building Tax. This is governed by Law No. 12 of 1985 on Tax on Land and Buildings, which has been amended by Law No. 12 of 1994 ("Law 12/1994"), and the Directorate General of Taxation Regulation No. PER-32/PJ/2012 concerning the Procedure of Imposing Land Building Tax on the Mining Sector for Mineral and Coal Mining. The rate of said Land and Building Tax is 0.5% calculated from the Sale Value of the Tax Object (*Nilai Jual Objek Pajak* or "**NJOP**"). The NJOP is defined as the average price obtained from the sale and purchase transaction reasonably occurring, and in the event there is no sale and purchase transaction, the NJOP shall be determined by comparing other prices and objects of the same type or the new acquisition value, or a replacement NJOP.

13.2 Are there royalties payable to the State over and above any taxes?

Yes, there are royalties payable to the State. In accordance with Article 128 (4) of the Mining Law, mining companies shall pay for: (i) Dead Rents; (ii) Exploration Royalties; (iii) Production Royalties; and (iv) compensation for access to data/information other than taxes. Said royalties are stipulated under Government Regulation No. 9 of 2012 concerning Non-Tax State Revenue under the MEMR ("**GR 9/2012**"). However, it is to be noted that the Government is currently preparing an amendment to GR 9/2012.

The table below sets out some information on the tariffs based on GR 9/2012:

Non-Tax State Revenue	Unit	Tariff
A. Revenue from service for the provision of a mineral and coal information data system:		
1. Service for the provision and issuance of a WIUP:		
a) Inquiry into mining area information	Per 15 minutes	Rp. 200,000
b) Area reservation and printing of a non-metal mineral WIUP map	Per WIUP	Rp. 10,000,000 – Rp. 50,000,000 (depends on the acreage)
c) Area reservation and printing of rock WIUP map	Per WIUP	Rp. 5,000,000 – Rp. 30,000,000 (depends on the acreage)
2. Service for the printing of a mining area information map.	Per sheet	Rp. 1,000,000 – Rp. 3,000,000 (depends on the size and the type)
B. Revenue from dead rent for metal mineral and coal mining business:		
1. IUP and IUPK of metal mineral and coal exploration	Per hectare/*annum*	US$ 2
2. IUP and IUPK of metal mineral and coal production operation	Per hectare/*annum*	US$ 4
3. Rent for smallholder lighten ("**IPRI**"):		
a) Non-metal minerals and rocks	Per hectare/*annum*	US$ 1
b) Metal minerals and coal	Per hectare/*annum*	US$ 2
C. Revenue from Royalties. (Please note that the royalty percentage depends on the commodity)		
1. Coal (open pit) with calorific value (Kkal/kg, air dried basis):		
a) ≤ 5,100	Per tonne	3% of the selling price
b) 5,100–6,100	Per tonne	5% of the selling price

Non-Tax State Revenue	Unit	Tariff
c) > 6,100	Per tonne	7% of the selling price
2. Coal (underground) with calorific value (Kkal/kg, air dried basis):		
a) ≤ 5,100	Per tonne	2% of the selling price
b) 5,100–6,100	Per tonne	4% of the selling price
c) > 6,100	Per tonne	6% of the selling price
3. Gold	Per kilogram	3.75% of the selling price
4. Nickel Ore	Per tonne	5% of the selling price
5. Diamonds	Per carat	6.5% of the selling price

The tariffs for royalties and their calculation depend on the type of minerals. However, specifically for CCOW, the royalty payable by the CCOW companies to the Government will be based on the provision in CCOW, i.e.: 13.5% of the selling price.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The Mining Law stipulates that the provincial and regency/municipality Governments are allowed to make their own regional regulations. However, such regional regulations shall be made in accordance with the prevailing laws and regulations.

In practice, the regional Governments are often found issuing regulation on spatial planning which hinder the extension process of certain licences of the mining companies.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

To our knowledge, there are no regional rules, protocols, policies or laws relating to several countries in the particular ASEAN region that need to be taken into account by an exploration or mining company.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

No, there are no specific provisions in the Mining Law which entitles the holder of a mining right to abandon the mining right. However, under GR 23/2010, an IUP holder may submit an application at any time to the relevant authority for partial reduction of the mining area. For the CCoW and CoW, usually there is a provision in the contract which gives the contractor the rights to relinquish all or part of Mining Area at any time and from time to time during the term of the contract, subject to a written application to the MEMR.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Yes. Based on GR 23/2010, the IUP holder of exploration rights have obligation to relinquish their mining area on the following conditions:

Metal minerals

a) In the fourth year retain an exploration area of not exceeding 50,000 (fifty thousand) hectares.

b) In the eighth year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP or Special Production Operation IUP, retain an area of not exceeding 25,000 (twenty-five thousand) hectares.

Coal

a. In the fourth year retain an exploration area of not exceeding 25,000 (twenty-five thousand) hectares.

b. In the seventh year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP or a Special Production Operation IUP, retain an area of not exceeding 15,000 (fifteen thousand) hectares.

Non-metal minerals

a. In the second year retain an exploration area of not exceeding 12,500 (twelve thousand five hundred) hectares.

b. In the third year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP, retain an area of not exceeding 5,000 (five thousand) hectares.

Certain-typed non-metal minerals

a. In the third year retain an exploration area of not exceeding 12,500 (twelve thousand five hundred) hectares.

b. In the seventh year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP, retain an area of not exceeding 5,000 (five thousand) hectares.

Rock

a. In the second year retain an exploration area not exceeding 2,500 (two thousand five hundred) hectares.

b. In the third year or at the final stage of exploration at the time of upgrade to a Production Operation IUP, retain an area not exceeding 1,000 (one thousand) hectares.

In the event the maximum required area of the retained area as mentioned above has been met, then the IUP holder or Special IUP holder or shall no longer be required to reduce the area.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes, the Mining Law gives the relevant authority (the issuer of the mining licence) the right to revoke the mining rights or licences in the event of non-compliance with any of the provisions stipulated in the Mining Law and/or obligations stated in the mining licence. In practice, the Government will not automatically revoke the mining licence. In the event of non-compliance with the Mining Law and/or obligations stated in the mining licence, the imposition of sanction will be conducted gradually from the lightest sanction to the most severe one in accordance with MEMR Regulation 25/2018. The sanctions begin with a warning letter issued by the relevant authority to the holder of the mining licence for a maximum of three times, each with terms of warning of 30 calendar days. If, after the written warnings, the holder of the mining licence has not yet complied with its obligations, then its mining activities will be partly or wholly suspended. The temporary suspension will be

imposed for a maximum of 60 calendar days. If after the foregoing sanctions have been imposed the non-compliance still continues, then, as a last resort, the authority will revoke the mining licence.

It is to be noted that the holder of mining licence whose licence is revoked by the relevant authority is still required to fulfil and complete all of its obligations in accordance with the prevailing laws and regulations. These obligations are deemed to have been completed once the holder of the mining licence obtains an approval from the MEMR or Governor in accordance with its authority.

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ABNR
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Ali Budiardjo, Nugroho, Reksodiputro, usually abbreviated to ABNR, was established in Jakarta in 1967 as a partnership of legal consultants in Indonesian business law. The firm is one of Indonesia's largest independent full-service law firms. The commitment we make to clients is to provide broad-based, personalised service from top quality teams of lawyers with international experience that includes ground-breaking deals and projects. ABNR's reputation has been recognised around the world by independent industry surveys and law firm guides. ABNR was selected, based on its high level of integrity and professionalism, to be the sole Indonesian member of the world's largest law firm association Lex Mundi and of the prestigious Pacific Rim Advisory Council ("**PRAC**").

Ivory Coast

Joachim Bilé-Aka

Bilé-Aka, Brizoua-Bi et Associés

Moussa Traoré

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

There are three main laws, namely Law No.2014-138 dated 24 March 2014, relating to the Mining Code, Decree No.2014-397 dated 25 June 2014, which implements the Mining Code, Order No.2014-148 dated 26 March 2014, which provides for the fees, royalties and mining taxes and the ministerial Decree No.002/MIM/CAB of 11 January 2016 relating to the granting and the renewal procedures of mining titles.

1.2 Which Government body/ies administer the mining industry?

Policy direction is given by the Ministry of Mines and Industry with operational and administrative affairs handled by the SODEMI.

1.3 Describe any other sources of law affecting the mining industry.

- Uniform Act Relating to General Commercial Law dated 15 December 2011.
- Law No.2003-206 dated 7 July 2003 enacting the Tax Code.
- The Law No.96-766 of 3 October 1996 enacting the Environmental Code.
- The Law No.2015-532 of 20 July 2015 enacting the Labor Code.
- The Order No.18/2003/CM/UEMOA amended by the Order No.02/2009/CM/UEMOA of 27 March 2009.

In addition, the Kimberley Process, which has applied since 2003, is a joint government, industry and civil society initiative to prevent "conflict diamonds" from entering the mainstream rough diamond market. Please note that Côte D'Ivoire has been a member of the Extractive Industries Transparency Initiative (EITI) since 2013.

The EITI is an international organisation which promotes and maintains a global standard, assessing the levels of transparency around countries' oil, gas and mineral resources. The EITI Standard consists of a set of requirements that governments and companies have to adhere to in order to become recognised as "EITI Compliant". Countries implement the EITI Standard to ensure full disclosure of taxes and other payments made by oil, gas and mining companies to governments.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The right to conduct reconnaissance is granted by a decree of the Minister in charge of Mines and Industry, to any person or entity which has filed an application which is in line with the legal requirements set under the legislation mentioned above.

2.2 What rights are required to conduct exploration?

An exploration permit is required to conduct exploration. It is granted for four years upon a surface of up to 98,842 acres, by a Presidential decree during the Council of Ministers upon proposal of the Minister in charge of Mines and Industry, to any person or entity that submitted an application which is in line with legal requirements. This permit is renewable twice for a period of three years.

2.3 What rights are required to conduct mining?

An exploitation permit is required to conduct mining.

Pursuant to article 67 of Decree No.2014-397 dated 25 June 2014, the artisanal mining permit is granted by the Minister of Mines and Industry.

Under article 58 of the Decree No.2014-397 dated 25 June 2014, the semi-industrial permit to conduct mining is delivered by the Minister of Mines and Industry for four years.

Finally, the industrial mining permit is granted by a presidential decree during the Council of Ministers upon proposal by the Minister of Mines and Industry, after the provision of suitable evidence of the existence of relevant mineral deposits, as previously indicated in the exploration licence. An investigation as to the convenience or otherwise of the exploitation of the resources – whether it is in "*commodo*" or "*incommodo*" – under Ivorian law, is required prior to the granting of the authorisation.

A person does not need to own or acquire an interest in the land in order to apply for, or hold, a mining permit.

Once this investigation is completed, the entity or the individual is entitled to an exploration permit.

2.4 Are different procedures applicable to different minerals and on different types of land?

The procedure applicable is the same for different minerals and different types of land, except for the following:

- rough diamond;
- raw gold;
- radioactive minerals;
- mineral water; and
- prohibited and protected areas.

2.5 Are different procedures applicable to natural oil and gas?

Yes, the Mining Code does not apply to natural oil and gas. Oil and Gas activities are governed by the Petroleum Code and its implementation decree.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Any type of company, whether foreign or local may apply for and be granted a mining title.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

A foreign entity may apply for a mining title. But upon granting of an exploitation permit, the foreign entity must set up a local entity in order to conduct the mining activities.

3.3 Are there any change of control restrictions applicable?

Yes, changes of control restrictions are applicable. Under Order R09/10/CM/UEMOA, funds may be freely transferred abroad by the Central bank, the post administration and authorised intermediaries, i.e. banks upon provision of the relevant supporting documents.

3.4 Are there requirements for ownership by indigenous persons or entities?

No such requirements exist under the Law, it is merely provided that the Government may promote indigenous ownership.

Nevertheless, in addition of the State ownership right in the share capital of a mining company stated in questions 3.1 and 3.4 above, the holder of a mining permit must set up development funds for the local communities.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The State does have free carry rights. It must have 10 per cent of the share capital of a mining company. This State participation cannot be diluted by any increase of the share capital of the company. Please note that an additional shareholding of the State (up to 15 per cent) can be negotiated between the mining company and the State. Any additional shareholding is contributory.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Yes. Under article 9 of the Decree No.2014-397 of 25 June 2014, the holder of a mining permit who would like to analyse mine samples in a foreign country must first be granted a non-trading exportation licence.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Any individuals or legal entity exporting or importing mineral substances must submit a declaration to the Ministry in charge of Mines and Industry.

On 22 May 2013, the Ivory Coast joined the Extractive Industries Transparency Initiative (EITI), which was created by several bodies in 2003, including countries, companies, civil society organisations and investors, to increase development and to use income derived from mining exploitation in poverty reduction plans in countries that have potential in oil, gas and mining products.

The Mining Code was amended to require permit holders to comply with the requirements imposed by the EITI, as well as the Kimberley Process (since 2003) in relation to illegal diamond trafficking.

The right to export mining products is granted by the mining permit. However, the export of gold and diamonds should only be performed by:

- the mining permit holder;
- import and export buying offices;
- the holders of authorisations to purchase and sell; and
- the recipients of artisanal mining authorisation and semi-industrial authorisations.

For the levies, please note that the holder of an exploitation permit, his affiliated companies and his sub-contractors are exempted from any taxes on the exportation of the mining products.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Under Ivorian law, mining permits (reconnaissance, exploration and exploitation) can be transferred wholly with the prior consent of the Government.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

While it is not permitted to mortgage the reconnaissance and the exploration permits, an exploitation permit may be mortgaged.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

No, these rights cannot be subdivided.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, these rights can only be held in undivided shares.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The holder of a primary mineral may be entitled to explore for secondary minerals if he applies for an extension of its mining permit to other substances.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Yes, but it is subject to the prior authorisation of the mining administration.

6.5 Are there any special rules relating to offshore exploration and mining?

Under article 4 of the Mining Code, the prospecting, exploration, exploitation, possession, processing, transportation, transformation and marketing of minerals, water mineral and geothermal deposits on all the national territory, in the territorial waters, the exclusive economic zone and on the continental shelf and its extension beyond two hundred nautical miles to the internationally recognised conventional limits of the Republic of Côte d'Ivoire, are subject to the provisions of this Act and decrees that implement it.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Reconnaissance and exploration permit: This permit enables the permit holder to conduct exploration activities in connection with the substance for which the permit is granted. Also, the permit allows the holder of an exclusive right to apply for an exploitation permit at any time during the permit's validity period, in the case of discovery of one or more deposits of the specified substance, within the geographical perimeter covered by the permit.

Nevertheless, he cannot conduct exploration on crop fields or hamper the irrigation of those fields.

Mining permit: This permit grants the permit holder an exclusive right to conduct exploitation and marketing activities in connection with the substances for which the permit is granted. This permit includes the authorisation to transport extracted, concentrated substances or their derivatives, as well as the processing of the same substances in addition to their export. This permit also enables the holder to build processing and refining plants for treatment purposes.

The occupation of the surface of land by the holder is subject to mining regulations.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The occupation of the surface of the land is subject to indemnification to the landowner or the lawful occupier. For this purpose, the holder has to conclude an agreement with the landowner or the lawful occupier. Such agreement contains, *inter alia*, the amount of the indemnity payable by the holder to the landowner or the lawful occupier. The Mining Administration is in charge of monitoring the process.

7.3 What rights of expropriation exist?

The Government could perform an expropriation for reasons of public utility. The expropriation is subject to payment of compensation by the Government to the holder.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Before starting any activities, the permit holder must perform an Environmental Impact Assessment (EIA). The permit holder can use the service of an independent expert whose staff shall be composed of a maximum of 33 per cent of foreign employees. The EIA report must be filed with the Ministry of Mines and with the Bureau of Environmental Impact Assessment. The Bureau of Environmental Impact Assessment and the Ministry of Environment have two months from the reception of the EIA report to give their authorisation to the project. If no response is received after a two-month silence, the proposal is deemed to be approved.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Any applicant for a mining title must provide along with the environment impact study a programme for the closure of the mining site.

This programme must clearly provide for the actions to be carried out to deal with waste products and other products rejected by the mine.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The closure of mining operations must be declared first to the Ministry of Mines. There are other obligations such as: the cleaning and rehabilitation of the site; the removal of any mining infrastructures; and the monitoring of the post rehabilitation programme.

To this end, the holder of a mining title must open an escrow account before starting the activities. These obligations are set out in the closure plan, which is drafted on a case-by-case basis depending on the site and the type of exploitation.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes. No exploration or mining operation can be undertaken within a protected zone.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No. A person does not need to own or acquire an interest in the land in order to apply for, or hold, a mining permit on it.

A native title holder may not oppose to the rights of a permit holder. However, as indicated above, he will be entitled to a fair indemnity should he be obliged to abandon his land because of the mining activities.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Apart from the relevant provisions of the Mining Code, the Environment Code and the Medical Code and its implementation decree, there is no specific legislation as such.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Before undertaking mining work, the permit holder has to develop relevant regulations related to safety and hygiene in relation to the proposed works. This regulation will be subject to the approval of the Mining Administration. Once approved, the permit holder will be required to comply with this regulation.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The State-owned company SODEMI is the Registrar of mining titles. It keeps a register and records all mining permits and the identity of their holders.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Any administrative sanction such as the cancellation of the mining title or the closure of the mine can be subject to an appeal before the administrative courts.

(Article 188 of the Mining Law.)

A transaction is possible between the Administration and the holder of the mining title. However, the transaction cannot override a criminal court decision.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

No, there is none.

12.2 Are there any State investment treaties which are applicable?

There is no State Investment Treaty specifically applicable to the mining sector as such. However, it is worth pointing that Cote D'Ivoire is party to various international conventions, notably the 1957 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and, by extension, to the International Centre for Settlement of Investment Disputes (ICSID), the Multilateral Investment Guarantee Agency (MIGA), the Organization for the Harmonization of Business Law in Africa (OHADA from its French acronym).

Finally, Côte D'Ivoire is member of the Extractive Industry Transparence Initiative since 2008 and was certified in 2013.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The permit holder is entitled among others to the following tax advantages and incentives:

(i) exemption of payment of up to 50 per cent of the registration fees for capital increase in a mining company;

(ii) exemption of import duties including value added tax on import of materials, machinery and equipment for mining activities; and

(iii) exemption of taxes on exportation of the mining products.

13.2 Are there royalties payable to the State over and above any taxes?

An *ad valorem* tax is payable per trimester on the company's turnover minus transports and refining costs.

The rate(s):

- varies from 3 to 6 per cent for gold, and such rate depends on the price per ounce of gold (from $1,000 to beyond $2,000);
- 4 per cent for precious metals;
- 3 per cent for precious and semi-precious stones;
- 3.5 per cent for base and non-ferrous metals;
- varies from 1.5 per cent to 3.5 per cent for iron and minerals;
- varies from 1.5 per cent to 3.5 per cent for manganese;
- 4 per cent for solid energetic substances and industrial minerals;
- 3 per cent for phosphate and mineral salts;
- 5 per cent for radioactive minerals; and
- 1 per cent for mineral water.

Furthermore, the Mining Law provides for different taxes depending on the type of the permit granted. Indeed, the holder of a reconnaissance permit, will pay a $1 tax per hectare per year whereas the holder of an exploration permit will pay a tax that varies from $6 to $30 per hectare per year.

Finally, when it comes to the mining permit the tax varies from $2 to $500 per hectare per year.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Yes. The Directive No.18/2003/CM/UEMOA modified by Order No.02/2009/CM/UEMOA of 27 March 2009 of the West African Economic and Monetary Union (UEMOA) on the mining sector.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes. Article 83 allows the holder of quarries to abandon its right.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Yes. The perimeter of an exploration permit is reduced by a quarter at each renewal of such permit.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes, cancellation is one of the administrative sanctions provided by the Mining Code in the case of failure of the permit holder to comply with its obligations.

Pursuant to article 43 of the Mining Code, the holder of an exploration permit who did not provide his feasibility study on time or does not pay the taxes he is supposed to, can have his mining rights cancelled.

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After 15 years of practice, Moussa Traoré has acquired significant experience in advising foreign companies in various sectors of business law. He has notably advised major foreign entities in the acquisitions of stocks/shares in local companies.

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Constituted on 1 April 2000 by Mr. Michel Kizito Brizoua-Bi and Mr. Joachim Bilé-Aka, the international law firm Bilé-Aka Brizoua-Bi & Associés is based in Abidjan whose principal mission, outside the judicial activity, is to optimise the legal and tax security of the projects or transactions of its customers.

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The law firm works both in French and English.

Macedonia

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The general liabilities and obligations of both the concessionaire and the conceding authority are governed by the Law on minerals as *lex specialis*. It regulates the types of concession (for exploration and exploitation) of different types of minerals, the processes for obtaining each of the required concessions and permits and their revocation.

1.2 Which Government body/ies administer the mining industry?

The mining industry is primarily administered by the Ministry of Economy, but the Ministry of Environment is also greatly involved. The formal grant of concession is done by the Government of the Republic of Macedonia pursuant to a formal Decision and by means of signing a concession agreement.

1.3 Describe any other sources of law affecting the mining industry.

Alongside general legislation referring to administrative procedures, taxes and trading companies, the mining industry is also directly regulated by the Law on environment, the Law on waters, the Law on construction, the Law on physical and urban planning, the Law on concessions and public-private partnerships and the Law on waste management.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance may be conducted upon prospective explorations' concession granted by the Government of the Republic of Macedonia. Such right is granted pursuant to a public bidding procedure, for the purpose of determining areas for possible detailed explorations

2.2 What rights are required to conduct exploration?

Exploration may be conducted upon detailed explorations' concession granted by the Government of the Republic of Macedonia. Such right may be granted pursuant to a public bidding procedure or – in cases of potential expanding of an existing exploitation concession – immediately to an actual concessionaire.

2.3 What rights are required to conduct mining?

Mining may be conducted upon exploitation concession granted by the Government and exploitation permit issued by the Ministry of Economy. Such right may be granted pursuant to a public bidding procedure or immediately to the entity that holds the right over the results from conducted detailed geological explorations.

2.4 Are different procedures applicable to different minerals and on different types of land?

There is no strict differentiation in the procedural milestones and general permits, plans and studies regarding different types of mineral or land; however, there are differences in the deadlines, areas, certain geological documentation and other specific terms of the concession that depend on the type of mineral.

2.5 Are different procedures applicable to natural oil and gas?

There is no explicitly diverse procedure prescribed for natural oil and gas exploitation (referred in the law as energetic minerals); however, certain elements, such as deadlines, areas, geological documentation and other terms of the concession differ for energetic minerals in comparison to other types.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Minerals' concession rights may be granted to any legal entity that fulfils all conditions of corporate and financial "good standing" set forth in the Law on minerals, including foreign companies.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes, any of the said entities may be granted a concession. If the entity applying for concession has registered office outside Macedonia, it would need to establish and register its subsidiary locally. No additional conditions are imposed on foreign entities as opposed to indigenous companies.

3.3 Are there any change of control restrictions applicable?

The transfer of control directly over the entity that has conducted the detailed geological explorations and applied for exploitation concession, as well as over the entity holding exploitation concession, cannot be made without a prior written consent of the state Government unless the right of ownership of the share with the concessionaire is acquired by inheritance or the concessionaire is a company listed on the stock market. An acquisition fee of seven per cent of the appraised value of the concession applies.

3.4 Are there requirements for ownership by indigenous persons or entities?

The only requirement relates to foreign entities applying for concession imposing that they need to establish a subsidiary in Macedonia in order to perform any mining activities on its territory. It should be noted that this requirement is not specific only to mining, but it represents a rather general rule of direct business of foreign entities in Macedonia, also prescribed under the Law on trading companies.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, the state has no carry rights or options, nor it may forcibly or *ex lege* acquire shareholding in the concessionaire.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Except general legislation regarding protection of the environment and customs, there are no special regulations concerning processing, refining and further beneficiation of mined minerals. However, it should be noted that all such activities need to be included and described in the main (and additional) mining plans and are thus subject to prior consent by the Ministry of Economy. Also, all processes need to be provided for and pre-approved by the Ministry of Environment pursuant to the applicable integrated ecological permit.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are no restrictions on the export of mineral ore and concentrate. Levies, on the other hand, are part of the concession fee and are calculated as a percentage of the market price of the mineral at hand applied to the quantities of sold concentrate.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The transfer of a mining concession is conditioned by prior written consent of the state Government and a payment of a transfer fee amounting to seven per cent of the appraised value of the concession. The law is silent on the transfer of reconnaissance and detailed exploration concessions, but, by means of analogy, it could be argued that such transfer is permissible but also subject to prior governmental consent. Notwithstanding the last, there is an explicit possibility for transfer of the ownership over the results of the detailed explorations without the necessity of prior governmental consent.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The reconnaissance, exploration and mining concession may be provided as security to raise finance, there is no explicit interdiction thereto. However, the enforcement of such security would be subject to prior approval by the Government and may, especially in the case of a mining concession, be subject to payment of the seven per cent acquisition fee.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

No, such rights may be granted, executed, transferred or revoked as a whole and cannot be subdivided.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

As provided under the law, only one entity may hold a certain concession granted to a certain territory and in reference to certain minerals, with exception to the concession over springs of mineral water that may be used for medical purposes by more entities simultaneously. Moreover, such concessionaire has a favourable position regarding further explorations on areas bordering the territory of its concession.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Yes, the law provides for two possibilities in this direction: (i) the concessionaire may exploit secondary ore as an additional, second product, in which case it would need to obtain second concession for such ore under the general terms and procedure; or (ii) if the other ore is found in low quantities in the primary mineral without it being separated and processed, there is no legal requirement for obtaining separate concession, but the concessionaire would be obliged to pay a concession fee calculated at a percentage of the market price of the secondary ore as per the actual proportion of such ore in the sold primary mineral.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The concessionaire is able to exercise any rights over residue deposits as far as such rights are provided for in the concession agreement, the exploitation permit, any of the mining plan or waste management plan and the A-integrated ecological permit.

6.5 Are there any special rules relating to offshore exploration and mining?

Macedonia is a continental state so the use of any waters for mining purposes, alongside the necessary exploration/exploitation concession and permit, is also subject to specific water management permit and integrated ecological permit, both issued by the Ministry of Environment.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Yes, the concessionaire holds the right to use the surface of the land to which the concession has been granted. It should be noted that, prior to any use of agricultural land for mining or construction activities, such land needs to be converted into construction land by means of consent by the public enterprise that manages the land at hand and pursuant to an agreement with the concessionaire for payment of all related costs. Also, prior to using the land, the concessionaire is obliged to resolve all title issues with the owner or lawful occupier of the plots.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

If the land is owned by a private person, the concessionaire may purchase the land from its owner under commercial terms or may request expropriation if no purchase could be agreed; if the land is owned by the state, it shall merely register its entitlement to use the land for exploitation purposes in the public cadastre. If there has been a lease agreement in place concerning certain land plot owned by the state, the costs of terminating such agreement would be borne by the concessionaire.

7.3 What rights of expropriation exist?

The Law on expropriation provides possibility for two types of expropriation: (i) complete expropriation upon which the State acquires full ownership over the expropriated property; and (ii) incomplete expropriation which only entitles the state or the municipality to right of easement.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The permits for reconnaissance, exploration and mining are granted pursuant to a formal consent of the Ministry of Environment to a revised Environmental Impact Study. Such study refers to the environmental impact and protection measures to be undertaken by the concessionaire throughout performing each separate activity of exploration or mining.

Alongside the said studies, prior to engaging in operation, a concessionaire must also obtain an A-integrated ecological permit, also issued by the Ministry of Environment that regulates the complete operation of the mining facilities, their output and emissions, waste management as well as the manner of re-cultivation of the mine upon expiry of the concession.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The storage of waste is subject to a specific Waste Management Plan, which is prepared by authorised waste management experts. Such plan provides for the construction and technical characteristics of the pit or tailings facility, whichever is most appropriate for the mineral at hand. The construction of such facilities is also to be approved by the Ministry of Environment by means of approval of the Environmental Impact Study prepared regarding the facility and to be based on appropriate construction permit. The law enables the concessionaire to seek enlargement of the concession field for the purpose of constructing waste storage facilities, if necessary.

The closure of the mine, on the other hand, implies secure closure of the tailings facility/pit and the revitalisation of the area. The activities thereto are provided for in the A-integrated ecological permit and are to be done on the expense of the concessionaire. If the concessionaire fails to undertake all prescribed measures, the authorities would activate the bank guarantee provided for this purpose prior issuance of the exploitation permit.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The concessionaire is obliged to undertake all technical measures prescribed in the A-Integrated Ecological Permit and the Waste management plan regarding the closure of any waste storage pits or tailing facilities, to reinstate the excavated land to the pits if possible and to re-cultivate the site restoring it to its state prior mining, if possible. All costs hereto are borne by the concessionaire.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Pursuant to the laws on physical planning and construction, a mine may only be located and may operate on an area in which heavy industry is permitted to be built pursuant to the regional Physical Planning Documentation. Such documentation is prepared and adopted by the State, on the grounds of prior consent of the competent municipality. No zoning or planning requirements apply to activities of prospective or detailed explorations.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

There is no native title recognised in Republic of Macedonia. As to other statutory surface rights, their existence does not impede the realisation of the concession entitlement over the land to any further extent than it would be required for such land to be purchased by the concessionaire or expropriated for the purpose of the mining activities.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Such issues are regulated under the Law on health and safety at work and the applicable by-laws. Of course, general legislation on pension, disability insurance and working ability applies.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

All employees, including managers, are obliged to act under the safety requirements set forth in the internal rules of the company, to take care of their own safety, the safety of other and the safety of the property and to undergo regular annual medical examinations. The law requires for one person to each 20 workers to be designated as responsible for issues of safety and health as the employees' representative. Owners (not employed in the company), as well as any other person on-site, when visiting the company's premises, are obliged to act under the rules for the safety of visitors.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes, all granted concessions are inscribed in the concessions registry kept with the Ministry of Economy. Further on, all land titles are inscribed in the Agency of cadastre whereas all company-connected details are registered with the Central Registry of Republic of Macedonia. Both the inscriptions in the cadastre and in the Central Registry have constitutional effect so that the title rights and the corporate activities are deemed acquired/executed upon their registration.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes, depending on the instance in which a certain decision has been reached, it may either be subject to a two-tier system of remedies (appeal and, further on, an administrative lawsuit) or a one-instance legal remedy directly through administrative dispute initiated by a lawsuit.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Notwithstanding the general principles of free market economy and entrepreneurship, protection of private ownership, protection of foreign investors and the principle of state ownership and protection over all natural wealth of the country, the Constitution does not contain provision that apply to mining and concessions directly and explicitly.

12.2 Are there any State investment treaties which are applicable?

Yes, the country has entered into several investment protection treaties with foreign states, which warrant the mutual protection of investments and free capital flow.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

No, general rules on taxation apply, meaning that the concessionaire would be subject to regular charges of VAT, profit tax and property tax, and to all applicable exemptions thereto. The former does not refer to the concession fees payable by the concessionaire in addition and regardless to the regular taxes, which are also calculated and collected by the State Revenue Office.

13.2 Are there royalties payable to the State over and above any taxes?

Yes, each type of concession is subject to specific concession fee:

- A fee of MKD 60,000–120,000 is payable upon obtaining detailed geological explorations (the amount depends of the type of mineral ore at question).
- An exploitation concession fee, comprised of two portions:
  - (i) a fee concerning the exploited quantities of ore, calculated on quarterly basis as a certain percentage of the market value of the ore at hand; and
  - (ii) a fixed fee, varying from MKD 100,000–240,000 depending on the type of ore, per square kilometre of land under concession, payable annually.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The local units of self-governance have no legislative competitions that may have an affect over or above the national legislation. However, the municipality is involved in certain procedures regarding granting concession, obtaining integrated permits, planning and similar, mostly by means of rendering prior consent or opinion. Such involvement may also be influenced by regional referendums and public consultations.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are no regional rules or protocols relating to the issue. However, the Macedonian Law on minerals provides an obligation for the Macedonian authorities to enable a neighbouring country's authorities and concerned public to review the terms under which an exploitation permit is required, in cases when the mining or waste storage facility has/have over-border impact.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Pursuant to the Law, the concessionaire may, pursuant to a request to the Ministry of Economy, unilaterally terminate the concession agreement if the economic interest in the exploitation activities ceased to exist. If the concessionaire does abandon the concession without appropriate resolution by the State Government the concessionaire would be liable for compensation of all damages occurred due such action, including loss of monetary means, any environmental damages, costs, etc.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

No, there are no such legal obligations, the concessionaire is entitled to exercise its concession right for the whole period of its duration and on the whole territory for which it has been granted.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The Law on minerals sets forth quite a general possibility for the State to revoke the granted concession due to failure of the concessionaire to comply. Such incompliance refers to some of the terms of the Law on minerals and the concession agreement, such as the obligation for payment of concession fee, the obligations to obtain and act under the exploitation permit, the obligations to prepare geodetic surveys, the duties to submit true and accurate reports and similar. Any incompliance with environmental legislation may also present basis for termination of the concession.

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Katarina was born in 1981 in Skopje, Republic of Macedonia. She attended the University of St. Cyril and Methodius, Skopje and later received an LL.M. in Commercial Law with honours from the University of Glasgow, Scotland. She joined Georgi Dimitrov Attorneys in 2007 and became a Partner in 2011.

As a Partner in the company, Katarina is involved in most complex M&A arrangements in the country, leading a team with a vast experience in Legal Due Diligence procedures over entities operating in highly regulated areas. In the last couple of years, Katarina has completed the largest M&A project in the private sector in the country, representing the foreign investor in the procedure for obtaining government approval for transfer of shares with a concessionaire. Katarina is fluent in English and has basic knowledge of the German language.

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Marija was born in 1988 in Prilep, Republic of Macedonia. She graduated at the Faculty of Law "*Iustinianus Primus*" in Skopje with honours, becoming a Frank Manning Award Alumni for the academic year of 2009/2010. She later received an LL.M. in Civil Law from the same faculty.

Marija joined Georgi Dimitrov Attorneys in 2011 and has since acquired a vast experience in commercial and property law, mining and concessions. Skilled in providing overall transaction support and counselling, Marija completed a number of acquisition procedures, with portfolio value of more than 1 billion USD. She has thus also gained experience in relations with the National Bank and other governmental bodies.

Marija is fluent in English and has a certain understanding of German and Italian.

Alongside the managing partner, Marija was member of the experts' team drafting the Policy Paper, and henceforth, the new Law on general administrative procedure in Macedonia.

georgi dimitrov attorneys
ГЕОРГИ ДИМИТРОВ АДВОКАТИ

GEORGI DIMITROV ATTORNEYS was founded in 1996 by the Managing Partner Georgi Dimitrov. Today, the office has 20 employees and it is located in the Skopje city centre.

The firm is highly qualified in providing legal services to companies and investors of international type with complex organisational structure. The investment portfolio of the company's clients in the country amounts to over 650 million EUR. Their expertise is most expressed in the field of mining and concessions, international M&A, competition and commercial law and real estate.

Georgi Dimitrov Attorneys work with a number of clients whom they dedicate all their resources and knowledge to the maximum extent. Hence their long list of satisfied clients among which are Arcelor, Orion Mines, Traxys Capital Partners, Halk Bank, Pro Credit Bank, Volvo, Samsung, Philips, Wiebe, UPS, Microsoft, Deutsche Telekom, SOL Hydropower, Macedonian Telecommunications, Mermeren Kombinat AD Prilep.

Mali

Johanna Cuvex-Micholin

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mali is a member of WAEMU (West African Economic and Monetary Union). The principal laws regulating the mining sector are the following:

- Law n°2012-015 dated 27 February 2012 enacting the mining Code (hereinafter the "**Mining Code**").
- Decree n°2012-311/P-RM dated 21 June 2012 implementing the Mining Code (hereinafter the "**Decree**").
- Regulation n°18/2003/CM/WAEMU dated 22 December 2003 enacting the WAEMU Mining Code.

1.2 Which Government body/ies administer the mining industry?

The following Government bodies administer the mining industry:

- The Ministry of Mines.
- The Mines and Geology National Department.
- The Mines Authority.

1.3 Describe any other sources of law affecting the mining industry.

Other sources of law are as follows:

- The Civil Law n°1987-031 dated 29 August 1987.
- The Uniform Act Relating to General Commercial Law dated 16 May 2011.
- The Environmental Law n°01-020 dated 30 May 2001 relating to pollution and disturbances.
- The Tax Code.
- Labour Law n°1992-020 dated 18 August 1992 as amended.
- Law n°01-075 dated 18 July 2001 enacting the Customs Code.
- WAEMU Treaty for the Monetary Union.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The Mining Code provides for prospection. Any prospection activities require a prospecting licence. Only a legal entity incorporated under Malian law, with at least one Malian shareholder, and which has the required technical and financial capacity, may carry out prospection activities.

Procedure:

The application for an authorisation for prospection is submitted in two (2) copies, one is addressed to the Ministry of Mines and the second is sent by registered letter to the National Director of Geology and Mines (who acknowledges receipt). The administration in charge of mines has thirty (30) days within which to check the admissibility of the request for prospection authorisation and ask for additional information in the event of omissions or amendments in the application file. The authorisation is granted by the Ministry of Mines for a period that may not exceed three (3) years, renewable once and without the reduction of the area. The renewal is as of right if the applicant has complied with the obligations provided in the Mining Code. The applicant will have thirty (30) days within which to answer and to provide any additional information required by the Ministry of Mines. The latter gives its answer within one (1) month following the thirty (30)-day period that the administration in charge of mines has, or following the thirty (30) days granted to the applicant to make its reply.

Rights:

- Exclusive right of prospection within the authorised perimeter for the minerals specified in the permit, with no limit as to depth.
- The permit for prospection may be transferred and assigned.
- The right to the stability of the fiscal and customs conditions during the validity of its titles.

Obligations:

- The holder of the prospection authorisation must present to the Director of Mines, *inter alia*, the work programme and the budget relating to the prospection and the work programme for the next year with the related expenses and period reports.
- The title holder must submit for approval to the Minister of Mines all contracts/documents in which the title holder promises to assign, transfer, or transmit the rights and obligations arising under the prospection permit.
- The title holder must devote at least the amount of the expenditures provided for by the programmes and the budgets that have been approved for the authorised works.

2.2 What rights are required to conduct exploration?

The exploration permit may be held by a legal entity which has the technical and financial capacity to carry out exploration activities. It is a movable right, indivisible and cannot be farmed out. It can, however, be assigned or transferred.

Procedure:

The application for an exploration permit is the same as that for an authorisation for prospection. The exploration permit is granted for a duration of no more than three (3) years, renewable twice for periods that may not exceed two (2) years.

Rights:

The exploration permit confers on its holder:

- Within its perimeter, surface and to an indefinite depth, the exclusive right to explore for the minerals for which it is granted and to freely dispose of the substances belonging to the group for which the permit was delivered.
- The right to the stability of the fiscal and customs conditions during the validity of its titles.
- The right to take samples of minerals extracted during the exploration.
- The right to ask for a mining permit if the holder has proven the existence of a commercially viable deposit during the period of the validity of the exploration permit.
- The right to another exploration permit for any substances other than those included in its own mining title, and which are discovered within the scope of its own exploration permit if its permit is free from any mining titles for this group.

The obligations conferred by the exploration permit are the same as those given by the authorisation for prospection.

2.3 What rights are required to conduct mining?

Mines may only be operated in accordance with the terms of (i) a mining permit, (ii) an authorisation for small-scale mining permit, or (iii) an authorisation for artisanal mining.

(i) Mining permit:

A mining permit may only be granted to the holder of an exploration permit, or of an authorisation for prospection and may only cover an area included within the exploration permit, or within the authorisation for prospection and can only concern the minerals for which these titles were granted.

The mining permit must be held by a company incorporated under Malian law with a free participation of the Malian State of 10 per cent free of any encumbrances. Moreover, the State reserves the right to exercise an option for additional participation of up to a further 10 per cent in the operating company.

Procedure:

The applicant adds to the application for the granting of the mining permit a feasibility study and an environmental impact study.

The National Director of Geology and Mines has fifteen (15) days within which to check the admissibility of the application and can, if necessary, ask for additional information.

The mining authorisation is granted within three (3) months as from the receipt of the application or as from the compliance of the application, subject to the payment of the fixed tax on the granting of the permit.

The application for a mining permit is addressed in three (3) originals to the Ministry of Mines and to the National Director of Mines and Geology together with an acknowledgment of receipt or sent by registered letter.

The mining permit is granted by way of decree and for a period of thirty (30) years, renewable by periods of ten (10) years until available reserves within the permit are used up (article 66 of the Mining Code).

Rights:

The mining permit confers upon the holder:

- The exclusive right to prospect, explore and exploit minerals within the perimeter that has been granted and to an indefinite depth.
- The right to assign and to farm out the mining permit.
- The right to mortgage or pledge the mining permit if the funds borrowed and guaranteed are used for mining activities.
- The right to the stability of the fiscal and customs conditions during the validity of its titles.
- The right, *inter alia*, to freely choose its suppliers and its subcontractors, to freely import goods and any equipment associated with mining activities.

Obligations:

- Every quarter to present to the National Director of Geology and Mines the situation and evolution of the staff, the state of the expenditures incurred for research work, the provisional programme of the production of the current year, and the weight, the nature and the content of the ores extracted.
- To begin mining operations within three (3) years as from the granting of the mining permit.
- To comply with the environmental rules.
- The right to request the merger of several contiguous permits belonging to the same owner.

(ii) Small-scale mining:

The exploitation of a deposit in small-scale mining is subject to the granting of an authorisation.

The permit for small-scale mining may be issued to a legal entity which is incorporated under Malian law and which has the technical and financial capacity to carry out a small-scale mining operation.

Procedure:

The application for a mining permit is addressed in three (3) originals to the Ministry of Mines and to the National Director of Mines and Geology, together with an acknowledgment of receipt, or sent by registered letter.

If all is in order, the authorisation to exploit a small-scale mining operation will be granted by decree and for a period not exceeding four (4) years, renewable by a period of four (4) years until available reserves are used up.

Rights:

- The right to ask for the conversion of the permit into a mining permit (article 61 of the Mining Code).
- The right to transfer, to farm out, to assign and to divide under certain conditions.

Obligations:

The holder of either permit is subject to the following obligations:

- To begin mining works within three (3) years as from the granting of the authorisation.
- To present to the National Director of Mines and Geology each quarter of each year of the situation and evolution of the staff, the state of the expenditures incurred for research work, the provisional programme for the production of the current year, and the weight, the nature and the content of the ores extracted.
- To comply with the health and safety rules and environmental rules.

(iii) Artisanal Mining

Artisanal mining is controlled by the local authority. The authorisation may be issued to an individual, or to a legal entity incorporated under Malian law.

The authorisation will be granted by the local authority and for a period not exceeding three (3) years, renewable by a period of three (3) years and until available reserves are used up.

2.4 Are different procedures applicable to different minerals and on different types of land?

There is a different procedure for quarries and there are two types of quarries:

- **Industrial quarries relate to volume mined per year exceeding 10,000m³**

The application for opening and operating a private quarry has to be addressed to the Ministry of Mines and be sent by registered letter, or to the National Director of Geology and Mines which acknowledges receipt.

The permit is granted by way of an order issued by the Minister of Mines, subject to the payment of the fixed tax of issue, for a period of maximum ten (10) years, renewable for the same or a shorter period until the end of the reserves.

- **Artisanal quarries relate to volume mined per year that does not exceed 10,000m³**

The quarry opening authorisation is issued by the territorial authority of the area in which the quarry is located for a period of three (3) years renewable for the same or a shorter period. The authorisation for the opening of the quarry is subject to the payment of the delivery tax.

There is no procedure applicable with regards to different types of land.

2.5 Are different procedures applicable to natural oil and gas?

The prospection, exploration and mining for hydrocarbons is governed by law n°2015-035 enacting the Petroleum Code dated 16 July 2015.

Exploration: An authorisation for exploration is granted for four (4) years, renewable for two successive periods which cannot exceed three (3) years each.

Mining: The authorisation is granted for a period of twenty-five (25) years, renewable for periods which cannot exceed ten (10) years each.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

To our knowledge, the mining code does not provides for the type of entity which can own these rights. However, only legal entities incorporated under Malian law can carry out mining activities.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

It is to be noted that only a legal entity incorporated under Malian law can hold a prospection authorisation, an exploration or mining permit.

3.3 Are there any change of control restrictions applicable?

The holder must send to the Minister of Mines any contract or agreement by which it entrusts or transfers, or transmits the mining title. The assignment or transfer takes effect only upon the entry into force of the decree of the Minister of Mines.

3.4 Are there requirements for ownership by indigenous persons or entities?

The Mining Code provides that indigenous persons or entities can acquire at least five (5) per cent of shares of a Mining company upon the same conditions as for other private shareholders.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The State has a ten (10) per cent free participation in the mining company and may negotiate for itself additional participation in the capital of the mining company of up to ten (10) per cent more.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The holder of a mining permit has to proceed with treatment, refining or processing of mining products in factories installed in Mali.

That being said, however, an authorisation may be granted by the mining administration to perform these operations outside of Mali.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The holder of a mining permit, or of a small-scale mining exploitation authorisation, can freely export the extracted substances produced.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

We note that except with regards to authorisations for exploration, all the other rights are transferable and assignable.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

In accordance with article 58§3 of the Mining Code, a small-scale mining authorisation can be mortgaged or pledged if the funds borrowed and guaranteed are used for mining activities.

In accordance with article 68 of the Mining Code, the mining permit is a property right, limited in time, which can be mortgaged or pledged if the funds borrowed and guaranteed are used for mining activities.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The authorisation for prospection and the exploration permit are movable rights, indivisible and may not be farmed out. They are assignable and transferable.

A small-scale mining authorisation is assignable, transferable, and can be farmed out. It is also divisible subject to certain conditions provided by the Decree.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Please see question 6.1 above.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

For the prospection authorisation and the exploration permit, upon discovery of minerals belonging to another group, the holder may request the extension of its permit or authorisation to the group, provided that the area of his authorisation or permit is free of title on this group.

For the mining permit, when the presence of a deposit of a mineral from a group other than the group granted to the holder of a mining permit is proven in the area, the holder of the permit must present a feasibility study accompanied by an execution time of this deposit. After that, the substance is integrated into the mining permit.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Residue deposits belong to the holder of the mining title.

6.5 Are there any special rules relating to offshore exploration and mining?

No, there are not.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Please refer to questions 2.2 and 2.3 above.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The title holder is under an obligation to compensate the landowner in the event that the title holder's activities cause damage to the land owner and to compensate the owner or his assignee, in the event of the absence of their consent, if the holder performs work on the property. The title holder will have to expropriate or compensate the person who holds a right over a piece of land if rights of way make impossible the normal use of their land title. There is also an obligation for the holder of an exploration research and mining permit to have the consent of the landowner, or his assignee for activities involving the surface or which have an impact on the latter. Compensation will have to be given to the landowner if the works cause damage.

7.3 What rights of expropriation exist?

Please refer to the answer to question 7.2 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In accordance with the Decree, an application for an authorisation for small-scale mining shall be accompanied by an environmental impact statement and an application for a mining permit shall be accompanied by an environmental impact study.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Any mining company must inform the administration responsible for mines of its intention to close a mine at least three (3) years before the stoppage of the mining works. In this regard, any applicant for a mining permit or for an authorisation for small-scale mining shall provide a closure and a rehabilitation plan of the mine. This plan is submitted for the approval of the administration in charge of mines and classified installations and must be submitted for review every three (3) years when amendments to the mining activities justify an amendment to the plan, or when the administration referred to above finds it necessary to ask the holder of a mining permit or of a small-scale mining permit authorisation to review the plan.

The plan must set out the methods planned for the recuperation of all the components of the mining installations. Further, it must also provide the realisation of the progressive rehabilitation works during the exploitation and not only at the termination of the exploitation.

The mining company must, at the end of the mining phase, realise a global evaluation of the risks associated with the closure of the mine in order to determinate the possible consequences of a failure and to elaborate and to put in place strategies of control in the long-run to manage risks.

Finally, at the closure of the works, the mining company must proceed with the sampling and with the analysis of the ground and of the other materials to verify that they have not been contaminated by any dangerous product.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Please see question 8.2 above.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

No mineral wells or gallery can be opened to the surface, no survey performed more than fifty (50) metres deep in a radius of one hundred (100) metres around, *inter alia*, walled properties or such like or villages as well as communication paths or water pipes (article 78 of the Mining Code). In accordance with article 17 of the Mining Code, a mining title defines a surface the perimeters of which are always orientated in parallel in the east-west direction and along a meridian in the north-south direction.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes, any exploration right or mining right is valid without the consent of the land owner. In case of refusal he may be expropriated in exchange for compensation.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The rules relating to health and safety are governed by the Mining Code.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The holders of mining titles and their subcontractors shall comply with:

- the minimal safety and hygiene rules applicable to exploration and mining works;
- provisions in relation to health risks inherent to mining operation;
- safety rules related to transport, storage and the use of explosives and chemicals; and
- the health legislation and regulations.

Further, and following the start date of the production, they shall contribute to:

- the implantation or the improvement of the sanitary and the school infrastructure within a reasonable distance of the deposit; and
- the organisation of recreational facilities for their staff and their families.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The registration office is the National Direction of Geology and Mines.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is no provision in the Mining Code and the Decree.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Malian Constitution has both a direct and an indirect impact on mining activities.

12.2 Are there any State investment treaties which are applicable?

Mali is a signatory to the ICSID Convention which entered into force in the country on 2 February 1978.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The holders of an exploration permit are exonerated of any taxes, including VAT, contribution or any direct or indirect taxes. However, they are subject, *inter alia*, to the following taxes:

- Registration fees.
- Tax on salaries and emoluments due by the employees.
- Annual surface royalty.
- Charges and social contributions due for the employees.

The holders of a mining permit have to pay, *inter alia*:

- An annual surface royalty.
- Flat rate contribution.
- Charges and social contributions due for the employee.
- Capital yields taxes.
- Statistical royalty.

The holder of a mining permit is exempted from VAT for a period which finishes at the end of the third year following the date of commencement of the production.

13.2 Are there royalties payable to the State over and above any taxes?

As far as we are aware, there is no royalty payable to the State in addition to the ones mentioned above.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Not to our knowledge.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

An exploration or mining company should also take into account:

- The West African Economic and Monetary Union Regulation 18/2003/CM/WAEMU dated 22 December 2003 enacting the Community Mining Code.
- Directive C/DIR3/05/09 dated 26–27 May 2009 relating to the harmonisation of guidelines and policies in the mining sector.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Prospection authorisation: the holder can only totally abandon its authorisation after having informed the Minister of Mines and after having communicated the measures that it will put in place to preserve safety and public health and the measures to cease disturbances caused by its activities. The abandon is effective once accepted by the Minister of Mines.

Exploration permit: the holder can abandon either totally or partially the permit after having informed the Minister of Mines and after having complied with the provisions of the Mining Code. The abandon of the permit is effective once accepted by the Minister of Mines and after the termination of the permit by an order of the Minister of Mines.

Mining permit: the holder can abandon either totally or partially the permit with notice to the administration in charge of mines. The abandon is effective once accepted by the Minister.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Not to our knowledge.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Mining titles can be cancelled or withdrawn by the administration in charge of mines following a formal notice which remains without effect for ninety (90) days for the mining permit and sixty (60) days for the others in the event of the non-compliance of the obligations, conditions or restrictions applicable to the mining title, such as:

- Non-compliance with the budgets and programmes without any justifications.
- Delay or suspension of the research or prospection activity without just cause for more than one (1) year.
- Delay or suspension of mining works for more than two (2) years after the establishment of the mining company, without an authorisation of the administration in charge of Mines and for reasons other than those of the market.
- Serious breaches of the rules relating to hygiene, safety and public health.
- No payment of taxes and fees and royalties relating to mining works.
- Breaches of the obligations relating to environmental conservation and protection and to the rehabilitation of the operated sites.

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Mauritania

Dempsey Law Firm

Christopher Dempsey

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Islamic Republic of Mauritania (hereafter "**Mauritania**") is not a member of the West African Economic and Monetary Union (hereafter "**WAEMU**") and the WAEMU Mining Code does not therefore apply in Mauritania.

The principal laws regulating mining in Mauritania are:

- Law n°2008-011 dated 27 April 2008 enacting the Mining Code, as amended by Law n°2009-026 dated 7 April 2009, Law n°2012-014 dated 22 February 2012 and Law n°2014-088 dated 27 April 2014 (hereafter the "**Mining Code**");
- Decree n°2008-158 dated 4 November 2008, on taxes and mining royalties;
- Decree n°2008-159 dated 4 November 2008 (hereafter the "**Decree**"), on mining and quarry titles;
- Decree n°2009-051 dated 4 February 2009 (amending certain provisions of the Decree); and
- Law n°2012-012 dated 12 February 2012, on mining conventions and approving the Model Mining Convention (hereafter the "**Model Mining Convention**").

1.2 Which Government body/ies administer the mining industry?

The mining industry in Mauritania is administered by the Ministry of Mines and the following departments:

- The Department of Mines and Geology.
- The Department of Industrial Development.
- The Department of Mine Police.
- The Department of Standardisation and Quality Promotion.
- The Mining Registry.

1.3 Describe any other sources of law affecting the mining industry.

- Order n°89-126 dated 14 September 1989, enacting the Code of Obligations and Contracts.
- Law n°2005-05 dated 18 January 2000, enacting the Commercial Code.
- Law n°2004-42 dated 25 July 2004, on the financial relations with foreign countries.
- Law n°2000-045 dated 26 July 2000, enacting the Environment Code.
- Bilateral and multilateral conventions to which Mauritania is a party.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

If works are to be carried out that involve going deeper than ten (10) feet below the surface of the ground then a prior declaration must be made to the Ministry of Mines. Similarly, the taking of geophysical measuring, geochemical prospection or studies of minerals must be declared first to the Ministry of Mines.

The information and documents collected may not, unless so authorised by the entity/person carrying out the prospection works, be made public or disclosed to third parties by the Ministry of Mines before the expiry of a period of three (3) years as from the date on which they were obtained.

The authorisation for prospection grants to its holder the non-exclusive right of prospection within the perimeter for all types of minerals.

The authorisation of prospection is granted by order of the Minister of Mines to any individual or legal entity who applies for it in order to carry out prospection works and who justifies possessing the requisite technical and financial capabilities. The authorisation is delivered for a period of four (4) months following the date of signature of the letter of receipt of the authorisation.

2.2 What rights are required to conduct exploration?

In order to be entitled to conduct exploration activities, an application must be lodged with the Mining Registry.

Procedure:

After checking the admissibility of the application, the Mining Registry assigns an identification code to the exploration permit that has been requested and enters the name of the applicant and the date (and time) of the presentation of the application in a register, which is jointly signed by the applicant (or its representative) and the person in charge of the Mining Registry. A signed copy of the form is given to the applicant by way of a receipt.

The processing of the application cannot exceed fifteen (15) days as from the date of registration.

If the application complies with the provisions of the Mining Code and the Decree of application, the Mining Registry proceeds with its provisional registration on the map of the mining registry, which is

valid for the duration of the investigation. Until a final decision is taken, any new application for an exploration permit covering all or part of the requested perimeter will be refused.

The Mining Registry prepares the draft decree granting the permit, or a letter which refuses the application (giving reasons for such refusal), as appropriate. If approved, the Minister of Mines will submit the draft decree to the Council of Ministers, for the latter's approval. Once the decree has been signed, it is sent to the Mining Registry which will notify the applicant within a period of four (4) months, as from the date of registration of the application. In case of refusal, the letter signed by the Minister is returned to the Mining Registry for transmission to the applicant and the provisional registration of the application is cancelled.

The Mining Registry informs the applicant of the amounts of duties and the surface royalty that must be paid, as well as the fact that such amounts must be paid within seven (7) days of notification. Further, in the letter of notification, the Mining Registry informs the applicant of (i) the amount of the performance banking guarantee, and (ii) the deadline of fourteen (14) days within which to present to the Mining Registry the documentary proof of the performance banking guarantee.

Following presentation of the receipt (within the above-mentioned time limit) proving that the required amounts have been paid, the applicant signs the letter of receipt, which is then the date from which the exploration permit is valid.

The exploration permit is delivered for a period of three (3) years, and it may be renewed twice (and each time for a maximum period of three (3) years).

Rights given by virtue of holding an exploration permit include the following:

- Right of access to the land covered by the exploration permit.
- Exclusive right to explore and research all substances within the scope of what has been authorised by the permit.
- Right to use sand and gravel on land belonging to the State (except if the land is subject to a quarry title held by a third party).
- Right to remove and ship out mineral samples.

Obligations of the title holder:

- Within 90 days of the date of the granting of the permit the title holder must commence the works.
- The minimum cost of the works carried out will be 15,000 UM/km² during the first period of validity of the permit, 20,000 UM/km² during the period of the first renewal and 30,000 UM/km² during the period of the second renewal.
- Submission of an annual report on activities to the Ministry of Mines.

2.3 What rights are required to conduct mining?

Mines may only be operated in accordance with the terms of (i) a mining permit, or (ii) a small-scale mining permit.

The mining permit may only be issued to a legal entity incorporated under Mauritanian law, in which the State is entitled to have a 10% free participation. The State is entitled to acquire a further 10% participation, for consideration.

(i) Mining permit

Procedure: The applicant must submit an application (at the latest) six (6) months prior to the date of expiry of the exploration permit. If the application complies with the Mining Code, the Mining Registry makes a provisional registration. After a favourable examination of the application, the Mining Registry prepares a draft decree and submits it to the Minister of Mines, who presents it to the Council of Ministers, for approval.

The Mining Registry notifies the applicant of the permit (within six (6) months as from the date of registration of the application), as well as the amounts payable. The applicant must present a receipt of payment of such amounts, within fifteen (15) days of receiving notification. The applicant signs the letter of receipt, which is the date of the validity of the permit. The Mining Registry removes the provisional registration and records the permit on the map of the registry and the registry of permits. The Department of Mines and Geology is informed of the permit. The mining permit is granted for a period of thirty (30) years. It can be renewed several times, each time for a period of ten (10) years.

Rights given by virtue of holding a mining permit include the following:

- Exclusive right of prospection, exploration and mining for a defined group of minerals for which evidence of a commercially viable deposit has been provided.
- Right to carry out all activities of concentration, enrichment and sale (assimilated to mining operations).
- The rights and obligations of an owner (subject to restrictions provided under the Mining Code).
- Right of ownership of the minerals extracted within the perimeter of the permit.

Obligations are as follows:

- The title holder is required to commence mining works within twenty-four (24) months of the granting of the permit.
- The title holder must possess the financial and technical capacity to carry out the mining works (assessed by the Department of Mines and Geology prior to the commencement of works). If it does not, the title holder's ability to start mining would be subject to either:
  a) association with a legal entity that does comply with the technical and financial capacity criteria referred to above, within a new Mauritanian company, to which the mining permits would be transferred; or
  b) the mining permit is transferred to an existing Mauritanian legal entity that complies with the technical and financial capacity criteria.
- Payment of duties, taxes and royalties.
- Submission of quarterly and annual reports on mining activities to the Ministry of Mines.
- Declaration to be made in the event of cessation of mining activities.
- Declaration regarding the closure of the mine (approved), including measures to be put in place – the title holder is obliged to guarantee the restoration of the site to its previous state.

(ii) Small-scale mining exploitation permit

Procedure: Application process similar to that for a mining permit. Granted for a period of three (3) years (renewable).

Rights: Gives the title holder the exclusive right to prospection, research, mining and sale of product extracted, within its perimeter, up to a depth of 150 metres.

Obligations:

- The title holder must commence mining works within twelve (12) months.
- As soon as mining operations commence, the title holder must notify the Ministry of Mines of the forecast minimum annual production.

2.4 Are different procedures applicable to different minerals and on different types of land?

There are different procedures applicable for industrial and artisanal quarries. In accordance with article 6 of the 2008 Mining Code (as amended), the following are examples of those substances that are subject to the regime applicable to quarries: sand; silica sand; gravel; limestone; calcite; dolomite; common clay and argillaceous rocks used for the manufacture of clay products; and other minerals found in their natural state as a loose deposit.

It is to be noted that there are different procedures applicable to different types of land. In this respect, article 7 of the 2008 Mining Code (as amended) provides that minerals found in the continental shelf and in the exclusive economic zone are subject to the 2008 Mining Code (as amended). In other cases, the minerals found are subject to the regime applicable to quarries, or to the mining regime in accordance with articles 5 and 6 of the 2008 Mining Code (as amended).

2.5 Are different procedures applicable to natural oil and gas?

There is a quite different procedure applicable to oil and gas, as provided by Law n°2010-033, dated 20 July 2010, enacting the Crude Hydrocarbons Code. Research and/or production of hydrocarbons are carried out upon the basis of exploration-production contracts with the State.

The State is entitled to a 10% participation in the rights and obligations of the contractor in the research perimeter and reserves the right to have a participation of 10% in the rights and obligations of the contractor in the production perimeter.

Procedure: The exploration and production contract results from an invitation to tender. A multidisciplinary technical committee is set up for each invitation to tender to assist the Minister in the evaluation of offers submitted. The exploration and production contract is signed by the Minister on behalf of the State and by the contractor and approved by decree issued by the Council of Ministers.

Rights: The contractor has the exclusive right to carry out research activities within the perimeter, as defined by the contract, as well as production in the event of a commercially viable discovery that has been declared and following approval by the Ministry of the development plan for the discovery.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

The Mining Code does not provide the type of entity than can carry out prospection or exploration activities. However, only legal entities incorporated under Mauritanian law can carry out mining activities.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

As provided in question 3.1, in the context of mining activities, the legal entity must be incorporated under Mauritanian law. However, the entity can be directly or indirectly owned by a foreign entity.

3.3 Are there any change of control restrictions applicable?

In the event of a new majority shareholder, the change in the capital structure of the title holder will be viewed (under the new mining regime) as corresponding to a transfer of the mining title as far as the Mauritanian mining authorities are concerned (and as may be inferred from article 69 of the 2012 Model Mining Convention and article 97 of Decree n°159/2008).

In accordance with article 97 of Decree n°159/2008, prior authorisation from the Mining Registry is required. Whereas under article 69 of the 2012 Model Mining Convention the prior consent of the Minister of Mines is not specifically required, if the transfer leads to a change of more than 10% in the title holder, the Minister of Mines may limit the amount of the transfer, or oppose it altogether.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no requirements for indigenous persons. However, as regards legal entities, see question 3.4 below.

3.5 Does the State have free carry rights or options to acquire shareholdings?

Under article 38(2) of the Mining Code (as amended), the mining permit may only be granted to a legal person incorporated under Mauritanian law in which the State possesses a 10% free participation. Moreover, the State reserves the right to exercise an option for additional participation, for consideration, of up to a further 10% in the operating company.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Processing and beneficiation are considered under Mauritanian mining law as being included within "mining operations" and are not therefore treated separately.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In accordance with article 56(6) of the 2012 Model Mining Convention, the State guarantees the title holder the right to export mineral substances that have been mined, produced or transformed, and to freely sell such substances. However, it is to be noted that, in accordance with article 5 of Law n°2004-42 dated 25 July 2004, relating to financial relations with foreign countries, the exportation of gold and other precious substances is subject to prior authorisation from the Central Bank of Mauritania.

As regards the payments of royalties, article 108 of the 2008 Mining Code (as amended) provides that the title holder pays the royalty on all sales or exports made. The rate of the royalty is set according to substance groups and as detailed in this article. For example, if iron is exported, the rate depends on the price per tonne and varies between 2.5% and 4%. As far as gold is concerned, the rate varies between 4% and 6.5% and depends on the price per ounce.

We would point out that these rates do not apply to sales or exports that are part of a bulk sample. Further, and as regards industrial quarries and small-scale mining, the above rates are subject to certain reductions.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

- **Exploration permit**:

A request for the transfer must be lodged with the Mining Registry. The examination procedure of the application for a transfer is the same as that for the grant of the initial permit, except that the Mining Registry will check the date of signature of the deed of transfer, and the date of grant. Indeed, the request for transfer must be made within 30 days of the date of signature of the deed of transfer. If the outcome of the examination is favourable, the Mining Registry prepares the draft decree authorising the transfer and submits it to the Minister of Mines for signature. After notification of the order by the Mining Registry and upon signing the registration form of the decree authorising the transfer, the Mining Registry informs the transferee of the fees to be paid and the delay within which payment is to be made (i.e., ten (10) days). After presentation of the receipt of payment, the transferee signs the letter of receipt, whose date shall be the date of the transfer of the permit.

- **Mining permit**:

A request for the transfer is lodged with the Mining Registry at least one year prior to the expiry of the permit. The examination procedure for the application for a transfer is the same as that for the granting of the initial permit, with the difference being that the Mining Registry must check the date of signature of the deed of transfer and the date on which it is granted. The transfer request must be made within 30 days of the date of signature of the deed of transfer. If the outcome of the examination is favourable, the Mining Registry prepares the draft decree authorising the transfer and submits it to the Minister for presentation to the Council of Ministers for their approval. Once the decree has been signed, the Mining Registry notifies the transferee of the fees to be paid and the delay within which to do so (i.e., fifteen (15) days). After presentation of the receipt of payment of the fees, the transferee signs the letter of receipt, which date shall be the date of the transfer of the permit.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

In accordance with article 17(1) of the Mining Code, the rights conferred by an exploration permit and a small-scale mining permit are rights of limited duration, which are indivisible and may not be farmed out. Exploration permits cannot be mortgaged or made subject to a pledge.

Pursuant to article 17(3) of the Mining Code (as amended) the rights conferred by the mining permit are real property rights, which are divisible and may be farmed out. A mining permit may therefore be mortgaged but it may not be made subject to a pledge.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

- **Exploration permit**:

In accordance with article 17 of the Mining Code and article 33 of the Decree, exploration permits are indivisible. That being said, article 33 of the Decree provides that during the validity of the exploration permit the perimeter of the latter is divisible, since the title holder is the sole holder of the different perimeters that may be issued from the original permit. The title holder may ask for the division of its perimeter into several polygons at least six (6) months prior to the renewal date.

As regards the procedure, the title holder submits the application form to the Mining Registry. After checking the admissibility of the application, the Mining Registry registers the applicant's name and the date of submission. If the application complies with the provisions in force, the Mining Registry will proceed with the provisional registration of the perimeters requested on the official map of the Mining Registry, which is valid for the duration of the investigation. Thereafter, the procedure is the same as that for the application of the exploration permit. A new independent permit will be granted for each of the perimeters. Surface area royalties and duration will be the same as for the initial permit.

- **Mining permit**:

In accordance with article 17(3) of the Mining Code (as amended), the real property rights conferred by the mining permit are divisible. The title holder of the permit can ask the Mining Registry at least six (6) months prior to the renewal date for the division of its perimeters into several polygons. The procedure that applies is the same as that for the exploration permit.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mining rights are divided into two categories:

- moveable rights which are indivisible; and
- real property rights which are divisible.

Both categories of rights may be brought into a company.

Undivided shares may be held by a joint venture.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The title holder is entitled to explore or mine for the group of substances that has been identified in the permit and only for those substances. Otherwise, separate permits will have to be applied for. In accordance with article 17(3) of the Mining Code (as amended), it is possible to have overlapping exploration permits where the substances concern different groups of substances. No overlapping of mining permits is allowed (even if the substances are from different groups), except if the holder of the first permit gives its consent.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Residue deposits belong to the holder of the mining title.

6.5 Are there any special rules relating to offshore exploration and mining?

There are no specific provisions relating to offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

First, please refer to the answers under questions 2.2 and 2.3 above. In addition, the title holder has the following rights:

- Establishment and operation of power plants, substations and power lines.
- Safety works.
- Preparation, washing, concentration, and the mechanical, chemical or metallurgical processing of extracted minerals, distillation, and the gasification of fuels.
- Storage and deposit of products and waste.
- Buildings for the housing and health of personnel.
- Establishment of all forms of communication channels.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The obligations of the title holder include:

- obtaining the consent of the landowner (except in specified cases);
- purchasing the land if easements (i.e., rights of way) render normal use impossible; and
- compensation to be given to the landowner if the works cause damage.

7.3 What rights of expropriation exist?

As regards the title holder, and in general terms (in accordance with the 2012 Model Mining Convention), the State guarantees that it will take no measures of expropriation or seize assets, except in circumstances where it is justified and in which case the State will first pay the title holder a fair compensation.

Notwithstanding the above, both exploration and mining permits may be cancelled in circumstances specifically provided for in the Mining Code.

As regards landowners, where the title holder and a landowner are unable to reach an agreement regarding either the amount of compensation to be paid or a proposal to buy the land in question, the State may expropriate the land, provided that fair compensation is paid first to the landowner.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

For the purposes of conducting mining operations, authorisation is given on the basis of an environmental impact study.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

In the event of the closure of a mine, the title holder is under an obligation to restore the site to its previous state. For this purpose, provision may be made at the outset of operations. The provision is deductible in the year that it is made, provided that the amount corresponding to the provision is paid into an account that has been specifically opened for the purpose, in the same year or within two (2) months of the end of the year in which the provision is made. This provision may be supported by a guarantee or a bank guarantee and the fees for obtaining the guarantee will be deductible in the year in which it is made.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Upon the cessation of exploration works or at the end of mining operations, the title holder must declare the measures that it intends to take in order to comply with its obligations under the Environment Code and with a view to the restoration of the site to its previous state.

Where a mine is being closed, the title holder must draw up a detailed plan outlining what is going to be done – approval is given by the Minister of Mines following reports/opinions from different authorities, including from the Ministry of the Environment. The title holder guarantees the due performance of the works to restore the site. Such due performance is recorded in an Order issued by the Minister of Mines. The mine will then be deemed to be closed.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

The Mining Code provides for the creation of the following zones:

- "**Promotional zone**": where a national public operator will conduct reconnaissance and exploration to promote the development of the mining industry, with a maximum area of 5,000 km^2 and a maximum duration of three (3) years.
- "**Special zone**": an area with demonstrated interest arising out of terminated, expired, cancelled, surrendered or matured mining titles.
- "**Reserved zones**": where no mining activities are possible.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No (other than the rights of landowners referred to above).

10 Health and Safety

10.1 What legislation governs health and safety in mining?

- The Labour Code.
- The Public Health Code.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The obligations imposed include the following:

- Informing the Labour Inspector of all accidents that occur at work, or of all work-related diseases.
- Making medical services available to employees.
- Use of machinery that has appropriate safety standards.
- Indicating on unsafe products the nature and level of danger.
- Compliance with provisions relating to specific diseases.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes – the Mining Registry in Nouakchott.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The administrative chamber of the Supreme Court hears at first and last instance, appeals on grounds of abuse of power, or on the legality of decisions as regards individual or regulatory acts but also on interpretation and disputes relating to exploration permits.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Mauritanian Constitution has both a direct and indirect impact on mining activities.

12.2 Are there any State investment treaties which are applicable?

Mauritania has signed investment treaties with countries such as Switzerland, Algeria, Tunisia and Belgium.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Yes – as provided for under the mining legislation (and the Model Mining Convention), including:

- Remuneratory tax: 2,000,000 ouguiyas – exploration permit; 10,000,0000 ouguiyas – mining permit.
- Exoneration from the BIC tax for 36 months as from the preliminary production phase (and then no more than 25%).
- Exoneration from the fixed minimum tax on any sale or export for 36 months as from the beginning of the preliminary production phase (and then at half the rate of the fixed minimum tax for the accounting period with a ceiling of 1.75%).

13.2 Are there royalties payable to the State over and above any taxes?

An annual surface royalty (not deductible) is payable:

- for exploration permits, at 2,000 ouguiyas per km² for the first year, and 24,000 ouguiyas per km² for the ninth year; and
- for mining permits, at 50,000 ouguiyas per km².

A mining royalty is payable at an escalating amount (based upon sale price): this being 6.5% where the price is more than $1,800 per ounce.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Laws are national. However, and in the execution of such laws, local town councils can adopt regulations relating to the administration of their respective municipalities, which should be taken into account by mining operators that operate in the territory of these municipalities.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The holder of an exploration permit can abandon its rights in the following situations:

- Pursuant to article 55 of the 2008 Decree, the exploration permit may be terminated at the request of the title holder. The request (which is sent to the Mining Registry) will only be valid if the acknowledgment of receipt for the payment of duty is attached.
- In accordance with article 33 of the 2008 Mining Code (as amended), the holder of an exploration permit can abandon its rights provided it has paid any fees due and provided it has sent a written notice to the competent authority. The exploration permit is deemed abandoned as from the day the abandonment is registered in the public register of mining titles. The notice of the abandonment is published in the Official Journal.
- The holder of an exploration permit can ask the Mining Registry for the reduction of its permit at least six (6) months before the date of the renewal of the latter (article 32 of the 2008 Decree).

The holder of a mining permit can abandon its rights in the following cases:

- In accordance with article 109 of the 2008 Decree, the mining permit may be terminated if the holder sends a request to the Mining Registry at least eighteen (18) months before the expiry date. Pursuant to article 48 of the 2008 Mining Code (as amended), the holder of a mining permit may abandon its rights, if it has sent a written notice to that effect to the Ministry of Mines and it has met the conditions provided by the Mining Code. The mining permit is considered abandoned as from the date of the order issued by the Minister of Mines.
- The title holder can ask the Mining Registry for the reduction of its permit at least six (6) months prior to the date of the renewal of the latter (article 94 of the 2008 Decree).

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

No, there are not.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

In accordance with article 24 of the 2008 Mining Code (as amended) and article 60 of the 2008 Decree, an exploration permit can be cancelled in the following situations:

- In the event of a serious breach of the provisions of the Mining Code by the title holder, the Minister of Mines may, upon the basis of the recommendation of his technical departments, suspend activities within the perimeter of the permit. If the breaches are not remedied within the prescribed period of time, the permit may be definitively withdrawn.
- If the works carried out within the perimeter of the permits are less than the minimum costs provided for in article 26 of the 2008 Decree (i.e., 15,000 UM/km^2 for the first period of validity, 20,000 UM/km^2 during the first renewal and 30,000 UM/km^2 during the second renewal).
- If the annual surface royalty is not paid within the prescribed period.
- If mining activities are carried out in an area covered by an exploration permit.

A mining permit can be cancelled in the following situations:

- If the title holder does not possess the financial and technical capacity to carry out the mining works, it will have to regularise the situation by one of the two solutions described in question 2.3, within a period of six (6) months following the notification by the Minister of Mines that it does not in fact meet the criteria required. Once these six (6) months have been exceeded the mining permit may then be revoked.
- If the applicant for a mining title does not appear before the Mining Registry within fifteen (15) days of receipt of the letter of notification with proof that the taxes owed have been paid (article 85 of the 2008 Decree).
- In cases of serious breaches of the provisions of the Mining Code by the title holder, the Minister of Mines can, based upon the recommendation of his technical departments, suspend activities within the area of the permit. Further, if the breaches are not remedied within the prescribed period of time, the permit may be definitively withdrawn (article 115 of the 2008 Decree).
- If the title holder of a small-scale mining permit fails persistently to comply with the health and safety obligations relating to personnel, and this notwithstanding, measures will be prescribed by the authorities.
- Finally, the permit will be revoked if the holder of a small-scale mining permit has not begun mining activities within a period of twelve (12) months.

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Mexico

RB Abogados

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mexican Mining Law Regulations and Article 27 of the Mexican Constitution regulate mining issues, in particular the exploration, exploitation and beneficiation of minerals or substances which in veins, strata, masses or beds constitute deposits of which the nature is different from the components of land. The Mining Law and Constitution also provide for the mining of: salt directly formed by marine waters from actual seas – surface or underground, naturally or artificially – and salts and by-products thereof, except petroleum and other solid hydrocarbons, liquid or gaseous, which are also found underground; radioactive minerals; substances contained in suspension or dissolution by groundwater, provided they do not come from a mineral deposit different from the components of the land; rocks or decomposed products that can only be used for the manufacturing of construction materials or are intended for this purpose; and products derived from the decomposition of rocks when their exploitation is through opencast work, and the salt comes from salt formed in endorheic basins.

The application of the Mining Law and its Regulations is the responsibility of the Federal Executive (President's Office) through the Ministry of Economy. The following laws govern all ancillary activities to the mining activities: the Mexican Federal Constitution; the Federal Environmental Law; the Federal Water Law; the Federal Agrarian Law (social tenure of most of the lands where mining projects are located); Federal Tax; State Civil Codes applicable on land tenure; the Federal Commercial Code; Federal Army Regulations for the storage, transport and use of explosives; Federal Labor Laws; Municipal regulations for the use of land; and Federal Environmental Norms.

1.2 Which Government body/ies administer the mining industry?

The *Dirección General de Minas* (Mexican Mines Bureau), formed under the Ministry of Economy. Notwithstanding the foregoing, other Government bodies administer the regulatory regimes relating to mining activities: *Secretaría del Medio Ambiente y Recursos Naturales* (Environmental Ministry); *Comisión Nacional del Agua* (Waters Commission); *Secretaría de la Defensa Nacional* (Army Ministry); *Secretaría del Trabajo y Previsión Social* (Labour Ministry); and the States Public Registries of Real Estate and the National Agrarian Registry.

1.3 Describe any other sources of law affecting the mining industry.

All laws and other norms and regulations are mentioned in question 1.1 above. These laws affect the industry as they regulate the activities the mining companies conduct in order to stake, maintain, explore and exploit mining concessions and to process and commercialise minerals. They also regulate environmental aspects in connection with the exploration and exploitation of these mining concessions. Other sources of law affecting the mining industry are: international treaties; administrative regulations on Federal Laws; and Court Resolutions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Understanding reconnaissance as the preceding stage to conducting mining minimum exploration activities prior to the issuance of a mining concession, an informal permission from the land owner where the mining concession is located or where the area proposed to be staked is located is required to conduct such activities. In the case that the areas of reconnaissance are already covered by an existing mining concession, the permission of the existing mining concessionary is also needed.

2.2 What rights are required to conduct exploration?

In order to conduct exploration activities, a mining concession is required covering the proposed exploration area; or a written agreement executed with the recorded owner of the mining concession before the Public Registry of Mines ("PRM") (formalised before a Mexican public notary and registered at the PRM) to explore the area is needed. In addition, permission or an agreement executed with the owner or possessor of the lands where the mining concession is located and an Environmental Impact Manifest authorised by the Environmental Authority are needed.

A mining concession allows its holder to conduct exploration, exploitation, mining and development activities.

2.3 What rights are required to conduct mining?

In order to conduct exploitation activities a mining concession is required covering the proposed exploration area; or the written

agreement executed with the recorded owner of the mining concession before the PRM (formalised before a Mexican public notary and registered at the PRM) to exploit the area is needed. In addition, permission or an agreement executed with the owner or possessor of the lands where the mining concession is located, an Environmental Impact Manifest authorised by the relevant Environmental Authority and permission from the Army Ministry to store, transport and use explosives are needed.

If the mining concessions are located in a forest reserve, a change of use of the land is required.

A water concession is needed for activities beyond the extraction of minerals activities, such as for a processing plant, and a permit for the discharge of water is also required in case such processing activities are conducted in the mine.

2.4 Are different procedures applicable to different minerals and on different types of land?

Different procedures are applicable for radioactive minerals, which are reserved for exploration and exploitation by the Mexican Government. Please also refer to question 2.5 hereinbelow.

Radioactive minerals are reserved for exploration and exploitation by the Federal State. Regarding the types of lands, in Mexico there are: private lands; Government-owned lands (Federal, Estate and Municipal); and social lands (*Ejido* and Communal lands). Please refer to question 7.1 hereinbelow.

2.5 Are different procedures applicable to natural oil and gas?

Gas derived from the exploitation of mineral coal, oil and solid, liquid or gaseous hydrocarbons, are reserved for the exclusive exploitation of the Mexican Authorities.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Only Mexican companies registered before the PRM can own mining rights to explore and exploit mining concessions. In the capital of the aforementioned Companies foreign investment can participate up to 100%. These Companies must be incorporated under laws of Mexico and have their corporate domicile within the country.

Also, social entities which are not commercial Companies and which do not allow foreign investment participation can own mining rights, such as Communities and Ejidos (social land granted to a group of individuals or communities).

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign entities cannot directly own mining concessions but through their Mexican subsidiaries. As mentioned above, the mining industry has no limits on foreigners participating in the ownership of Mexican mining companies. Mexican mining companies may be 100% owned by foreign investors either individuals or entities. Mexican mining companies that are 100% (or less) owned by foreigners are considered Mexican entities and have the same rights as a Mexican doing business.

Mexican companies with foreign investment shall be registered in the Foreign Investment Registry, notify the Mexican Foreign Investment Authority of changes in the company capital, as well as to provide periodical reports (this is mainly for statistical purposes); this has no impact on an application for a mining concession.

3.3 Are there any change of control restrictions applicable?

No, there are not.

3.4 Are there requirements for ownership by indigenous persons or entities?

In the acquisition of mining concessions, if there are simultaneous applications for the acquisition of a mining concession, indigenous communities living where the relevant mining concession is located have preferred rights to acquire the mining concession.

Mexico has subscribed the Convention for Protection of the Indigenous and Tribal People (Convention No. 169 – ILO). In accordance to this Convention, before the starting of mining activities, concessionaries shall consult indigenous communities located in areas where the mining concession is located. However, there are no mechanisms implemented in the Mexican applicable legislation in this regard nor sanctions or penalties imposed if the concessionary does not consult the indigenous community.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are environmental laws, rules and Technical Norms ("NOMS") to comply with in order to build and operate plants for the processing and beneficiation of mined minerals. The Mexican Official Standard NOM-141-SEMARNAT-2003, sets the procedure for preparation, design, construction, operation and post-operation of mine tailing dams.

For the exploration and exploitation of tailings, no mining concession is required.

There are no specific rules under the Mining Law for the ownership of tailings. If tailings result from the ore beneficiated by the mining concession holder, they belong to the mining concession holder. In the case of tailings derived from the beneficiation of ore in a third parties' beneficiation plant, it usually belongs to the owner of the beneficiation plant.

In Mexico there are ancient mining works that produced tailings. Those tailings have no relationship with today's mining concessions; for these, in accordance with civil law (*Código Civil Federal*), they belong to the owner of the lands where such tailings are located.

Furthermore, dumps (*terreros*), in accordance with the Mexican Mining Law, belong to the mining concession holder, unless it is evident that a particular *terreros* comes from another mining concession.

There are no restrictions on the beneficiation of minerals in a different location from where the minerals were extracted.

There are no provisions which prohibit the export of unbeneficiated minerals. Local beneficiators do not have pre-emptive rights to beneficiate minerals.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In general terms, there are no restrictions. All import and export processes require a permit. However, in order to export iron, gold, silver and copper minerals, the producing-exporting company or individual must be registered in a Mining Sectorial Registry for the Exportation of such minerals.

For the exportation of iron, exporters are required to be the owners of the mining concession from where the minerals are extracted.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

There are no restrictions whatsoever on the transfer of mining concessions and rights thereto. Agreements assigning, or generating rights over, mining concessions must be notarised. The transfer of mining concessions or rights thereunder shall produce legal effects against third parties, the Ministry of Economy and other governmental authorities upon their registration before the PRM. Owners of mining concessions shall be only recognised as so, it is, they must be recorded as concessionaires before the PRM.

A transfer or assignment will be null and void when made to an unqualified person under the Mining Law. However, the Mining Law provides that a transfer to a unqualified person will not be null and void when it occurs pursuant to a court resolution ordering the debtor (mining concessionaire) payment of the debt, and provided further that the rights are then transferred to a capable party within 365 calendar days after the date of the issuance of the court resolution.

Government consent is not required in order to transfer a mining concession, or in the event of change of control of its holder or its parent.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Mining concessions and rights can be pledged and even mortgaged as a guarantee to raise finance. All guarantees over rights of mining concessions must be registered at the PRM in order to have full effect before third parties. Creditors often require the registration of the guarantees over mining concessions at the Movable Guarantees Registry (*Registro Unico de Garantías Mobiliarias*).

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes. The co-ownership of a mining concession (the co-ownership granting different percentages to the co-holders) may exist. A percentage of a mining concession may be transferred to a third party through an Assignment Agreement. Co-holders shall have the right of first refusal to acquire the transferable interest.

A mining concession also may be subdivided through an administrative proceeding conducted before the Mexican Mines Bureau.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

If a mining concession is held by two or more parties through a joint venture, the rules of the joint venture shall apply. If no joint venture rules exist, the right is undivided.

The co-ownership of a mining concession may be owned by: Mexican Commercial Companies; Mexican individuals; and Social Entities.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

A mining concession holder may explore and exploit all minerals and/or substances specified in the Article 4 of the Federal Mining Law, except for those reserved to be exploited by the Mexican Government as mentioned in questions 2.4 and 2.5 above.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Please refer to the answer to question 4.1 above.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes, there are special rules. It is necessary to comply with all rules governing shores, lake shores, water deposits and rivers.

Regarding mining activities in the exclusive economic zones and the continental shelf, Mexico is party to several international treaties which determine, together with the Mexican Constitution, the limits of exclusive economic zones, which mining activities shall be governed in accordance with Mexican laws, and activities in the continental shelf to be conducted in accordance with international treaties.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The mining rights covered under a concession do not include direct ownership or possession rights over the surface where a mining concession is located.

The use of the lands may be obtained through direct ownership or possession of lands (e.g. lease agreements/temporary occupation agreements/easement agreements, expropriation through an administrative proceeding).

The Mexican Constitution recognises the following surface rights:

A. *Bienes Comunales* (social land granted to aborigines).

B. *Ejidos* (social land granted to a group of individuals or communities).

C. National Lands.

D. *Zonas Federales* (federal areas, beaches and river causes).

E. Private Property.

The Agrarian Law governs the property rights mentioned in sections A through C above. Said lands can be legally occupied or acquired by private parties as provided in the Agrarian Law.

A concession holder may acquire all property rights mentioned above. Typically, the consideration payable for the lands is agreed between the parties. The Mining Law provides the rules under which a mining concession holder may require the expropriation or the temporary occupation of the land when it does not reach an agreement with the landowner. In case of expropriation by the Mexican Government, the consideration is payable based on an appraisal made by an agency of the Mexican Government.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

In accordance with the Mexican Mining Law, the mining activities should be preferred over any other use or exploitation of the land where the mining concessions are located (except the case of exploration and exploitation of oil and other hydrocarbons and the performance of power generation activities in which activities shall be preferred over the mining activities; and in case a mining concession and an assignation for the exploitation of oil and a mining concession coexist, the mining concession holder must comply with certain technical specifications), therefore the Mexican Mining Law and its Regulations provide the rules under which a mining concession holder may require the expropriation or the temporary occupation of the land when it does not reach an agreement with the land owner. In case of expropriation, the consideration is payable based on an appraisal made by an Agency of the Mexican Government.

The company has the right to explore and exploit the minerals underground because of the mining claim rights granted by the Federal Government (underground rights); surface rights are honoured to third parties as explained in question 7.1. Under the Mining Law, there is no obligation for the holder of a mining right to share any rights over the exploration or exploitation with the landowners or lawful occupier, but somehow a legal consent should exist between the two of them to be able to prove legally to the Environmental Authorities that the company has the legal occupancy of the surface rights and the legal use of the land. It is also important to have the social licence in order to develop the project in harmony with the community.

Please also consider that the Economy Ministry may revoke the temporary occupation agreement or to revert the surface expropriated in the following cases:

(i) if the mining works to develop are not started within the 365 days following the issuance of the relevant resolution;

(ii) if the mining works are suspended for a year or more;

(iii) if the surface granted is destined to a use other than the mining activities;

(iv) if the concessions holders do not pay the consideration determined in the relevant resolution of temporary occupation or expropriation;

(v) if the mining concession is nullified or cancelled; and

(vi) by a Court resolution.

7.3 What rights of expropriation exist?

In accordance with Mexican mining legislation, the owner of a mining concession may require the expropriation of the surface where the mining concession is located under the rules stated in the Mexican Expropriation Law. If the expropriation is of lands owned by *Ejidos* or Agrarian Communities the process is carried out before the Agrarian Authorities and under the rules of the Mexican Agrarian Law. Please also refer to question 7.2 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Each stage requires authorisation and is subject to different requirements.

The prospective and exploration stage requires a Preventive Report where it is justified that activities undertaken comply with the Mexican official standard number 120-SEMARNAT-2010, which establishes the specifications for environmental protection for direct mining exploration activities.

The operation stage requires the submission of an Environmental Impact Statement ("MIA") and a request for authorisation of Change of Use on Forest Land ("CUSTF"), or the requirement to qualify for the benefit of the Secretarial Agreement which establishes the possibility of the unified process through the presentation of the Unified Technical Paper ("DTU").

In any case, the MIA or the DTU must contain a risk assessment because the operation stage is considered a high-risk activity. Also, it is necessary to prove compliance with the Official Norm, NOM-141. In case of the leaching of gold, silver and copper, it is necessary to prove compliance with the NOM 155 and 159.

For the operation stage it is also necessary to register as a hazardous waste generator, and to register a Hazardous Waste Management Plan according to the NOM-157 and a Programme for the Prevention of Accidents ("PPA"). For air emissions issues, a Single Environmental Licence ("LAU") and a Report on Releases and Transfers of Pollutants ("COA") is required. It is also necessary to prove compliance with the Emissions Standards (NOM-043 for particulate matters; and NOM-085 for combustion and other matters).

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Regarding the restrictions for storage of tailings or waste dams,

there is an Official Mexican Rules (Norma Oficial Mexicana) NOM-141-SEMARNAT-2003, which establishes the procedure for characterising the tailings, as well as the specifications and criteria for the characterisation and preparation site, project, construction, operation and post-operation of tailings dams.

These facilities are inspected by authorities quite often; there are no specific periods for such inspections.

In addition, there is an obligation to get a permit from the authority Program for the Prevention of Accidents (PPA); in certain cases, to submit a Risk Assessment, to register the Hazardous Waste Management Plan, to have environmental insurance and to provide notice to the authority in case of emergencies, accidents or loss of hazardous waste.

For the closure of mines, there are two different forms of closure:

1. Closure notification for hazardous waste control.
2. Closing Programme for the operation of the mine.

The first one needs the authorisation of the Contaminated Soil Remediation Programme. The second needs the authorisation of the Closure and Closing Programme.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

There are a number of obligations to comply with for the closure of a mine. However, the specifications depend on the Closing Programme authorised by the Environmental Authority for the specific mine. Basically, the obligations relate to: safety (stability of the lands where mining activities were conducted); the closing of all the entrances to underground mines; and control of hazardous material and waste.

Remediation works are performed in Mexico just in case there is soil contamination. Otherwise, a refurbishing process must be performed. Those responsible for activities that involve generation and management of hazardous materials and waste that cause contamination of sites, are required to carry out remediation works.

If hazardous substances which are considered high-risk activities are used during the exploitation phase, it is necessary to have an environmental risk insurance, which will be required in the corresponding resolution of the Environmental Impact Assessment, as a condition to start operating activities. Three insurance or guarantees may be required: (i) if hazardous substances are used; (ii) if hazardous waste is generated; and (iii) another, contained in the resolutions of the environmental impact authorisation, for the fulfilment of obligations.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes, there are zoning requirements for nature-protected areas.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Please refer to the answer to question 3.4.

The land native titles are described in question 7.1 and for each title there are different types of rights over the land use, such as common land use, parcel land (lots), human settlement or land squatters (possessors).

All the land native titles and surface rights have to be legally acquired or occupied to have access to the land for exploration and/or exploitation for mining purposes when the activities are conducted by a different entity than one of those mentioned in points A and B of question 7.1 above.

The possession by Communities and *Ejidos* groups of the surface where a mining concession is located may be transferred to private entities. The consent of those groups is needed to conduct mining activities where those groups own or possess the lands where mining activities will be conducted.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The principal health, safety and labour laws pertaining to the mining industry are:

- Federal Labor Law.
- Federal Social Security Law.
- Federal Regulations on Safety, Health and Work Environment.
- Official Regulation NOM-023-STPS-2012, Underground and Open Pit Mines – Safety and Health Conditions at Work.
- Official Regulation NOM-032-STPS-2008, Security for underground coal mines.

The principal regulatory entity is the Ministry of Labor and Social Welfare.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The main obligations fall on the operator of the mining project. Usually, the operator is a Mexican mining company which, through the management, must comply with safety and health dispositions. In case of negligence of the management to provide safe and healthy conditions as provided by law, the Board Members may be personally responsible for the damages suffered by workers or third parties in the mine. This responsibility may result in criminal charges.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. The central titles registration office is the PRM, which depends on the Mexican Mines Bureau.

In accordance with the Mexican Mining Law, all acts, agreements and contracts related to the transmission of mining concessions and rights thereto shall be registered before the PRM. Promises to execute an agreement, liens, contractual obligations, royalties affecting mining concessions, etc., must also be registered before this Registry.

In addition, certain agreements for use of the lands where mining concessions are located (temporary occupation agreements/easements agreements, etc.) may be registered before the PRM. The surface covered by such agreements shall be entirely covered by a mining concession in order for these kind of agreements to be registered before this Registry.

Any person may consult the PRM and request, at their expense, certified copies of their entries and documents that relate to them, and of the absence of a registration or subsequent entries in relation to a particular entry.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The concessionaires have a Review Action (an administrative appeal) against the resolutions of the relevant authorities that they may consider illegal. Also, concessionaires have the right to appeal any unlawful act made by the authority before the courts.

In the case that an action was brought to the Mexican Mines Bureau, the Bureau may rule ratifying, revoking or modifying the resolution appealed through the Review Action. This proceeding shall be conducted in terms of the Law of the Public Administration Process (*Ley Federal del Procedimiento Administrativo*).

In the case of proceedings brought by concessionaires through courts, the court is the institution that shall rule about the action made by the authority. A court proceeding is feasible against the resolution of the Mines Bureau of the Review Action.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Article 27, paragraphs 4 and 6, of the Mexican Constitution states that the Mexican Nation is the owner of minerals and substances that, in veins, ledges, masses or beds, constitute deposits the nature of which is different from the components of the earth. The use and exploitation of these minerals and substances specified in the Mexican Constitution and in the Mexican Mining Law, in its Article 4, as previously mentioned, may be granted through a mining concession to Mexican individuals and companies organised under the laws of Mexico.

The Mexican Constitution protects the owners of mining concessions, for all Mexican Authorities, from unlawful acts which may harm the rights of a legal owner of a mining concession.

12.2 Are there any State investment treaties which are applicable?

The Mexican state has several bilateral agreements with other countries that contemplate certain matters related to the mining industry:

i) NAFTA. The purpose of NAFTA and other Commercial Treaties was to eliminate most of the duties imposed to exportation and importation of goods.

Mexico has a temporary importation scheme through which payment of duties are not triggered except that the equipment remains in the country after the term for its temporary importation elapses.

Furthermore, Chapter 3 of NAFTA includes certain benefits for the import of mining equipment against the countries without free trade agreements, which usually are subject to a payment of a tax that ranges from 10% to 20%.

ii) Mexico and Japan Free Trade Agreement. With this agreement, Mexican companies will have zero rate for the exportation of up to 95% of the goods exported to Japan, including, among others, minerals.

Mexico will reduce duties in the upcoming years up to 44% of goods imported from Japan, among others, goods with electronic and steel components.

iii) Mexico and Chile Free Trade Agreement. The agreement provides the opportunity to participate as a supplier of mining industry inputs with a tax rate of 0% between the parties for chemical products for the flotation of minerals, and other processes performed in the mining industry including leachates, depressants, foaming agents, flocculants, sodium cyanide, sodium pentasulfide, among others.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Yes, a special mining surface fee is payable in accordance with the Mexican Mining Law and the Federal Duties Law. Mining concessionaires must pay, on a semi-annual basis, governmental mining fees, the payable amounts of which depend on: (i) the date on which the title document of a mining concession was registered before the Public Registry of Mines (the older the mining concession, the more expensive the governmental fees); and (ii) the surface (number of hectares) of the mining concession (the "Governmental Mining Fees").

Furthermore, in accordance with Article 268 of the Federal Duties Law, holders of mining concessions shall pay, on a yearly basis, the 7.5% of the positive difference that results from the income of the sale of the minerals extracted from a mining concession minus the authorised deductions (the "Governmental Royalty"). Payment of this Governmental Royalty must be made before 31 March of the following year in which the sale of minerals happened.

In accordance with Article 270 of the Federal Duties Law, in addition to the abovementioned Governmental Royalty, mining concessions holders that commercialise gold, silver or platinum shall pay, on a yearly basis, the 0.5% of the income for the sale of such minerals, (the "Extraordinary Governmental Royalty").

Finally, the mining concession holders that do not perform and verify exploration and/or exploitation works during two consecutive years, during the first 11 years of seniority counted from their issuance, shall pay on a semi-annual basis, an additional 50% of the corresponding Governmental Mining Fees in accordance with the quotas stated in the Duties Law or 100% if the concession's seniority is over 11 years.

13.2 Are there royalties payable to the State over and above any taxes?

Please refer to question 13.1 above.

Likewise, in accordance with the Mexican Mining Law, mining concessions may be granted exclusively to Mexican persons or to Mexican companies, and through assignations (for mining concessions, held by the Government, which, once they are explored, are sold to private entities by way of auctions) from the Mexican Geological Service (SGM), the owner of assignations which depends on the Mexican Government.

Once a title document for a mining concession acquired from the SGM is issued, this title document shall state the royalty amount payable to the Mexican Government as consideration for the exploration activities and discoveries made by the SGM. This royalty is payable to the SGM.

Concessionaires that own mining concessions derived from assignations of the SGM must submit semi-annual reports containing works and production in the mining lot covered by the mining concession, and these affect the payment of the royalties payable to the SGM.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not. Exploration, exploitation, and beneficiation of ore activities ruled by the Mexican Mining Law, which is Federal, likewise all mining activities are listed in the catalogue of activities ruled by the Federal Environmental Law; however, ancillary activities of mining companies which are not under the aforementioned catalogue are ruled by local legislations.

Notwithstanding the foregoing, an ecological tax approved in 2016 by the state Congress of Zacatecas started its application in 2017. The ecological tax affects, among others, the Mining Companies conducting exploration and exploitation activities. Zacatecas State is the largest silver producer in Mexico. The Mining Activities and the Environmental Laws are governed by Federal laws; therefore, the Zacatecas environmental tax has been challenged by Companies, Unions and the same Federal Mexican Government; many of the challenge proceedings are still in the process of resolution. Some of the largest mining companies have succeeded in their proceedings against the Zacatecas State ecological tax.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes; in accordance with Article 19 of the Federal Mining Law, a mining concession holder is entitled either to abandon its mining concession or to reduce it. In each case an administrative proceeding should be conducted before the Mexican Mines Bureau.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

No, there are not.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The State may only cancel a mining concession through the corresponding administrative proceeding in the following cases: (i) in case a concession holder exploits minerals or substances not specified in Article 4 of the Federal Mining Law; (ii) in case it does not pay the consideration and the royalties payable to the SGM if it acquired its mining concession from the SGM (please refer to question 13.2); (iii) in case a mining concession holder is no longer entitled to own mining concessions (i.e. a Mexican Company becomes a Foreign Company); (iv) in case the concession holder does not properly comply with the surface fees payable in accordance with the Federal Mining Law and the Federal Duties Law; or (v) in case it does not perform and verify exploration and/or exploitation works through the filing of work assessment reports. Also, please note that the concessions holders that conduct exploitation of coal shall comply with certain additional rules and in case of incompliance of them, the Mexican Mines Bureau may be entitled to cancel such mining concessions.

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Academic Career: Professor at ITAM Law School "Corporations" (1987–1995). Professor "Corporate Law" at ITAM MBA School. Professor at ITAM Law Master's Degree "Corporate and Transactions Law" 2002 to date.

Languages: Spanish and English.

RB Abogados was founded in 1993 by Enrique R. del Bosque, who had previously worked for four years at the Mexican mining group, Luismin, which was subsequently sold to Silver Wheaton and then to Goldcorp. For eight years Enrique R. del Bosque worked as a Corporate and Transactional lawyer at one of the largest Mexican law firms.

Since its foundation, RB Abogados has focused on counselling mining transactions mainly conducted by Canadian mining companies, whilst also specialising in: incorporating Mexican companies to be able to acquire mining properties; conducting due diligences of properties and/or mining companies; structuring deals to acquire mining properties/mining concessions/lands/assets/royalties, and/or mining companies or joint ventures; and structuring credit transactions including granting guarantees to finance projects or raise funds at TSX and NYSE and royalty streaming transactions. The firm also focuses on mining obligations compliance.

RB Abogados' lawyers studied in the most recognised Mexican Universities, many of them started as students in the law firm and now have become very experienced transactional lawyers focused in mining transactions, the rest of the lawyers worked in law firms focused in commercial transactions, foreign investment, corporate law, etc. All of our lawyers speak fluent English and have English writing skills.

Our main objective is to provide legal security to investors participating in the Mexican mining industry (i.e., controlling Mexican subsidiaries, shareholders to the Mexican subsidiaries' parent companies, and banks and financial institutions as lenders/investors).

Chapter 18

Mongolia

Zoljargal Dashnyam

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The main pieces of legislation that govern the mining sector are the Constitution of Mongolia, the Subsoil Law, the Minerals Law, the Common Minerals Law, the Land Law, the Investment Law and the Environmental Protection Laws, and the National Security Law. In addition, various resolutions are issued by the State Great Khural (Parliament) and the Government (Cabinet) of Mongolia for the implementation of these and other laws that affect the mining sector. The most notable resolution is the one enacted by Parliament approving the State Policy on Minerals.

While the Constitution of Mongolia and the State Policy on Minerals lay out the foundation and general state policy and principles towards subsoil and mineral wealth, the Minerals Law governs reconnaissance, exploration and mining of all types of mineral except water, petroleum, natural gas, radioactive minerals and common minerals which are regulated by other specific laws. In particular, the Minerals Law regulates the ownership of minerals, classification of mineral deposits, requirements for minerals licence holders, state involvement and participation in the minerals sector, requirements for taking back a licensed area for reserve, limitations and prohibitions of mineral prospection, exploration and mining, regulations for licensing, term, fee, exploration and mining activities and their requirements, obligations of licence holders (environmental protection requirements, royalties and reporting), licence transfer and licence revocation-related issues, and licence-related dispute settlement mechanisms.

1.2 Which Government body/ies administer the mining industry?

The mining industry is administered by the Ministry of Energy and Heavy Industry ("**Ministry**") and the Mineral Resources and Petroleum Authority of Mongolia, a government implementing agency ("**MRPAM**").

The Ministry oversees the mining industry in its capacity as a central administrative authority for the mining and petroleum sector. However, the MRPAM is the main governmental authority in charge of applying its geological knowledge and information to recommend areas, policies and plans for preservation, conservation, reclamation of geological resources and administration of geological resources and activities. The MRPAM conducts geological and mineral surveys, inspections, studies, research, knowledge development, distribution and service, and cooperation in regard to geology and mineral resources with other countries and international organisations. Most importantly, the MRPAM maintains mineral data and licence information and issues minerals licences.

1.3 Describe any other sources of law affecting the mining industry.

The Law of Mongolia on Special Permits for Commercial Activities, enacted by Parliament on 1 February 2001 (amended from time to time), sets forth the types of licensed activities and governs the issuance, suspension and termination of licences in general:

- The Law of Mongolia on the Prohibition against Exploration and Mining in Headwater Areas, Protected Zones for Water Reserves and Forest Lands ("**Prohibition Law**"), enacted on 16 July 2009, is the implementing legislation. The Prohibition Law strictly forbids minerals exploration and mining in certain areas, namely areas overlapping (i) headwaters of rivers and lakes, (ii) forested areas, and (iii) protected zones for rivers and lakes (please note that, although the Prohibition Law is in effect as of August 2017, the implementation of this law is still pending due to lack of concrete identification of affected areas under Resolution No. 194 of the Government).
- The Environmental Impact Assessment Law, enacted by Parliament on 1 May 2012, requires licence holders to have an environmental impact assessment (general and detailed) conducted prior to commencement of any activities in the licensed area. This is also a pre-requisite for obtaining a minerals licence.
- The Cultural Heritage Protection Law, enacted by Parliament on 15 May 2014 (amended from time to time), requires applicants of land rights for mineral exploration and mining purposes to have an archaeological and palaeontological survey conducted by experts in the relevant area.
- The Regulation on General Requirements of Scoping Study, Pre-Feasibility Study and Feasibility Study, and Accepting a Feasibility Study, approved by the Order No. 074 of the Minister of Mining and Energy of Mongolia, dated 17 April 2012.
- Resolution No. 174 of the Government of Mongolia, adopted on 8 June 2011, setting and approving certain parts of the boundaries of the areas of land in which mineral exploration and exploitation is prohibited.
- Resolution No. 194 of the Government of Mongolia, adopted on 5 June 2012, setting and approving the boundaries of (i) headwater areas for rivers and lakes, (ii) forest reserve areas, and (iii) protected water reserve areas.
- Resolution No. 27 of the Parliament, adopted on 6 February 2007, designating 15 mineral deposits as Strategic Deposits and 39 mineral deposits as potential Strategic Deposits.

Other applicable laws:

- The Criminal Code (2017).
- The Violations Law (2017).
- The General Administrative Law (2016).
- The Anti-Corruption Law (2006).
- The Law on Air Pollution (2010).
- The Law on Air (2012).
- The Law on Natural Resources Use Fee (2012).
- The Customs Law (2008).
- The Customs Tariff and Tax Law (2008).
- The Law on Regulation of Public and Private Interest and Prevention of Conflict of Interest in Public Service (2012).
- The Value-Added Tax Law (2016).
- The Accounting Law (2016).
- The Excise Tax Law (2006).
- The Radio Frequency Law (1999).
- The Stamp Duty Law (2011).
- The Law on Water Pollution Fee (2012).
- The Law on Water (2012).
- The Hazardous and Toxic Chemicals Law (2006).

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Under the Minerals Law, reconnaissance of minerals means carrying out an investigation in order to identify mineral concentration without disturbing the subsoil and includes physical observation, rock sampling, airborne surveys and reviewing related geological and field information.

Any legal entity can have the right to conduct reconnaissance for minerals in areas already under exploration or the rights to a mining licence within the territory of Mongolia, except for reserved areas and special needs land, without a licence.

However, a legal entity proposing to conduct reconnaissance must notify the MRPAM, registering its name and address and a description and location of the area in which they propose to conduct reconnaissance. The Minerals Law prohibits disturbing the subsoil while conducting reconnaissance and any legal entity proposing to conduct reconnaissance must obtain permission from the holders of the land ownership, possession and use rights to enter their land.

2.2 What rights are required to conduct exploration?

The Minerals Law defines mineral exploration as work carried out on and under the earth's surface for the purpose of identifying the location of mineral concentrations and evaluating the quality and determining its economic and commercial feasibility. The Minerals Law strictly prohibits mineral exploration without the relevant exploration licence granted by the MRPAM.

An exploration licence can be granted to legal entities incorporated under Mongolian laws and registered with the Mongolian registration authorities. In other words, only legal entities incorporated in Mongolia can apply for and hold a licence to explore minerals.

According to the Minerals Law, exploration licences can be granted 1) upon a request of the legal entity, or 2) by a way of tendering.

The first and most common method to grant an exploration licence is by an application process. Upon receipt of an application by a legal entity, the MRPAM checks for any overlap of coordinates and other technical matters, and notifies the applicant if there are any problems within 20 business days following the filing. If and when the application is approved, the applicant has 10 business days to pay the applicable fee. An exploration licence is issued in the name of only one legal entity for a term of three years. The exploration licence can be extended by three times each for three years, provided that the licence holder has been in compliance with the terms and conditions of the Minerals Law.

The second method is reissuance of an exploration licence for areas where the licence has been revoked. The MRPAM selects the areas where the licence has been revoked, announcing to the public in a daily newspaper within 30 days of the date of selection that it will accept an application for tender bids. Applicants will be evaluated considering the skills of the applicant's professional staff and the applicant with the highest rating will be granted the licence. If in evaluation of two or more applicants, they have the same rating, the licence will be granted to the entity who applied first.

As required under the Investment Law, foreign state-owned enterprises investing in a legal entity holding a minerals licence need prior approval from the relevant agency if they acquire 33% or more of the shares.

2.3 What rights are required to conduct mining?

The Minerals Law defines mineral mining as the entire range of activities that includes separating and extracting minerals from land surface and subsoil, ore stockpile, waste or tailings, increasing the concentration of its usable contents, producing products, marketing those products, selling and other activities related thereto. The Minerals Law also prohibits mineral mining without a mining licence.

Under the Minerals Law, the holder of an exploration licence has an exclusive right to apply for and obtain a mining licence covering all or any portion of the exploration licensed area. In order to obtain a mining licence, the exploration licence holder must submit to the MRPAM application documents including an application form, environmental impact assessment reports, an environmental protection plan, a map of the mine and some other information.

The MRPAM grants a mining licence for a period of 30 years, which can be extended two times, each for a period of 20 years, each depending on the reserve of the mineral.

If the exploration licence holder fails to submit an application for a mining licence upon expiration of its exploration licence, the mining licence for the area will be put out to tender.

2.4 Are different procedures applicable to different minerals and on different types of land?

Applications for minerals licences, except for natural gas, oil, radioactive minerals and common minerals, are the same. However, the land rights are different depending on the ownership of the licence holding entity. For instance, for an entity whose capital comprises 25%–100% foreign investment, the licence holder can only obtain a land use right. Other entities with less than a 25% foreign investment are considered domestic entities and are eligible to obtain a land possession right. The main differences are that the land possession right holder is allowed to sublease and pledge its land right, while the land use right holders are prohibited from such sublease or pledge.

2.5 Are different procedures applicable to natural oil and gas?

Natural oil and gas licences are granted according to the Petroleum Law under (i) a competitive bidding procedure, and (ii) a direct contracting procedure, with applicants depending on the prospection-funding party and other considerations.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

In general, a for-profit legal entity can obtain reconnaissance, exploration and mining rights. The Company Law provides for two types of companies: limited liability companies ("LLCs"); and joint stock companies ("JSCs"). Both LLCs and JSCs can obtain reconnaissance, exploration and mining rights.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Under the Licensing Law and the Minerals Law, mining and exploration licences can be granted to legal entities incorporated under Mongolian laws and registered with the Mongolian state registration authorities. Therefore, a foreign investor (a foreign person or foreign legal entity) cannot directly apply for and hold any minerals licences in Mongolia. They can only do so by way of establishing a wholly foreign-owned company in Mongolia or investing in a joint venture with a local partner.

3.3 Are there any change of control restrictions applicable?

In general, there are no restrictions applicable to any change of control involving private entities or persons. However, foreign state-owned enterprises investing in an entity operating in the mining sector need prior approval from the relevant government agency if they acquire 33% or more of the shares, as required under the Investment Law.

While not a restriction on change of control, on 10 November 2017, the Parliament of Mongolia passed an amendment to the Law on Income Tax. Pursuant to the amendment, share transfer transactions that have the effect of changing the ultimate control of the mineral licence holding legal entity, and carried out by the any shareholder or similar holding companies of a legal entity holding mineral licences, would trigger a taxable event on the legal entity holding the licence.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no specific requirements for ownership by indigenous persons or entities.

3.5 Does the State have free carry rights or options to acquire shareholdings?

Pursuant to the Minerals Law, the State may hold up to 50% equity interest in an entity that holds a mining licence for a strategic deposit, provided that the reserve was determined as a result of exploration conducted using State funds.

In the event that a strategic deposit reserve was determined as a result of exploration conducted using private funds, the state may hold up to 34% of the equity interest in such strategic deposit.

Parliament has the authority to designate minerals deposits as strategic deposits. A holder of a mining licence in respect of a strategic deposit must have at least 10% of its shares traded on the Mongolian Stock Exchange. However, this requirement has not been enforced in practice.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The Minerals Law obligates the minerals licence holder to give preferential supply of mined, beneficiated and semi-processed mining products to domestic refineries or processing plants that operate in the territory of Mongolia, at market price.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The mining licence holder may export precious stones and extracted metals through the Central Bank of Mongolia. However, export of ferrous and non-ferrous metal (cast iron, steel, copper, brass, aluminium or their alloys, scrap, except recyclable cans of beer or other drinks (beverages), ferrous and non-ferrous metals (casted) in ingots or other primary forms, spare parts made of ferrous or non-ferrous metals and which are no longer usable (for their intended use)) is prohibited.

There is no restriction on the levies payable in respect of mineral exports. The sales value of the exported products is determined at the average monthly prices of the products or similar products, based on regularly published international market prices or determined through recognised principles of international trade.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

There are no restrictions on the transfer of a minerals licence. However, in case a licence dispute is under review by the court, a licence cannot be transferred until there is a final court decision. Under the Minerals Law, a holder of an exploration and mining licence can transfer the mining licence in the following circumstances:

(1) if the licence holder was reorganised by way of a merger or consolidation of the company resulting from such reorganisation;

(2) if more than 20% of the shares of the licence holder are owned by another company, to the parent company;

(3) if the licence holder sold the mining equipment, machinery and documents and it has been proven that the applicable tax has been fully paid for the purchase of the same; or

(4) if the licence holder defaults on its obligations under the pledge agreement or underlying loan agreement, the pledgee may enforce the licence pledge by transferring the licence pledge to itself or a third party which is incorporated under Mongolian law to be the resident taxpayer.

Also, the Minerals Law allows exploration and mining licence holders to transfer a part of the licensed area to persons eligible to hold a licence upon registration with the MRPAM. This also includes transfer under the valid pledge agreement.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes, the Minerals Law allows holders of mineral exploration and mining licences to pledge their licences only to banks and non-banking financial institutions solely for the financing of their investments, development and operations regarding the licensed activity, or the minerals deposit covered by, the licence subject to the pledge. However, mineral licences alone cannot serve as collateral and they must be accompanied by exploration reports, a feasibility study, geological research and other properties that are not prohibited by law for pledge. Pledge agreements for mineral licences must be registered with the MRPAM in order to be effective.

The Minerals Law does not specify whether banks and non-banking financial institutions need to be Mongolian entities. In practice, Mongolian entities often grant security over their minerals licences in favour of foreign banks and the MRPAM registers such pledges.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Pursuant to the Minerals Law, a holder of a minerals licence may transfer a part of the licensed area to persons eligible to hold a licence in line with conditions, requirements and procedures set forth in the Minerals Law. In this case, area, size and position of the transferred and remained parts of the licensed area must all comply with the relevant conditions and requirements.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

According to the Minerals Law, one licence may be granted to one legal entity only. Minerals reconnaissance, exploration and mining rights cannot be held in undivided shares.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Under Mongolian law, all minerals must be included in the technical and economic feasibility study with respect to the mine and the mineral reserve must be registered in the state registry at the MRPAM. However, a holder of a mining licence may conduct exploration work within the licensed area. A holder of a mining licence will have to notify the MRPAM of any amendment to the feasibility study and to have their approval for any other minerals not covered in the feasibility study.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

As explained in question 6.3 above, all minerals must be included in the technical and economic feasibility study with respect to the mine. In other words, this is subject to the prior approval of the MRPAM.

6.5 Are there any special rules relating to offshore exploration and mining?

There are no special rules in Mongolia relating to offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

A holder of a minerals licence does not automatically hold a right to use the surface of land, so it must acquire a land use right by obtaining a land right certificate and entering into a land use agreement with the relevant governor prior to commencing its mining operations.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The general obligations of the holder of a minerals licence are as follows:

- the licence holder is obliged to pay land use fees and other fees as provided in the land use agreement;
- the licence holder must conduct reclamation on the land;
- the licence holder must comply with the environmental regulations; and
- in order to ensure that the mining licence holder performs its obligations that are described in the laws and regulations, it must deposit monetary funds of no less than 50% of its annual budget for environmental protection into a special bank account established by the Ministry of Environment and Tourism before the relevant year's mining work has started.

7.3 What rights of expropriation exist?

Under the Land Law, the (Central) Government and local government may take land for public use or special needs in exchange for negotiated compensation and after entering into an agreement with the holder of the land possession or use right.

One of the potential risks faced by mineral exploration and mining licence holders is that the surface land area can be re-taken by the State as a special needs territory for up to five years. Consequently, the MRPAM must in this case terminate the mineral exploration or mining licence, provided that the licence holder has obtained and agreed to compensation.

Under the Constitution of Mongolia and the Land Law, the Parliament, Government, and local governments all have the authority to re-acquire land for special needs. Within 10 business days after the relevant level of authority makes its decision to re-acquire land for special needs, it must notify the MRPAM.

The authority that made the decision to re-acquire land for special needs and the affected minerals licence holder must negotiate the amount of compensation and the timing for the payment of the compensation. If the parties fail to reach an agreement, then the MRPAM shall determine such on the basis of an authorised independent body. The licence holder has the right to continue its operations if the relevant authority failed to pay the compensation within the specified timing.

When taking the land for state special needs, the Government must provide at least one year's notice to the land right holder, enter into an agreement and pay the price for the immovable property built on the land re-acquired by the Government. The price of the immovable property is determined by the Government and the land right holder on the basis of the then current market price and, possibly, an independent property valuation.

The Government can acquire the land for special needs for any of the following grounds or reasons:

(1) as a state special protection area;
(2) as state border strip land;
(3) for ensuring state defence and security;
(4) for providing land to foreign diplomat missions and consulates, and representative offices of international organisations;
(5) as land for scientific and technological tests, experiments, and sites for regular environmental and climatic observation;
(6) as inter-province pasture land;
(7) as a pasture reserve area;
(8) as contracted oil exploration sites to be utilised in compliance with production sharing agreements;
(9) as a free trade zone;
(10) for constructing and using nuclear facilities;
(11) for artisanal mining;
(12) for border ports;
(13) as an area designated to develop and implement large-scale nationwide construction and infrastructure projects; and
(14) as a centralised disposal area for hazardous items.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Under Mongolian law, applications for a licence for the use of natural resources, extraction of petroleum and minerals, and possession and use of land for business purposes and approval for any other projects are subject to a prior 1) general environmental impact assessment, and 2) archaeological, palaeontological and ethnological preliminary survey.

General environmental impact assessments for all new projects and existing plants, factories, services and building facilities that are planned to be renovated and expanded and projects that will make use of natural resources in one way or another must be performed by an assessment expert, who must complete the assessment within 14 working days and issue a formal opinion as to whether:

(a) the project should not be permitted or rejected on the grounds that it is likely to cause considerable harm to the environment by virtue of its proposed technology, technique and activities, that it is absent in land management planning, that its activities are inconsistent with the state policy and the strategic assessment opinions or relevant legislation;
(b) the project may be implemented without a detailed environmental impact assessment subject to specific conditions; and
(c) the project requires a detailed environmental impact assessment.

Pursuant to the Environmental Impact Assessment Law, a detailed impact assessment must be prepared by an authorised Mongolian legal entity. Such entity must prepare a report presenting findings of the detailed environmental impact assessment and develop an environmental management plan.

Pursuant to the Cultural Heritage Protection Law, preliminary prospecting and research must be carried out by professional palaeontological, archaeological or ethnological scientific organisations for assessments prior to the issuance of land rights for economic purposes associated with settlements, constructions, construction of new roads, establishment of hydro power plants, agriculture, mineral exploration and mining.

If palaeontological, archaeological or ethnological preliminary prospecting concludes that there is a risk to cultural heritage, this shall provide a basis to halt the activity of the legal entity.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

There are no specific requirements for storage of tailings and other waste products stated in the Minerals Law. However, tailings and waste management must be an integral part of the technical and economic feasibility study with respect to the mine and it must be reviewed and approved by the Minerals Council of the MRPAM.

For the closure of mines, according to the Environmental Impact Assessment Law, a licence holder must prepare a mine closure plan at least three years prior to the mine closing and submit it to the Ministry of Environment and Tourism for review. Following the submission of a mine closure plan, a licence holder must inform the Ministry of Mining and Heavy Industry of the mine closure at least one year prior to the mine's planned closure.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

As for obligations of a mining licence holder, they must take preparatory measures pursuant to regulations prior to the closure of a mine. A mine can be closed in whole or in part and must implement the following measures:

(1) take all necessary measures to ensure safe use of the mine area for public purposes and reclamation of the environment;
(2) take preventive measures if the mine claim is dangerous for public use; and
(3) remove all machinery, equipment and other property from the mining area except as permitted by local administrative bodies or the specialised inspection authority.

Furthermore, the licence holder must prepare a detailed map of an appropriate scale showing dangerous or potentially dangerous areas created by mining operations by placing necessary warnings and markings in the vicinity of the mining claim and must submit the map to the specialised inspection authority and the local Governor.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes. Pursuant to the Minerals Law, within three months following the registration of the mining licence in the register of licences, the mining licence holder must establish the boundaries and mark the approved mining with permanent markers in accordance with the technical requirements specified by the professional inspection agency. A person authorised by the MRPAM must perform the establishment of the boundaries of the mining area, who then files a report with the MRPAM upon completion.

A mining licence holder must preserve the boundary markers in good condition and is obliged to adjust and remove markers in case of a rearrangement of the boundaries following decisions of the MRPAM.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Pursuant to the Subsoil Law, a holder of a minerals licence has a duty not to interfere in any way with the rights of others to own, possess and use land. Any damages caused to others due to such interference must be compensated by the holder of the minerals licence.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Law of Mongolia on Safety and Hygiene is the main legislation that governs labour safety and hygiene relations in Mongolia. Any company and employer conducting business in Mongolia must comply with the standards and requirements applicable to industrial buildings and facilities, machinery, mechanisms, equipment, medical checks, fire safety and professional training, among others.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Minerals Law requires minerals licence holders (both exploration and mining alike) to undertake activities to ensure the safety and hygiene of its employees and the safety of the local residents.

As a general rule, the minerals licence holder must take the following actions and measures in relation to safety and hygiene:

- approve and implement rules, regulations and procedures in accordance with the nature of the workplace;
- undertake activities to protect the lives and health of employees and preventative measures with regard to toxic and dangerous chemical substances, explosives, explosive devices, radioactive and biologically active substances and their impact;
- arrange for employees to receive preliminary and scheduled medical check-ups necessary for and related to the performance of their work;
- provide employees with special garments and protective equipment, which are fit for their working conditions and performance of their work, free of charge;
- create conditions in which chemical, physical and biological factors developed in the course of industrial operations shall not affect labour, hygiene and the environment and to take technical and organisational measures for creating such conditions;
- stop immediately if any conditions emerge in the course of industrial operations which could impose a danger to human life and health and to eliminate such dangerous conditions immediately;
- introduce labour safety and hygiene management for protecting employees from accidents, damages and diseases which could occur in the course of industrial operations;
- make risk evaluations for the purpose of elimination and control of possible danger and accidents in a workplace;
- conduct training on safe operations, conduct yearly examinations of labour safety and hygiene, give instructions on safe operation and prevent employees from working if they did not attend training, receive instruction or take examinations;
- keep a numerical record on industrial accidents, acute poisoning and occupational diseases and report these to relevant organisations; and
- pay compensation, in accordance with laws and legislation, to employees who have lost the ability to work due to industrial accidents, occupational diseases and acute poisoning.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The MRPAM keeps and maintains a central database of minerals licences and transfers and pledges of minerals licences. The MRPAM also maintains records of pledges, transfers, payment of annual licence fees and changes in coordinates.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes. The Administrative Court of Mongolia deals with any matters relating to public law outside of purely constitutional matters. Under the Law on Procedure for Administrative Cases, the Administrative Court has exclusive jurisdiction over all disputes arising out of actions of public administration and directed out to citizens or businesses. Any disputes arising from or in relation to an administrative act and which may affect a person's rights, may be challenged before the Administrative Court.

The General Administrative Law requires that pre-hearing of the administrative case be held by the MRPAM before commencing the actions at the Administrative Court. For complaints of a citizen or legal entities against action taken by the government or its agency or officials, a direct supervising administration or officer should be the one to decide whether the action is lawful or not before it goes to court.

If a mining licence holder asserts that any public administration or official's act or action (oral, written form of decree, order, decision and regulation) breached its lawful right, a licence holder may submit a complaint to the direct higher officials or administrative tribunals above it within 30 days upon receipt of the decision or inaction. If the dispute is still not resolved by the direct higher officials or administrative tribunals, or a licence holder does not accept a decision on the dispute, a licence holder may initiate administrative court proceedings against the MRPAM.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

There is no specific clause in the Constitution that would directly impact the rights to conduct reconnaissance, exploration and mining. However, Article 6.1 of the Constitution states that the land, its subsoil, forests, water, fauna and flora and other natural resources in Mongolia shall belong exclusively to the people and be under State protection.

12.2 Are there any State investment treaties which are applicable?

Yes, there are. Mongolia is a party to Bilateral Investment Treaties which provide standards of protection for foreign investors with 39 countries, those being Austria, Belarus, Bulgaria, Canada, China, Croatia, Cuba, the Czech Republic, Denmark, Egypt, Finland, Hungary, India, Indonesia, Israel, Italy, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lithuania, Malaysia, the Netherlands, North Korea, the Philippines, Poland, Qatar, Romania, Russia, Singapore, South Korea, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, the United Arab Emirates, the USA and Vietnam.

By definition of such treaties, investment comprises any kind of assets, including movable and immovable property, shares, copyright, industrial property rights, trademarks, know-how and trade names, among others.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There is no special rule applicable to taxation of exploration and mining entities. According to the Minerals Law and the Business Entities Income Tax Law, both exploration and mining entities are subject to a 10% corporate income tax for annual profit below 3 billion Mongolian Togrog or a 25% tax for profit exceeding 3 billion Mongolian Togrog plus 300 million Mongolian Togrog.

13.2 Are there royalties payable to the State over and above any taxes?

Under the Minerals Law, a holder of a mining licence must pay a royalty. There are two types of royalties calculated on the basis of the total sales value of the minerals extracted:

(1) The standard flat rate royalty

The standard royalty rates are 2.5% for coal sold in Mongolia as well as gold sold to the Bank of Mongolia and its authorised entities, and 5% for all other minerals, i.e., coal sold abroad, gold sold at the mine, or shipped for sales from the mine, or used by the licence holder.

(2) The surtax royalty

The surtax royalty is imposed on the total sales value of 23 types of minerals in addition to the standard flat rate royalty.

The rates of the surtax royalty vary from 1% to 5% for minerals other than copper. For copper, the surtax royalty rates range between 22% and 30% for ore, between 11% and 15% for concentrates, and between 1% and 5% for final products.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

There are no such rules.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

We are not aware of any such rules.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes, there are. Pursuant to the Minerals Law, a holder of a minerals licence may relinquish all or part of the mining area.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

A licence holder may voluntarily submit an application to be approved by the Ministry of Mining. The main document required to relinquish a mining area is evidence that the licence holder has met the environmental obligations and the requirements for mine closure and it must be attached to the application.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Pursuant to the Minerals Law, the MRPAM has the authority to terminate a minerals licence in any of the following events:

(a) the licence holder is no longer registered in Mongolia;

(b) the licence holder has failed to pay the licence fees within the specified period;

(c) the licence holder has failed to spend or the expenditure is lower than the minimum amount for exploration work;

(d) the State has re-acquired the exploration or mining area (i) for reserve in order to undertake geological studies, prospecting or exploration using State funds, (ii) for special needs, or (iii) as a result of the statutory prohibition of minerals exploration or mining in the licensed area and the licence holder has been fully compensated;

(e) the ministry in charge of the environment has issued an opinion based on the local government proposal in respect of the licence holder's failure to perform its obligations to reclaim the environment;

(f) it is determined that there is a cultural heritage in an exploration site; or

(g) the licence holder has breached the agreement concluded in accordance with the Prohibition Law.

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GTS ADVOCATES
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GTs Advocates LLP is recognised internationally and domestically as one of the leading law firms in Ulaanbaatar. What distinguishes GTs is the hard-working team of lawyers who are always on the offence for knowledge and greater experience. The firm has risen in the rankings to a Band One firm for Mongolia focused on General Business Law in 2015, 2016, 2017, and 2018. GTs provides a full range of legal advisory services focalised in five key areas including corporate and M&A, finance and capital markets, all stages of project finance (encompassing mining, infrastructure and energy), commerce and real estate, and lastly, litigation and arbitration. As a law firm with wide-ranging experience with far-reaching clients, GTs has cultivated a consistent and instinctive pragmatism that is sensitive of cultural, social and legal differences.

Mozambique

Zara Jamal

JLA Advogados (Jamal, Langa & Associados) in collaboration with Abreu Advogados

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The mining sector is regulated by:

(i) Mining:
   a. Mining Law, Law no. 20/2014, of August 18; and
   b. Decree no. 31/2015 of December 31.

(ii) Environment:
   a. Law no. 20/1997, of October 1; and
   b. the Regulation for Environmental Matters in respect to the Mining Activities, Decree no. 26/2004, of August 20 (amended by Decree no. 42/2008 and Ministerial Diploma no. 189/2006).

(iii) Tax:
   a. Law no. 28/2014, of September 23 – amended by Law no. 15/2017, of December 28; and
   b. Decree no. 28/2015, of December 28.

(iv) Technical Safety: Decree no. 61/2006 of December 26.

(v) Foreign labour: Decree no. 63/2011 of December 7.

(vi) Land:
   a. the Land Law, Law no. 19/98, of October 1;
   b. its Regulation, Decree no. 66/1998, of December 8 – amended by Decree no. 43/2010 and Decree no. 1/2003); and
   c. Decree no. 31/2012, of August 8.

1.2 Which Government body/ies administer the mining industry?

There are four bodies administering the mining industry.

■ **Legislative authority – Council of Ministers**

The mining sector is legislated by the Council of Ministers, a branch of the Mozambican government comprised of the President, the Prime Minister and all other Ministers. They also award concessions and mining contracts.

■ **Direct Regulator – Ministry of Mineral Resources and Energy (MIREME)**

MIREME implements the governmental policy set for the mining sector and supervises the National Mining Institute (INM) and the National Mining Directorate (NDM). These latter entities:

(i) review, approve, regulate and monitor operation of new mining projects;
(ii) develop and propose relevant mining policies;
(iii) manage the allocation of concessions and licences;
(iv) supervise public procurement processes;
(v) perform technical and economic studies to open new mines;
(vi) decommission mines;
(vii) publish guidelines on public and private sector participation;
(viii) moderate and minimise the potential social environmental impact of mining activities;
(ix) enforce health and safety standards;
(x) support, review and endorse mining sector activities carried out by other institutes; and
(xi) promote the international exportation of Mozambican minerals and metals.

■ **Supervisory Entity – Inspectorate-General of Mineral Resources**

This institute ensures compliance with regulations regarding mining activities and technical safety.

■ **Extraction Supervisor – High Authority for the Extractive Industry**

This yet-to-be-operational entity supervises the extraction industry.

The Constitution and Land Law state that all land belongs to the State and cannot be sold, traded, mortgaged, pledged or otherwise disposed of thus titles for the use and exploitation of land (DUATs) are required for all economic activities. DUATs are not attributed based on the land or minerals to be explored, rather the relevant authority depends on certain factors, such as:

(i) Mining Concessions within approved urbanisation plans – the Municipal Authorities.
(ii) Mining concessions for areas ≤ 1,000 ha – the Provincial Government.
(iii) Mining concession in areas between 1,000 and 10,000 ha – the Ministry of Land, Rural Development and Environment.
(iv) Mining concessions in areas > 10,000 ha – Council of Ministers.

1.3 Describe any other sources of law affecting the mining industry.

The following laws apply alongside those already mentioned under question 1.1 above:

(i) The Constitution of the Republic of Mozambique, 2004.
(ii) Law no. 20/97, of October 1 – "Environmental Law".
(iii) Resolution no. 21/2004, of May 16 – "Policy of Corporate Social Responsibility for the Industry of Extraction of Mineral Resources".

(iv) Decree no. 20/2011, of June 16 – "Regulation on the Commercialisation of Mineral Products" – amended by Decree no. 25/2015, of November 20.

(v) Decree no. 94/2014, of December 31 – "Regulation on Waste Management".

(vi) Ministerial Diploma 189/2006, of December 14 – "Rules and Directives for Environmental Management for Mining Activities".

(vii) Law no. 23/2007, of August 1 – "Labour Law".

(viii) Law no. 15/2011, of August 10 – "Mega-Projects and Public-Private Partnerships (PPP) Law".

(ix) Decree no. 16/2012, of June 4 – "PPP Regulation".

(x) Law no. 28/2014, of September 23 – "Law on the Specific Regime of Taxation and Fiscal Benefits for Mining Operations".

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The Reconnaissance and Exploration Licence, established in the Mining Regime, permits titleholders to access the area and overlaying land, to carry out reconnaissance and exploration work, obtain and select samples, and make use of all existing natural resources (such as timber, water, etc.), as required for successful mining operations. This licence does not allow full mining activity, being limited to reconnaissance and exploration operations for which sampling (and eventual commercialisation of such samples) is admissible.

2.2 What rights are required to conduct exploration?

All land in Mozambique is the property of the State, and by extension so are its contents, *e.g.* natural and mineral resources. Thus exploration and mining of mineral resources requires governmental authorisation, concession or licence, allocated via public tenders or the grant of mining titles. Under the Mining Law, only Mozambican persons (either legal or natural) may acquire titles upon demonstration of their financial and technical capabilities.

The Government may open public tenders for mining activities and operations in partially or wholly protected areas that: (i) were previously subjected to geological studies or mining activity; (ii) show potential for mineral resources; and (iii) were reserved for mining.

Alternatively, mining titles are granted considering the benefits to the State and priority order, often through Prospecting and Exploration Licences (PELs) and mining concessions. The PEL grant commits the holder to:

(i) submit annual reports detailing the previous year's activities and expenditure and the programme and budget for the upcoming year to the Government;

(ii) interact respectfully with local communities; and

(iii) pay damages resulting from mining activities to DUAT holders.

2.3 What rights are required to conduct mining?

Mining concessions and contracts are the sole licences permitting complete mining operations, including the right to use existent mineral resources (*e.g.* timber, water, etc.). Some derivative natural resources might not be included, *e.g.* Coal Bed Methane ("CBM") extracted from coal may not be extracted unless the mining rights are held alongside a CBM (Oil & Gas) concession.

2.4 Are different procedures applicable to different minerals and on different types of land?

The Mining Regime does not differentiate the procedures based on the diversity of minerals. However, minerals able to generate significant volumes of transaction, impacting the economy, will likely require the execution of a mining contract, subject to a tender.

2.5 Are different procedures applicable to natural oil and gas?

There is a cross-over with laws related to land, labour and investment, but a specific regime was created for natural oil and gas, namely Law no. 21/2014, of August 18 (the "Petroleum Law").

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

The Mining Law grants reconnaissance, exploration and mining rights to natural persons and legal persons incorporated and registered in Mozambique.

Additionally, these legal persons may be granted DUATs prior to the approval of the aforementioned rights.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign entities must establish legal representation in Mozambique, under the Commercial Code, as titles can only be held by Mozambican persons, defined in the Mining Law as registered in Mozambique, domiciled therein, with the majority of its share capital held by Mozambican nationals.

There are no special rules for foreign applicants, but they must comply with immigration laws, like Decree no. 108/2014, of December 31, the "Regulation of the Legal Regime applicable to Foreign Citizens regarding Entry, Stay and Departure from the Country".

3.3 Are there any change of control restrictions applicable?

The Mining Law requires titleholders directly or indirectly transferring their shareholding to request Governmental prior authorisation; irrespective of the amount. Failure to strictly comply with the transfer requirements results in the voiding of the transfer.

3.4 Are there requirements for ownership by indigenous persons or entities?

As mining rights and licences are only attributed to Mozambican persons, the updates of the Mining Regime increase the development and know-how of Mozambican businesses by ensuring the (i) involvement of national entrepreneurs in the industry, and (ii) provision of professional training to Mozambican employees.

A percentage of State revenues generated from mining activities are reserved for the development of communities affected by mining activities.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The Mining Law secures the State's right to participate in mining projects, while the PPP Law permits the participation of private or public Mozambican corporations in the share capital of each undertaking.

Additionally, the PPP Regulation establishes that the State has a free carry participation right of a minimum of 5% of the share capital, during any phase of the project, as consideration for awarding exploration rights over natural resources.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Only Mozambican persons, not holding other forms of titles, possessing the necessary technical and financial capacity to undertake such activities, may acquire Mining Treatment or Processing Licences.

Only holders of Mining Concessions, Certificates or Passes may perform mining treatment activities. The processing of minerals produced in Mozambique should be carried out in the national territory where possible.

The treatment and/or processing of radioactive minerals require additional authorisation and follow a specific legal regime.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Holders of Mining Concessions, Certificates or Passes may freely dispose of the output of their mineral extraction efforts. However, where the seller/exporter of the minerals is not also their producer/miner, a Trading Licence must be obtained from the NDM. The unauthorised sale, purchase or transportation of mineral products outside of Mozambique is a criminal act punishable with imprisonment.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The transfer of rights and obligations under mining titles requires the prior authorisation of the Government. Requests for the transfer of permits and/or rights can take place two years after the commencement of the authorised activity, and must be accompanied by an activity report and a Tax Clearance Certificate.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Certain licences and property, movable and immovable, may be given as security, provided that they have prior authorisation from MIREME. The form of security depends on the asset and conditions required to effectuate a transfer of the rights.

MIREME must authorise the creation and enforcement of security rights over mining interests. The intended beneficiary of the security cannot immediately redeem the collateral in the event of a default of the financing arrangement since MIREME, who must intervene by law, retains full discretionary powers to authorise or refuse its enforcement.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Only in compliance with the requisites stated under question 5.1 above.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The Mining Law is silent in this respect. However, undivided shares shall be subject to the requirements established under the Commercial Code.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Additional minerals discovered during the exploration phase must be immediately reported to the authorities. The titleholder, who enjoys a preemption right, may request the inclusion of associated minerals in their mining permit, subsequently requiring the amendment of the mining operation's working programme.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Residue deposits related to the mineral granted under the concession and the concession area should be included in the granted mining operations and, thus, may be disposed of or exploited freely by the concessionaire.

6.5 Are there any special rules relating to offshore exploration and mining?

There are no special rules for offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The right of mining exploration and the DUAT are mutually exclusive, although both can be held simultaneously. Mining operations enjoy preferential use of the land, even if it had been previously granted to a third party. If the DUAT holder is not the titleholder, the rights of the former can end upon receiving payment of fair compensation.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The application for mining exploration rights requires prospective titleholders to contract with the Government and the community. The resettlement of communities affected by mining activities is strictly established in the Mining Law, which requires the preparation of a relocation plan and provision of fair and transparent compensation.

7.3 What rights of expropriation exist?

The Constitution and the Mining Law provide that the expropriation of goods and private property rights may only occur exceptionally, subject to the provision of: (i) justification considering the public interest; and (ii) fair compensation. Moreover, these laws establish that titleholders are entitled to compensation from losses arising from Government action limiting the exercise of their legal or contractual rights.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The Mining Law establishes the following requirements:

(i) Category A: mining activities performed under a Mining Concession – an environmental impact study.

(ii) Category B: mining activities in quarries, prospecting and research for pilot experiments, undertaken under a Mining Certificate – a simplified environmental impact study.

(iii) Category C: non-mechanised prospecting, research and other activities performed under a Mining Pass – an environmental management programme.

Throughout the implementation of the environmental management until the closure of the mine, communities must be consulted and heard.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The closure or abandonment of mining operations may only be done following approval of the closure plan by the relevant authority. Performance bonds or other guarantees may be required to cover decommissioning costs.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The value of the performance bond, if required by law, shall be reviewed biennially by the supervising authority. The State shall use the performance bonds to rehabilitate and close the mines upon termination of the activity where the environmental audit found the titleholder breached its rehabilitation and decommissioning obligations. The performance bonds shall be returned upon termination of the mining activity upon fulfilment of these obligations.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

DUATs may not be acquired for total and partial protection zones; however, particular licences may be issued for:

(i) interior water beds, territorial sea and the exclusive economic zone;

(ii) the continental shelf;

(iii) the strip of maritime coastline, including that surrounding islands, bays and estuaries, measured from the high tide line to a mark 100 metres inland;

(iv) a strip of land up to 100 metres long surrounding water sources;

(v) a strip of land up to 250 metres long along the edge of dams and reservoirs;

(vi) land occupied by public interest railway lines and their resection stations with a bordering strip of 50 metres on each side of the line;

(vii) land occupied by motorways and four-lane highways, aerial, surface, underground and underwater installations and conduits for electricity, telecommunications, petroleum, gas and water, including a bordering strip of 50 metres of each side;

(viii) land occupied by roads included a bordering strip of 30 metres for primary roads and 15 metres for secondary and tertiary roads;

(ix) a 2-kilometre long strip of land along the terrestrial border;

(x) land occupied by airports and aerodromes with a surrounding strip of land of 100 metres long; and

(xi) the 100-metre strip of land surrounding military or other defence and State security installations.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The Constitution and the Land Law recognise and protect native and community land rights, including occupation and acquisitions by customary right. Formal land titles do not affect the protection of these rights. Nevertheless, the DUAT for performing mining activities is regulated by the aforementioned regime.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Labour Law and the Regulations on Health and Safety for Mining Activities.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

To ensure employee health and safety, mining operators must prepare a safety and evacuation plan and provide first aid and safety equipment kept in accessible locations and suitable for use in emergencies.

Mining operators must be insured against all risks including: (i) damage to mining installations and infrastructures; (ii) third-party liability; and (iii) workplace accidents.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mining Regime requires the registration of the acquisition, alteration, transfer and termination of mining titles, copies of which shall be filed with the NDM, the Provincial Directorate and the Local Government.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Administrative decisions may be appealed, by means of an administrative hierarchical appeal or claim as regulated by the Administrative Procedural Law (Law no. 14/2011, of August 10), and may also be challenged before the Administrative Courts.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution and Mining Law state that mineral resources found in the soil, subsoil, internal waters, territorial sea, continental shelf, and in exclusive economic zones are the property of the State. To protect private property, the Constitution rarely permits the limitation of private rights, unless they are in the name of public interest, which entitles the right-holder to compensation.

12.2 Are there any State investment treaties which are applicable?

Mozambique has signed bilateral investment treaties with: Algeria; Belgium and Luxembourg; China; Cuba; Denmark; Finland; France; Germany; Indonesia; Italy; Mauritius; the Netherlands; Portugal; South Africa; Sweden; Switzerland; the United Kingdom; the United States; and Vietnam.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The "Law on the Specific Regime of Taxation and Fiscal Benefits for Mining Operations" and its Regulation established the mining industry's fiscal framework, which set new rules on taxation applicable to mining, provided tax benefit incentives and updated the Mozambican fiscal policies to a global standard.

In addition to the general taxes applied in Mozambique – *e.g.*: VAT; Customs Duties; and Municipal Charges – the aforementioned laws establish the (i) Mining Production Tax (*IPM*), (ii) Surface Tax (*ISS*), (iii) Corporate Income Tax (*IRPC*), and (iv) Resource Rent Tax (*IRRM*).

13.2 Are there royalties payable to the State over and above any taxes?

No, there are not.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Municipal taxes must be paid to the Municipal Government.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Mozambique has signed several double taxation treaties (DTTs) with Botswana, China, Italy, Mauritius, Portugal, South Africa, the United Arab Emirates and Vietnam.

Mozambique and Angola executed a bilateral cooperation treaty for their mining industries in 2007. Additionally, Mozambique has implemented the Extractive Industry's Transparency Initiative (EITI).

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Titleholders must comply with the applicable rules and deliver notice to MIREME before they can wholly or partially abandon the mines.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

In addition to question 15.1, titleholders must register any partial abandonment on the title.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The Mining Law rules on revocation and extinction of mining titles, which do not extinguish the titleholder's duties before the revocation date for the performance of their contracted obligations or third-party claims brought in good faith for damages or injury caused by mining activities.

a) Mining titles:
   (i) failure to pay taxes;
   (ii) failure to comply with the regulatory or contractual provisions, where the breach is grounds for the revocation of the title;
   (iii) insolvency of the titleholder;

(iv) transformation or dissolution of the company intended for merger or reincorporation, unless the prior authorisation of the regulatory authority has been obtained; and

(v) indebtedness to the State.

b) Prospecting and Exploration Licences:

(i) failure to submit annual reports on the performed activities;

(ii) failure to spend the minimum expenditure established; and

(iii) non-performance of exploration following the authorised work programme.

c) Mining Concessions:

(i) failure to demarcate and maintain the boundaries of the mining area;

(ii) failure to commence mining production within 48 months from the issuance of the concession;

(iii) failure to maintain the level of production established in the authorised mining plan and/or its amendments;

(iv) failure to submit information and periodical reports regarding the mining activities;

(v) non-performance of the environmental recuperation of the area and closure of the mine in accordance with the approved plans;

(vi) termination of production without mitigating circumstances; and

(vii) violation of regulatory or contractual provisions, where the breach is grounds for the revocation of the Concession.

d) Mining Passes:

(i) failure to comply with the environmental norms;

(ii) illegal sale of mineral products;

(iii) trafficking and/or the concealment of trafficking of mineral products; and

(iv) causation of serious environmental damage resulting from mining activities.

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JLA Advogados

JLA Advogados is one of the most dynamic law firms in Mozambique. The firm has continued to grow year-on-year, expanding significantly in the Mozambican market, with a team of 12 professionals, with continued investment in sustainable growth.

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Through their international project – Abreu International Legal Solutions – the firm has six international desks formed by lawyers highly experienced in international law who work in association or joint offices with prestigious local law firms.

Peru

Rebaza, Alcazar & De Las Casas

Luis Miguel Elias

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The General Mining Law is the primary national law that regulates the mining industry in Peru. Said law, its regulations and ancillary rules apply in light of the Peruvian Constitution in a civil law-based system.

1.2 Which Government body/ies administer the mining industry?

The Ministry of Energy and Mines (MINEM) is the main government body that administers the mining industry. Other relevant bodies include the Geological, Mining and Metallurgical Institute (INGEMMET), the Ministry of Environment (MINAM), the National Environmental Certification Authority (SENACE), the Supervisory Agency for Investment in Energy and Mining (OSINERGMIN) and the Agency for Environmental Assessment and Enforcement (OEFA).

1.3 Describe any other sources of law affecting the mining industry.

In addition to the General Mining Law, other sources of law affecting the mining industry include, among others:

- The Peruvian Constitution.
- The Peruvian Civil Code.
- The General Environmental Law.
- The Law that Regulates Environmental Liabilities for Mining.
- The Hydric Resources Law.
- The General Law of Local Communities.
- The General Corporations Law.
- The General Law of the Public Registries.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

All natural resources within the Peruvian territory are owned by the Peruvian State, which has sovereignty on the use and deployment of such resources. In respect of mineral resources, the General Mining Law regulates a system based on mining concessions. The Peruvian State retains the ownership of all mineral resources; however, the ownership of extracted minerals is vested in the holders of mining concessions.

Any person (including individuals and entities) is entitled to request before INGEMMET the granting of mining concession rights. These rights are independent from surface and real estate property rights located over the premises of such mining concessions. INGEMMET is the government body that consolidates a nationwide publicly available database with all mining concessions for metallic and non-metallic minerals.

Mining concessions are granted on a "first come, first served" basis. If simultaneous requests are made, an auction among the interested parties settles such requests. A mining concession provides its holder with the exclusive right to undertake mining activity within a determined area.

All holders of mining concessions are required to pay good standing fees, called validity fees. These fees are calculated based on the concession area and paid on an annual basis to INGEMMET. Reduced fees apply for artisanal and small mining producers. Failure to pay validity fees for two years will result in the cancellation of the mining concession.

2.2 What rights are required to conduct exploration?

All holders of mining concessions have the right to perform exploration and conduct mining activities. Hence, no proceeding to convert the exploration rights into operation rights applies. The same mining concession is valid for exploration and to conduct mining activity in Peru.

2.3 What rights are required to conduct mining?

The following mining rights, as applicable, are required to conduct mining operations:

Mining Rights	Scope
Mining concession	Performance of exploration and conduct of metallic or non-metallic mining activities in a determined area.
Beneficiation concession	Performance of physical and/or chemical procedures required for extraction, concentration, smelting and/or refining.
General works concession	Auxiliary activities or complementary services, such as ventilation, drainage, lifting or extraction for two or more mining concessions.

Mining Rights	Scope
Mineral transport concession	Required for massive and continuous transportation of minerals via unconventional methods, such as conveyor belts, pipelines or aerial tramways.

All holders of mining concessions are required under the General Mining Law to move into production and comply with the applicable minimum annual production thresholds. As of 2019, the minimum annual production threshold is of one Peruvian tax unit (approximately USD 1,260.00) per hectare of the mining concession.

Failure to meet the minimum annual production threshold after 10 years from when the concession was granted will result in the application of penalty fees each year up to the 30th anniversary of the date when the concession was granted. Nonetheless, the penalty will not apply if the investment made is 10 times more than the penalties incurred. Upon the 30th anniversary and if the holder cannot reach the minimum annual production threshold, the mining concession will automatically lapse and expire.

Other rights required to conduct mining activities in Peru include the acquisition of surface and access rights to the area of interest (see section 7), environmental certification and permitting (see section 8), and, as applicable, authorisations, permits and licences for the construction of facilities, use of explosives, use of water resources, use of controlled substances and chemicals, fuel storage, management and disposal of waste or hazardous materials, among others.

2.4 Are different procedures applicable to different minerals and on different types of land?

The same procedures to request and obtain mining rights apply to all metallic and non-metallic concessions. Land-based mining concessions are granted in areas that range from 100 hectares to 1,000 hectares per concession. In marine zones, the concession may reach an area of up to 10,000 hectares.

2.5 Are different procedures applicable to natural oil and gas?

Yes, different procedures and specific legislation applies for such activities.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Individuals and entities, whether national or foreign, are entitled to apply for and hold mining rights. The latter is based on the Peruvian Constitution, which acknowledges the same rights to all national and foreign individuals and entities.

The foregoing general rule is subject to an exception. Foreigners are restricted to acquire property rights over real estate and/or mining concessions located 50km within Peru's country boundaries, unless prior authorisation is obtained via a Supreme Decree.

Public officers and officials, such as the President, Congress, judges, ministers, prosecutors, among others, cannot participate in mining while holding office.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Any foreign entity or foreign-owned entity, whether direct or indirect, is entitled to request and hold mining rights in Peru. No special rules apply for foreign applicants, save for the restriction on acquisition of rights within 50km of the country's borders (refer to question 3.1 above).

3.3 Are there any change of control restrictions applicable?

No legal or regulatory change of control restrictions apply in Peru.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no requirements for ownership of mining rights by indigenous persons, groups or entities.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The Peruvian State does not have free carry rights or options to acquire shareholdings in mining companies or other entities that conduct mining in Peru.

The Peruvian Constitution provides for the government to have a promotional role for the development of private investment. The government may participate in any business only in a subsidiary manner, provided that, however, a special law is issued and approved by Congress.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The General Mining Law and its regulations include special provisions for beneficiation rights and related processing and refining procedures. The law defines beneficiation as the conjunction of physical, chemical and/or chemical-physical processes required for extraction or concentration in order to purify, smelt or refine minerals. Beneficiation includes the following stages:

1. Mechanical preparation process, whereby a mineral is downsized, classified and cleansed.
2. Metallurgy, whereby chemical and/or physical processes are performed to concentrate and extract minerals or their valuable compounds.
3. Refining process to purify the mineral products from prior metallurgical processes.

A holder of a beneficiation concession has the right to perform extraction and/or concentration processes to purify, smelt and/or refine metals.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In general, commercialisation of minerals in Peru is unrestricted.

There are no restrictions on the export of minerals. Mining producers may freely export their production and no authorisation or licence is required for such purposes. In the case of gold, all individuals and entities that trade and/or refine such metal are required to be registered in the Special Registry of Gold Traders and Producers.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

There are no restrictions on the transfer of mining rights in Peru. Mining rights may be freely transferred among parties via agreements and no authorisation or consent is required from government bodies.

The transfer, encumbrance or other disposition of mining rights agreed among parties or pursued by creditors (such as injunctions) against holders of such mining rights, are all acts that may be registered before the Public Registries. Registration provides publicity to the holder of such rights and enforceability priority of such rights against third parties.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Mining rights are capable of being mortgaged, encumbered or otherwise granted as collateral to secure obligations, whether financial or other. In case of mortgages, said security interests are constituted upon their registration in the Public Registries.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The holder of a mining concession is entitled to file a subdivision request before INGEMMET to separate the mining concession into two or more concessions. If the mining concession is mortgaged or encumbered, the authorisation and consent of the creditor or holder of any such creditor rights is required.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

A mining concession may be held by multiple parties or holders in undivided interests or shares. The undivided interests of multiple holders to a mining concession are of similar legal nature to the rights held by multiple owners of a single real estate property. When multiple parties hold rights to a mining concession, they must appoint a common representative.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Mining concessions grant the right to explore for or mine metallic or non-metallic minerals. Hence, a mining concession granted for metallic minerals allows the holder of rights to explore for or mine primary and secondary metallic minerals.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Mining concessions are independent and differ from all surface rights, facilities or residue deposits on the land concerned. In order to exercise surface rights, access rights or other rights over the area of interest, the holder of the mining concession is required to acquire or obtain such rights or authorisation from their owners or holders. See section 7.

6.5 Are there any special rules relating to offshore exploration and mining?

The General Mining Law and its regulations do not impose special rules for offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Mining rights are independent from surface rights located on the same premises of land. Hence, the holders of mining rights may be different parties to those holders or owners of the lands where such mining rights are confined.

There is no restriction for mining concession holders to acquire or purchase lands, real estate properties, easements, rights of way and/or other surface rights owned or held by third parties.

If the owner of such properties is the government, then a regulated acquisition process would need to be initiated by the mining concession holder before the National Agency of State-owned Properties.

If the owner or holder of such properties or rights is a local community, then such community's approval is required and, generally, an agreement must be negotiated and agreed with the community addressing their expectative in respect of the mining investment.

Only in case of mining concessions granted over unclaimed and unoccupied lands, shall the holder of the mining rights automatically have the right to use the surface for mining purposes, without additional authorisation and free of charge.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a mining concession has to respect the landowner's property or rights of an occupier. A holder of mining rights cannot trespass such property or use surface lands without the landowner's or occupier's consent.

7.3 What rights of expropriation exist?

Expropriation rights of the government are limited to events of national security, or in case of public interest and necessity, as specifically declared by law. In case of expropriation, the Peruvian State is required to make a compensation payment to the former owner based on fair valuation of the expropriated property.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The following environmental certification and related authorisations are required, as applicable, for mining:

- A statement of environmental impact is required for projects or activities that have no or a minor impact on the environment.
- A semi-detailed environmental impact study is required for projects or activities that have a moderate adverse impact on the environment.
- A detailed environmental impact study is required for projects or activities that have a significant adverse impact on the environment.
- Water permits, which may include the licence to use certain hydric resources, authorisation to discharge wastewaters or authorisation to reuse and/or treat water.
- Certification on the absence of archaeological remains and construction authorisation required for construction and implementation of the project's facilities.
- Authorisation to use explosives for construction and mining.
- Registry and authorisation for the use of controlled substances and chemicals.
- Approval of the Mining Plan.
- Mining Operation Certificate.
- Approval of the Mine Closure Plan and related guaranty to the benefit of MINEM.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Peruvian regulation imposes certain restrictions and obligations for the storage of tailings and other waste products. Among others, policies for the control and management of emissions, hazardous materials and reagents are required to be implemented. On an ongoing basis, OEFA monitors compliance with the applicable regulation, environmental certifications and authorisations. OEFA is entitled to carry on inspections and pursue investigations to audit compliance of environmental regulation and for the prevention of environmental risk and/or liabilities.

The plan for the closure of a mine is subject to the approval of MINEM. The holder of the mining concession is required to put in place a guaranty to secure its obligations before MINEM, as approved under the mine closure plan.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The mine closure plan sets forth all actions, studies and obligations to be conducted by the holder of mining rights in order to mitigate, reduce and/or eliminate the adverse effects that the mining operations may have on the environment, including the local population and ecosystems within the area of interest. The plan needs to address the technical and legal obligations to be performed progressively during the life of the mine.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Mining rights are not subject to specific zoning or planning requirements; however, such rights will not be available or granted on the premises of protected areas or other restricted and regulated areas.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The government of Peru ratified the International Labor Organization Convention No. 169 and adopted its principles into domestic legislation. Hence, prior consultation to native or indigenous communities is required for new projects within an area of interest.

In case of a negative response from native communities, such event does not cancel or terminate the mining rights. As mentioned in section 7, mining rights are independent and differ from surface rights or other rights to land, such as native titles or others.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Health and safety in mining is governed by the following main laws and regulations:

- General Mining Law and its regulations.
- Law of Safety and Health in Employment.
- Regulations for Occupational Health and Safety for Mining.
- Law of Productivity and Competitiveness and its regulations.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Health and safety regulations in mining impose general and specific obligations to all stakeholders, including holders of mining rights, employers, managers and employees. Among others, the following main obligations apply:

- Specific safety requirements for construction, operation and other mining activities.
- Medical exams are required for occupational safety and health.
- Minimum salary regulations are in place for mining employees.
- Special holiday is acknowledged for mining employees.
- Special retirement law and regulations for mining employees.
- Contractual obligations under collective bargaining agreements or other agreements with mining employees may address additional health and safety rights and obligations.

MINEM, OSINERGMIN, the Ministry of Labor and Employment, and the Agency of Labor Inspection (SUNAFIL) are the regulatory bodies that supervise compliance with health and safety obligations in mining.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Mining rights are registered before the Mining Registry of the Peruvian Public Registries and recorded before INGEMMET in a public nationwide database that reflects the regulatory status on validity fee payments.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Peruvian law provides that all administrative decisions, whether related to mining or not, are to be subject to a dual administrative instance. A decision from a first instance may be appealed for review by the second administrative instance which is of a higher level. Further, a decision of the second administrative instance may be challenged in a judicial process before Peruvian courts and tribunals.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution acknowledges the ownership of the Peruvian State over natural resources and provides that concessions grant their holders real rights in a civil law system and subject to their applicable laws. Likewise, the Constitution acknowledges that property is an inviolable right.

12.2 Are there any State investment treaties which are applicable?

The government of Peru promotes foreign investment and has more than 30 bilateral agreements with countries from the Americas, Asia and Europe. Further, Peru is signatory to:

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- The International Centre for Settlement of Investment Disputes, a World Bank group international arbitration institution for dispute resolution between international investors.
- The Multilateral Investment Guarantee Agency, a World Bank group organisation which offers political risk insurance and credit enhancement guarantees.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The following special taxation rules apply:

- Mining royalties levy the quarterly sales revenues from metallic and non-metallic mineral resources at a minimum rate of 1% and up to 12%.
- Special mining tax levies the operating profit of metallic resources at a tax rate that ranges from 2% to 8.4%.
- Special mining contribution applies to entities that have entered into tax stability agreements with the government. This contribution is calculated over and ranges between 4% to 13.12% of the operating profit of metallic mineral resources.

All payments of mining royalties, special mining taxes and special mining contributions are deductible expenses for income tax purposes.

Further, as an incentive for mining investment, an early recovery regime of VAT applies for mining entities in the exploration stage, as well as special tax depreciation for all mining companies with a stability agreement or in general for mining equipment and machinery.

13.2 Are there royalties payable to the State over and above any taxes?

See question 13.1.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

National legislation prevails over local provincial or municipal regulation. Local provincial and municipal rules cannot go against the Constitution, and laws are required to be issued subject to the national legal framework.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

International treaties and conventions that Peru is party to are adopted by and apply as domestic legislation. Peru has ratified:

- The ILO Convention 169 (see question 9.1).
- The International Covenant on Economic, Social and Cultural Rights.
- The Convention of Technical Cooperation with the Inter-American Development Bank.
- The International Technical Law ISO 2,600 providing guidelines on social responsibility.

See question 12.2.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The General Mining Law provides that petitions for mining rights shall fall in an abandonment event if the petitioner does not comply with the obligations and requirements to be filed within the applicable request proceeding.

In case a holder of a mining right fails to pay the validity fees and/or penalties (for not reaching the minimum annual production threshold) for two years, whether consecutive or not, such mining right will lapse and expire.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Mining concessions are irrevocable so long as all legal obligations to maintain such rights are being met by its holder. Only if such

holder fails to meet its obligations (refer to the second paragraph of question 15.1) or expressly files a request for the extinction of such right, may such person relinquish their mining right.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Refer to question 15.2. Further, the Peruvian State may cancel mining rights in the following cases:

- if the mining concession overlaps with other rights having statutory preference or priority;
- if the mining rights are inaccessible; or
- if they are declared null and void due to restrictions of the holder of such rights.

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Poland

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law in Poland is regulated primarily by the Geological and Mining Law of 9 June 2011 and by the Ordinance of the Council of Ministers of 10 January 2012 on the tender for the establishment of a mining usufruct (the "**Ordinance**"). The Geological and Mining Law sets out the rules and conditions for undertaking, pursuing, and concluding: geological works; extraction of minerals from deposits; underground tankless storage of substances; underground storage of waste; and geological carbon dioxide storage as well as the requirements for the protection of mineral deposits; groundwater; and other aspects of the environment. The Ordinance sets out tender details and the procedure for organising and conducting a tender.

1.2 Which Government body/ies administer the mining industry?

Geological administration authorities include: the Minister of the Environment; marshals of voivodships; and heads of poviats.

State geological services are performed by the Polish Geological Institute – National Research Institute, which: initiates, coordinates, and fulfils responsibilities aimed at exploring the geological structure of the country; maintains a central geological archive; gathers and makes available geological information; maintains geological databases; draws up a national assessment of mineral deposit reserves; coordinates and performs geological cartography works (and performs related pilot works); maintains a register of mining districts and closed geological carbon dioxide repositories; and identifies and monitors geological risks.

Mining supervisory authorities are: the President of the State Mining Authority; directors of local mining authorities; and the Director of the Specialist Mining Authority. The President of the State Mining Authority is a government administration authority, acting under the supervision of the Minister of Energy.

1.3 Describe any other sources of law affecting the mining industry.

The mining industry is affected by:

- the Environmental Protection Law of 27 April 2001 which sets out the principles governing environmental protection and the use of environmental resources with regard to sustainable development requirements;
- the Act on preservation of the national character of the strategic natural resources of the country of 6 July 2001 which specifies Polish strategic natural resources;
- the Ordinance of the Minister of Environment of 24 April 2012 on the detailed requirements for projects for the development of deposits which specifies what should be included in projects for the development of deposits; and
- the Act on the function of hard coal mining of 7 September 2007 which sets out the principles for financial restructuring of mining enterprises, rules for liquidation of mines, rules for employment restructuring in liquidated mines, conditions for obtaining initial investment subsidies, and principles of corporate governance.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The following activities require a concession under the Polish Geological and Mining Law: (i) prospecting for or exploration of mineral deposits covered by mining ownership (other than hydrocarbon deposits); (ii) prospecting for or exploration of a geological carbon dioxide storage complex; (iii) extraction of minerals from deposits; (iv) prospecting for or exploration of hydrocarbon deposits and extraction of hydrocarbons from deposits; (v) underground tankless storage of substances; (vi) underground storage of waste; and (vii) geological storage of carbon dioxide. The catalogue of specified activities is closed, meaning that the performance of other regulated activities (e.g., the search and recognition of therapeutic waters, brine and thermal waters) is exempt from the obligation to obtain a concession.

2.2 What rights are required to conduct exploration?

Please refer to question 2.1 above.

2.3 What rights are required to conduct mining?

The rights required for conducting mining (i.e., extraction of minerals from deposits, underground tankless storage of substances, underground landfilling of waste, and underground carbon dioxide storage) depend on the legal status of the deposit.

Mining usufruct contract

In the case of deposits covered by mining ownership, apart from obtaining a concession, it is necessary to conclude a written agreement with the State Treasury.

Mining ownership applies to deposits of certain minerals, which are always owned by the State Treasury, irrespective of their location. These deposits are: hydrocarbons; hard coal; methane existing as an accompanying mineral; brown coal; metal ores, with the exception of bog meadow iron ores and native metals; ores of radioactive elements; native sulphur; rock salt; potassium salt; magnesium-potassium salt; gypsum and anhydrite; and precious stones. In the case of these deposits, it is necessary to conclude a written contract on the establishment of a mining usufruct. The establishment of a mining usufruct may be preceded by tendering, in particular if more than one interested party applies for it.

Concession

In the case of every deposit, in order to conduct mining, a concession is required. The concession is granted by:

- the Minister of the Environment in the case of extraction of minerals from deposits covered by mining ownership, extraction of minerals from deposits situated within the boundaries of the maritime areas of the Republic of Poland, underground tankless storage of substances, underground landfilling of waste, and underground carbon dioxide storage;
- *starosta* (a representative of a local authority, for example, of a city), if the area of a documented deposit which is not covered by mining ownership does not exceed two hectares, annual extraction of the mineral from the deposit does not exceed 20,000 cubic metres per calendar year, and the activity will be carried out by open-cast mining and without the use of blasting agents; and
- the marshal of a voivodeship (a regional self-governing authority) for any other cases.

A concession is granted for a definite period of time, no less than three years and no more than 50 years (subject to certain exceptions) and details the scope of the permitted activities.

2.4 Are different procedures applicable to different minerals and on different types of land?

Yes, there are some differences. The authority granting a concession may be different, depending on the types of mineral and in the location, e.g., in the case of maritime areas.

Moreover, certain minerals and different types of land require special approvals, in particular:

- prospecting, exploring and extraction of ores of radioactive elements (the President of the National Atomic Energy Agency);
- prospecting, exploring and extraction of hydrocarbons in marine areas (the President of the Higher Mining Authority);
- extraction of minerals from land under inland waters (the authority competent for issuing water law permits); and
- extraction of minerals covered by mining ownership and underground storage of substances or carbon dioxide (the minister competent for the environment and, in the case of storage of substances or carbon dioxide, also of the European Commission).

Finally, in the case of a concession for underground storage of carbon dioxide, the establishment of collateral granted by the entrepreneur to the government is obligatory.

2.5 Are different procedures applicable to natural oil and gas?

In order to assess the ability of an interested entity to carry out the activities in the scope of prospecting for and exploration of hydrocarbon deposits and extraction of hydrocarbons from deposits, the Minister of the Environment conducts an eligibility procedure. In the course of the eligibility procedure, it is ascertained whether the entity intending: (i) is under corporate control of a third party state, entity or citizen of a third party state, and, if so, whether such control can pose a threat to Polish national security; and (ii) has experience in prospecting for and exploration of hydrocarbon deposits or extraction of hydrocarbons from deposits. The experience should be documented and consist of exploration of at least one hydrocarbon deposit or continuously carrying out, for a period of at least three years, the extraction of hydrocarbons from deposits.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Any type of legal entity (any legal form) can own a concession for reconnaissance, exploration, and mining.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes, a foreign entity or an entity owned by a foreign entity may be the holder of the rights. However, when an application refers to hydrocarbons, the Minister of the Environment will assess whether the direct or indirect foreign ownership of a concession applicant would endanger Polish national security (see question 2.5).

3.3 Are there any change of control restrictions applicable?

Yes, in the case of a change of control, the entity has to apply to undergo the qualification proceedings described in question 2.5 again. If the Minister of the Environment gains knowledge of such a change, the qualification proceedings will be initiated *ex officio*.

3.4 Are there requirements for ownership by indigenous persons or entities?

No, there are not.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Extracting minerals from deposits requires a concession. Polish Geological and Mining Law does not directly cover processing, refining, and further beneficiation of mined minerals; however, such activities are likely to be addressed in the text of the concession and are also subject to the general provisions of Polish law (e.g., the Labour Code).

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are no restrictions or special levies on the export (to non-EU members) or intercommunity trading of underground resources from Poland.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The transfer of rights to conduct reconnaissance, exploration, and mining is possible but would essentially involve going through the entire concession process again. The transferee must meet all the statutory requirements.

Contrary to the usual rules of the general succession of rights from one entrepreneur to another, a concession concerning reconnaissance, exploration, and mining does not transfer automatically in the case of:

1) transformation of the company (by merger, division, takeover, etc.);
2) acquisition of a bankrupt entrepreneurship; or
3) acquisition of an entrepreneurship by way of a composition of assets.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The rights cannot be mortgaged or otherwise encumbered for collateral purposes.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

A joint concession is possible provided that each member of the group is qualified and party to a cooperation agreement. Consortium members are jointly and severally liable to the contracting authority under the concession. Any changes to the group will essentially involve going through the entire concession process again.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The Polish Geological and Mining Law does not expressly determine whether such rights are held in undivided shares. A concession for reconnaissance, exploration, and mining may be granted jointly to more than one entrepreneur. The cooperation agreement among the applicants should indicate the percentage share of each of them in cost and profit and will govern the legal relationship among the consortium members. However, they remain jointly and severally liable to the contracting authority under the concession.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Generally, the scope of a concession determines what types of deposits may be explored or mined. However, the holder of rights to explore for or mine a primary mineral is also entitled – and obliged – to make use of the secondary minerals that are necessary to mine in order to use the primary minerals.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

As mentioned in question 6.3, the scope of a concession determines what types of deposits may be explored or mined. An entrepreneur is required to make use of the deposits that are necessary to mine the main deposit. In practice, if the residue deposit is unusable for the holder of a right, due to its lower value or commercial character, it may be disposed of as waste.

6.5 Are there any special rules relating to offshore exploration and mining?

Decisions concerning offshore exploration and mining require consultation with the director of one of three Polish governmental offices with various jurisdictions over inland waters and the territorial sea or with the Ministry of Maritime Affairs and Inland Waterways as regards the exclusive economic zone which includes up to 200 sea miles of the Baltic Sea from the shore. More restrictive assessment and procedures are implemented with respect to offshore exploration and mining of hydrocarbons. In such cases there are numerous consultations and safety obligations during the process of granting, changing, extending, and making use of the rights to offshore reconnaissance, exploration, and mining.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The holder of a right to conduct reconnaissance, exploration or mining acquires the right to use the surface of land upon obtaining a concession. The decision on granting a concession indicates the area (geodesic plots of land) on which the reconnaissance, exploration, or mining may take place. However, before filing a motion for a concession, a future holder should secure the right to the relevant real estate by way of definitive agreement (or promise to use the land) with the native title holder (this obligation does not pertain to mining lignite).

In addition, for the purpose of exploitation of deposits which are subject to mining ownership of the government (i.e., hydrocarbons, black coal, methane existing as a secondary deposit, lignite, metals except turf iron ore, radiating elements, native sulphur, rock salt, potassium salt, potassium magnesium salt, gypsum and anhydrite, precious stones, therapeutic waters, thermal waters and brine) and which are separate from the land ownership, the future holder of rights should also conclude a mining usufruct agreement with the State Treasury. When an agreement is in place and a concession is granted, the holder of both may exclusively use the area of the usufruct.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

In the exploitation of its rights, the holder has the obligation to avoid unnecessarily harming the interests of the landowner or lawful occupier or impeding the lawful exercise of their own rights.

7.3 What rights of expropriation exist?

If a third party's real estate becomes necessary to conduct an in-scope activity, the concession holder may demand to be granted use for a limited period of time, in exchange for remuneration. If, as a consequence, the property is no longer fit for its previous purpose, the owner (or perpetual usufructuary) may demand that the concession holder buys the property. Under more limited and unusual circumstances, the concession holder may demand that the owner (or perpetual usufructuary) sell the land to the holder.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

If concession may have a significant impact on the environment, then an environmental decision will always be required. If an environmental decision is not required, an applicant for a concession has to submit a list of all associated protected natural areas so as to facilitate the authorities' confirmation of that conclusion. An application for a concession for reconnaissance, exploration or mining operation rights must also contain proposed countermeasures for any negative impacts on the environment of a planned activity. The concession authority may also impose particular obligations in a concession decision itself, including but not limited to: requiring specialised safety equipment; conducting work only in certain times of the year; or re-cultivation.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Storage of tailings requires compliance with a number of general legal requirements, such as minimising the production of waste, minimising the impact on health and the environment and reusing the waste whenever possible. The waste must be selected, pressed, and divided and different types of waste should be stored separately. The storage holder is required to have a plan of waste management approved by a local authority and to update it every five years. Waste that may not be reused without delay must be transferred to the closest disposal facility. If the holder of the right to conduct reconnaissance, exploration and mining operations wishes to conduct its own disposal facility, it should comply with a number of additional requirements, including preparation of a formalised risk assessment, acquisition of consent from the local authority and appointing staff with necessary qualifications. The marshal of the voivodship may allow exceptions from these procedures with regard to non-dangerous waste.

A concession for reconnaissance, exploration and mining operations may itself set forth special storage rules.

A concession is also required for underground waste storage. Such concession should set forth the types and amounts of waste allowed to be stored, and the method of the monitoring of storage.

A liquidation fund must be prepared by each entrepreneur who acquires a concession for mining or underground waste storage. The fund may only be used to cover the cost of liquidation of a mining facility or redundant parts of the operation or particular assets.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

In the case of a liquidation of a mining facility, in whole or part, the concession holder is obliged to:

1) secure or liquidate the excavations, devices, and objects;
2) undertake measures securing neighbouring deposits and neighbouring excavations; and
3) undertake measures to protect the environment and cause the re-cultivation of land.

Exploitation and closure of underground storage should be done in a way guaranteeing public security and in a way which guarantees the prevention of a negative impact on the environment.

If a usufruct agreement does not provide otherwise, the holder, before the expiration of the mining right, should secure or liquidate objects, devices, and installations erected in the space subject to the usufruct.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Exercising a right of reconnaissance, exploration, or mining is only possible if it does not infringe upon the permitted use of a property as set forth in a local zoning plan (or preparatory studies for such a plan).

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Provided that the licenced activity is conducted legally, the native title holder or surface rights holder should not have an impact on reconnaissance, exploration or mining operations.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Constitution of the Republic of Poland is the basic legal act which provides for the right to safe and healthy working conditions. The means of implementing this right is defined by the Polish Labor Code.

However, health and safety in the mining sector is also ruled by additional and more specific regulations for the operation of underground mining plants issued by the Minister of Energy. Certain regulations of the Minister of Economy are also applicable. These regulations list the specific requirements for health and safety, traffic safety, and fire protection in mines ("**Mining Regulations**"),

e.g., the Regulation of the Minister of Economy of 28 June, 2002 on occupational safety and hygiene, traffic and fire protection services in mining operations for the extraction of common minerals.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

According to Polish Labor Law, employers are responsible for health and safety at work. It is the employers' duty to ensure safe working conditions, including measures to prevent accidents at work, occupational diseases, and other work-related diseases.

Employers are required to evaluate and document occupational risk associated with work performed, apply necessary preventative measures to minimise risks, and inform employees about occupational risks and the guidelines on protection against such risks. Additionally, employers must provide employees with free personal protection equipment if it is necessary to protect them against dangers in the working environment. The Mining Regulations impose a wide range of additional duties and obligations on managers, operators, owners, employers, employees and workers relating to health and safety at mines.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Polish Geological Institute – National Research Institute maintains the information system 'Geoinfonet' which includes information about: geological data and samples, and results of their examination; submitted geological studies; granted concessions for prospecting or exploration of mineral deposits; concessions for prospecting and exploration of hydrocarbon deposits and extraction of hydrocarbons from deposits; investment decisions; and concessions for the extraction of minerals from deposits; as well as approved or submitted geological operations plans; mining districts and mining areas; and parameters regarding the extraction of hydrocarbons from a deposit.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The appellate proceeding described in the Code of Administrative Proceeding applies to all administrative decisions, including administrative mining law decisions. According to the Code of Administrative Proceeding, a public administration authority is competent to consider an appeal if it is of a higher level administratively than the authority which issued a decision. An appeal must be submitted to the competent appellate authority via the authority which issued the decision within 14 days of the day the decision was served upon a party, or if the decision was announced orally, within 14 days of the day the decision has been announced to the parties. The appeal requires no detailed substantiation. It is sufficient if it is evident from the appeal that the party is dissatisfied with the decision issued. With some exceptions, the marshal of the voivodeship is a geological administration authority of first instance to whom, within the meaning of the Administrative Procedure Code, the minister in charge of the environment is a superior authority.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Polish Constitution has an indirect impact on mining by referring to other acts in its article 86: "Everyone is obligated to care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by acts." Such acts include the Act on preservation of the national character of the strategic natural resources of the country of 6 July 2001, which lists mineral deposits which are owned by the State Treasury and are not generally subject to private ownership. Public authorities managing natural resources are obliged to use mineral deposits in accordance with the principle of sustainable development.

12.2 Are there any State investment treaties which are applicable?

Poland has concluded 54 treaties with different countries on the promotion and mutual protection of investments. According to the general rule of such treaties, each contracting party must promote on its territory investments by investors of the other contracting party, and must allow the performance of such investments in accordance with its internal legislation. A number of these treaties refer to the right to explore and extract natural resources. For example, the treaties with Greece, dated 14 October 1992, with Denmark of 1 May 1990, with Macedonia of 28 November 1996, as well as the treaty with Sweden of 13 October 1989 list concessions for the exploration, cultivation, extraction and utilisation of natural resources as an investment.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are several specific taxes in Poland which are applicable to exploration and mining entities.

Tax on extraction of some minerals

Starting from 18 April 2012, extraction of copper and silver in Poland is subject to tax. Starting from 1 January 2020, extraction of petroleum and natural gas in Poland will also be subject to this tax (entities extracting petroleum and natural gas in Poland have been subject to certain evidencing requirements since 1 January 2016).

In general, the taxpayers are the entities (notwithstanding their legal form) extracting the minerals – i.e., copper, silver, petroleum or natural gas – in the course of their business activities.

In the case of copper and silver, the tax base is the amount of copper (tonnes) or silver (kilograms) within the produced concentrate, or, where a taxpayer does not produce concentrate, the amount of copper and silver within the ore output. The tax rate depends on the monthly average price of copper on the London Metal Exchange and of silver as announced by the London Bullion Market Association.

In the case of petroleum and natural gas, the tax base is the value of the petroleum or natural gas extracts. The tax due is a product of the rate and the value of petroleum (tonnes) and natural gas (megawatthours), in the case of petroleum, based on the average monthly price set by OPEC, and, in the case of natural gas, based on the monthly price on the Polish Power Exchange. The rates of the tax vary depending on the type of the deposits. Extraction of natural gas and petroleum from low-productivity wells is tax exempt. The taxes are payable on a monthly basis.

Special hydrocarbon tax

Starting from 1 January 2020, income resulting from extraction of certain hydrocarbons (i.e., petroleum, natural gas and their natural derivatives, except from methane found in hard coal deposits and methane found as an accompanying mineral) within the territory of Poland will be subject to a special hydrocarbon tax. The special hydrocarbon tax act has been in force since 1 January 2016. Since that time there are certain evidencing obligations for taxpayers; however, the tax will only be payable starting from 1 January 2020.

Taxpayers of the special hydrocarbon tax are, in general, the entities (notwithstanding their legal form) extracting, exploring, and prospecting hydrocarbons in Poland in the course of their business activities.

The special hydrocarbon tax is payable on a yearly basis (with monthly tax advances) and the tax year corresponds with the tax year for the taxpayer's corporate income tax ("**CIT**"), or for personal income tax ("**PIT**").

The tax base is the income resulting from extracting, exploring and prospecting of the hydrocarbons, which is calculated as a difference between revenues from extracting, exploring and prospecting of the hydrocarbons and the qualified costs. The revenue is the amount of cash or other benefits obtained as remuneration for the sale of hydrocarbons. Qualified costs are expenses incurred by the taxpayer for the purpose of earning revenue or retaining or securing a source of revenue (which are not expressly excluded as non-tax deductibles), including expenses resulting from, for example: prospecting; exploring; extracting; storage; and delivery of the extracted hydrocarbons and termination of the activity. Furthermore, certain public law obligations, such as the amount of CIT/PIT payable (in connection with extracting, exploring or prospecting of the hydrocarbons), the amount of the tax on extraction of some minerals, etc., also constitute qualified costs. Any tax loss resulting from extracting, exploring and prospecting of the hydrocarbons may be deducted in the next tax year.

The tax rate varies from 0% to 25% of the tax base and depends on the profitability of the business activity.

Excise tax

Entities selling certain minerals (e.g., coal, natural gas) to a non-final buyer have an obligation to impose the required excise tax on the sale price. Verification of whether there is a necessity to impose an excise amount on the sale price is on the seller's side. Excise tax rates vary by product type.

Other taxes

Entities extracting minerals are also taxpayers of regular taxes resulting from business activities – CIT (or PIT), value added tax ("**VAT**"), and real estate tax ("**RET**").

13.2 Are there royalties payable to the State over and above any taxes?

There are several royalties which are payable by exploration and mining entities.

Concession fee

The entity which was granted with a concession for:

- prospecting and exploring of mineral deposits;
- prospecting and exploring of an underground carbon dioxide storage complex; and
- prospecting, exploring and extraction of hydrocarbons,

is obliged to pay a one-time fee for the concession, which is a product of the rate and the land area covered by a concession. The rate varies and depends on the type of minerals and scope of activities covered by a concession.

Extraction fee

An entity granted a concession for extraction of mineral deposits or for prospecting, exploring and extraction of hydrocarbons, is obliged to pay, on a half-year basis, an extraction fee which is a product of the rate and amount of the minerals extracted within the settlement period. The rate of the extraction fee varies and depends on the type of minerals extracted.

Storage fee

An entity granted a concession for: (i) underground tankless storage of substances; (ii) underground carbon dioxide storage; or (iii) underground waste storage, is obliged to pay a fee which is a product of the amount of the substance introduced into the ground and a rate which varies depending on the type of material introduced into ground within a half-year settlement period.

Remuneration for establishment of mining usufruct

A mining usufruct fee will also be payable. The amount of this remuneration is defined within the contract between the State Treasury and the extracting entity, is payable on a yearly basis, and consists of a fixed amount (which depends on the value of the deposit of the minerals and type of the minerals extracted) and a variable amount (which is a fraction of the extraction fee payable in the previous year).

There is also a necessity to pay varying amounts of remuneration for the establishment of a mining usufruct for activities such as: (i) prospecting and exploring of the mineral deposits; (ii) underground tankless storage of substances; and (iii) underground waste storage.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes. Carrying out a mining activity specified by the Polish Geological and Mining Law is only allowed if it does not violate the purpose of the land specified in the local zoning plan. This is an act of local law adopted in the form of a resolution, specifying conditions of land development.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Yes. As Poland is a Member State of the European Union, legislation from the European Union may be applicable with regard to environmental concerns and health and safety standards.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes, according to art. 38 of the Polish Geological and Mining Law, the holder of a concession has a right to renounce the concession. In such case, the concession-granting authority declares a lapse of the concession by decision.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Provided the holder is honouring the terms and conditions of the concession, there is no relinquishment obligation before the end of the concession's term (usually no less than three years and no more than 50 years).

A concession for the prospecting for and exploration of a hydrocarbon deposit and extraction of hydrocarbons from a deposit is granted on the condition that a security deposit is established for non-performance or undue performance of the conditions specified in the concession, as well as the funding of decommissioning of works if the concession expires, is revoked, or loses its binding force. The deposit is established for the period from the day on which the concession is granted to the day on which the stage of prospecting and exploration is completed. If the entrepreneur fails to present to the concession-granting authority proof of the establishment of the deposits, the concession expires.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes, according to art. 37 of the Polish Geological and Mining Law, if an entrepreneur violates the requirements of the act, or fails to satisfy the conditions of the concession, the concession-granting authority may call for the removal of infringements and, in the case of failure, to comply with the command, also withdraw the concession.

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Chapter 22

Portugal


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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Portuguese legal system is integrated in the civil/continental law system, which means that the majority of the legal provisions are comprised and enacted by statutes, written law being its primary source. The legal system is structured hierarchically and the Constitution is the leading legal instrument. The political bodies empowered to pass legislation are Parliament and the Government. The Government has the power to legislate on all subjects that are not reserved for Parliament and enacts legislation under the form of Decree-Laws.

Until 2015, Mining Law was regulated by the Decree-Law 90/90 of March 16, which established the General Regime for the Discovery and Use of Geological Resources and by specific Regulations for each type of mineral resource (Decree-Law 84/90, of March 16, which established the Spring Waters Regulation; Decree-Law 85/90, of March 16, which established the Heavy Waters Regulation; Decree-Law 86/90, of March 16, which established the Mineral Waters Regulation; Decree-Law 87/90, of March 16, which established the Geothermic Resources Regulation; Decree-Law 88/90 of March 16, which established the Mineral Deposits Regulation and Decree-Law 270/2001, of October 6, which established the Quarries Regulation).

In June 2015, the Legal Framework for the Discovery and Use of the Geological Resources Located in Portugal (including National Maritime Space) – Law 54/2015 of 22 June – was enacted (the "Geological Resources Law"). The Geological Resources Law revoked Decree-Law 90/90 of March 16.

The creation of this new legal regime derived from the National Strategy for Geological Resources ("ENRG-RM") – Council of Ministers Resolution 78/2012 – which envisaged the establishment of a new – more efficient – legal and institutional framework.

The Portuguese Government should have approved all complementary legislation within three months from the entry into force of the Geological Resources Law, notably the new mineral deposits legal framework. The passing of complementary legislation has, however, been delayed, taking into consideration (*inter alia*) that general elections took place and a new Government has been in office since the last quarter of 2015. In the meantime, the specific Regulations for each type of mineral resources mentioned above remain in force regarding everything which is not incompatible with the Geological Resources Law.

Other key statutes include the General Health and Safety at Work on Mines and Quarries Regulation (approved by Decree-Law 162/90, of May 22), the Regulation on Environmental Recovery of Deteriorated Mining Sites (approved by Decree-Law 198-A/2001, of July 6), the Regulation on Waste Management of Mineral Deposits' Exploitation (approved by Decree-Law 10/2010, of February 4), the Regulations on Manufacture, Storage, Trade and Use of Explosive Products (approved by Decree-Law 376/84, of November 30, 1984, as amended) and the Regulation on Social Security for Employees in Mines (approved by Decree-Law 195/95, of July 28). Furthermore, the legislative framework is complemented by several circulars enacted by the General Directorate of Energy and Geology ("DGEG"), regarding, for instance, the authorisation for the acquisition and use of explosive products on mines and quarries (Circular no. 9/2018, April 1, 2018).

1.2 Which Government body/ies administer the mining industry?

The mining industry is currently administered by the Ministry of Economy and is under the direct supervision of the DGEG, save in relation to geological resources located in the national maritime space, which are supervised by the General Directorate of Natural Resources, Security and Maritime Services. Notwithstanding the above, specific matters governed by different authorities regarding health and safety, nature conservation and cultural heritage, may also apply.

The Autonomous Regions of Azores and Madeira are responsible for the granting of rights over geological resources located in those territories.

1.3 Describe any other sources of law affecting the mining industry.

As a Member State of the European Union, Portugal is subject to European legislation (please refer to question 14.2 below).

Mining activity must also take into account environmental, tax, waste management, social security, territorial planning, health and safety regulations and the special regulations for hazardous activities. Legislation with a regional scope further applies in connection with mining activities in the Azores and Madeira autonomous regions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

The Geological Resources Law acknowledges and regulates the concept of reconnaissance. To conduct reconnaissance, an entity

must hold a prior evaluation right over area/areas designed for the exercise of activities for the use of metallic mineral deposits. Such right is granted under an administrative contract (with a maximum non-renewable term of one year) and may be requested to DGEG by any entity with recognised technical, economic and financial suitability. Prior evaluation rights entitle the holder of such rights to develop studies to allow a better knowledge of the geological potential of the envisaged area, namely through the analysis of available information and samples taken from the area.

2.2 What rights are required to conduct exploration?

To conduct exploration of mineral deposits, one must hold a prospecting and research right or an experimental exploitation right.

The procedure for obtaining prospecting and research rights may be initiated by the interested parties through the submission of an application, or by the Portuguese State through a tender procedure (subject to the provisions of the Public Procurement Code), while the experimental exploration rights are granted at the request of the interested parties. These rights may only be granted over available areas (except if there is no incompatibility between the concessions granted, or to be granted, and the prospecting and research rights) and to legal entities who give proof of suitability and financial and technical capacity to perform these activities. The contract for prospecting and research activities and for experimental exploitation rights has a maximum term of five years.

A prospecting and research title gives the right to develop activities aimed at the discovery of resources and the definition of their characteristics, until the determination of the economic value of any resources found.

If the discovered resources fail to have the necessary conditions to initiate their immediate and effective exploitation, the interested parties may submit an application for experimental exploitation rights. These rights are granted through an administrative contract, with a maximum legal term of five years, and entitle their holder to perform the same activities as those entrusted to a holder of an exploitation title.

2.3 What rights are required to conduct mining?

The right to exploit geological resources (mining) is granted by means of a concession (with a maximum term of 90 years), following a prior evaluation/prospecting and research/experimental exploitation agreement (if resources have been discovered) or, in case no such prior agreement exists, granted in respect of (i) available areas, or (ii) areas covered by prior evaluation, prospecting and research, experimental exploitation rights, in case these relate to different mineral resources and the different mining activities are compatible. The text of the exploitation concession agreement shall be published in the Official Gazette. This concession entitles its holder to the right of exploitation for economic use of resources.

2.4 Are different procedures applicable to different minerals and on different types of land?

Complementary legislation to be enacted shall regulate the legal framework for the discovery and use of mineral deposits, as well as other geological resources, as mentioned in section 1. To date, no different procedures have been applicable to the different mineral deposits or different types of land under the mining law.

2.5 Are different procedures applicable to natural oil and gas?

Yes. Oil and gas are expressly excluded from the Geological Resources Law (in line with the previous framework) and are regulated by specific laws, the main legal framework being set out in Decree-Law 109/94 of April 26 1994, as amended by Law 82/2017, of 18 August 2017.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Exploration concessions may only be granted to legal persons giving proof of technical, economic and financial suitability. Other than that, the law does not impose restrictions on the type of persons at stake. The Companies Code contemplates two forms of limited liability companies that are normally used for the purpose of developing mining projects in Portugal. Those corporate forms are the *sociedade anónima* (SA) and the *sociedade por quotas*.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes, foreign entities or entities owned by a foreign entity can hold mining rights; there are no special rules for foreign applicants applying. Notwithstanding, under Portuguese corporate law, any foreign company not legally domiciled in Portugal that aims to undertake activity in Portugal for more than one year must create a permanent establishment in the Portuguese territory. Moreover, in what concerns tax representation before the Portuguese Tax Authorities, the Portuguese Corporate Income Tax Code establishes that an entity that has neither its head office or (place of) effective management in Portuguese territory, nor a permanent establishment situated therein, shall be required to appoint a person or entity with residence, head office or (place of) effective management in that territory as its tax representative before the Portuguese Tax Authorities, in case it generates income in this territory. As an exception, companies resident for tax purposes in a Member State of the European Union, or a Member State of the European Economic Area (in the latter case, the exception applies insofar as there is an administrative cooperation agreement in force between Portugal and the relevant EEA Member State) are not required to appoint a tax representative.

Foreign direct investment is not restricted under general Portuguese law. In respect of repatriation of profits and investment, there are no currency controls under Portuguese law and money can be freely transferred into or out of Portugal. Also, there are no restrictions on the remittance of profits or investments abroad.

3.3 Are there any change of control restrictions applicable?

No change of control restrictions are expressly provided for in mining law. However, there are rules on the assignment of contractual positions in prior evaluation, prospecting and research, experimental exploitation and exploitation agreements (please refer to question 5.1 below).

3.4 Are there requirements for ownership by indigenous persons or entities?

No, there are not.

3.5 Does the State have free carry rights or options to acquire shareholdings?

There are no free carry or similar rights under the law. However, the State may control or impose conditions on the exploitation of mineral rights in certain circumstances, notably for reasons of national or regional interest. Also, for public interest reasons, the Ministry of Economy may exercise preferential rights in the acquisition of mineral deposits.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Yes. Under mining law, any processing/commercialisation or beneficiation of products resulting from exploitation is subject to supervision by DGEG and/or by the relevant trading authorities (depending on the type of processing and trading at stake).

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The export, sale or any other means of transfer (even free of charge) of any products which do not come from authorised exploitations, or which were not legally imported, is forbidden. The export of minerals or land samples may be made under a prospecting and research agreement for industrial analysis and tests if previously authorised by the Ministry of Economy.

Although no restrictions arise from mining law, the export of ore or minerals must, at all times, be made in compliance with the terms of international treaties that Portugal is a party to, which may introduce restrictions thereto.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Pursuant to the Geological Resources Law, the contractual position under prospecting and research, experimental exploitation and exploitation agreements may be transferred with the express authorisation of the Ministry of Economy. Rights to conduct reconnaissance may not be transferred.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

In accordance with the Geological Resources Law, the creation of mortgages is only authorised over rights arising from a concession for exploitation – and over the physical facilities created for support of mining activities – as security of credits/loans for the exploitation works, and shall be previously communicated to DGEG.

The enforcement of said mortgage shall follow the rules of the Code of Tax Procedure and Proceedings and of the Civil Procedure Code until the moment of the auction, which shall be executed by DGEG through public tender.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The option to subdivide rights to conduct reconnaissance, exploration and mining is not provided for, nor forbidden, in the mining laws.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The law does not prevent the association of entities for the purposes of acquiring mining rights and, in this context, joint undivided holdings may be considered to be permitted.

The Geological Resources Law introduced the possibility for holders of different concession titles to request the creation of a Agrupamento de Concessões, which will be allocated with the rights and obligations resulting from their capacity as concessionaires, based on neighbourhood or contiguity, ownership by the same economic group, the similarity or complementarity of the exploited geological resources and/or the benefits for the commercialisation or preparation of products.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

In general, yes, to the extent that concession agreements are usually not entered into for a specific type of mineral, but for the minerals available in the concession area. If the contract is granted for a specific mineral, the mining of a new mineral may only be made pursuant to an amendment to the concession agreement, which would be subject to approval by the competent authorities.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The law does not establish any specific rights over the residue deposits and they may generally be explored if they have an economic value. There is, however, a legal obligation to adequately manage and ensure that the waste generated is treated at the site – by means of a specific licensing procedure – or alternatively, is sent to a duly licensed facility for final destination and treatment. A waste management plan, in order to guarantee that waste is adequately managed, must be drawn up.

6.5 Are there any special rules relating to offshore exploration and mining?

The Geological Resources Law is applicable to all discoveries and use of geological resources located within the national territory, including those located in the Portuguese National Maritime Space (which is defined under Law 17/2014 of April 10 and comprises the seashore, territorial waters, exclusive economic zone and continental platform beyond the 200 maritime miles). In the maritime space, mining activities shall be subject to the granting of a use licence.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Prospecting and research and experimental exploitation right holders have the right to temporarily use the land necessary for the performance of works (and establishment of the facilities) and the granting of those rights is accompanied by the creation of an administrative easement over the relevant area. The holders of a concession agreement (exploitation right) may obtain, by means of an administrative act, the necessary administrative easements for the exploitation of resources. In certain circumstances, neighbouring land may be subject to said easement.

These administrative easements have the maximum legal term of seven years, without prejudice to the possibility of continuing occupying land with the consent of the owner of the land.

Also, the holders of a concession agreement have preference rights in the acquisition or transfer *in lieu* of the land located in the concession area, as long as the acquisition is necessary for the exploitation.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a prospecting and research right must compensate any third parties for all damages directly caused by the research activities and implement the relevant security, environmental protection and landscape recovery measures, even after the end of activities.

The holders of experimental exploitation and concession exploitation rights shall compensate any third parties for the damages resulting from exploitation, and shall implement environmental protection and landscape recovery measures.

The temporary use of the necessary land by holders of experimental exploitation rights entails the payment of compensation to the owners of the land.

Also, the creation of administrative easements may give rise to the payment of compensation.

7.3 What rights of expropriation exist?

The holders of a concession exploitation agreement may request the urgent expropriation, by reasons of public utility, of the land necessary for the performance of works and installation of facilities, even if it is located outside the covered area.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The main environmental authorisations applicable to mining activities are: (i) a favourable environmental impact assessment declaration – issued under the environmental impact assessment legislation; or (ii) a favourable (more simplified) environmental assessment declaration – issued according to Natura 2000 legislation. The type of authorisation shall depend on the size, location and area occupied by the operation at stake.

Specific authorisations, such as the licensing for the use of water resources, shall also be necessary.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Pursuant to the Geological Resources Law, a financial guarantee shall be delivered together with the prospecting and research, experimental exploitation and exploitation agreements in order to ensure compliance with the contract, the landscape recovery and the closure of mines.

In accordance with the Regulation on Waste Management of Mineral Deposits' Exploitation, the holder of the mining right must submit a waste management plan, which must be reviewed every five years. The facilities for the storage of tailings or other waste products are subject to a licensing procedure with DGEG or the Regional Directorate or Economy, depending on the type of the facility.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Closure obligations include the removal of all constructions and installations, the removal and delivery of all waste to a final destination in a duly licensed facility and the environmental recovery of the area according to an environmental and landscape recovery plan previously approved by the authorities.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Mining operations may only be carried out in areas designated for these activities in the applicable municipal zoning plans or in areas where mining is considered compatible with the use foreseen in the municipal zoning plan. In some cases, the municipal plan may not be completely updated in relation to special zoning plans approved by the Government determining legal restrictions for environmental purposes and, therefore, said plans and restrictions must also be taken into account.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No, it does not.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Health and safety in mining is governed by Decree-Law 162/90 of May 22, which approves the General Health and Safety at Work in Mines and Quarries Regulation.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Both employers and employees shall comply with health and safety conditions set out in articles 2 and 3 of Decree-Law 162/90 of May 22. The main obligations are imposed on the employer who is required to inform the employee (and in certain situations to publicise or make available easily accessible information) on all health and safety measures imposed by law.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. DGEG is the competent authority for this purpose.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

General law applies, meaning that, depending on the administration body and decision, administrative decisions may be subject to a claim or opposition against the public body that has taken the decision, in certain cases to an hierarchic appeal (within the public administration) and is generally subject to administrative appeals before judicial courts.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Portuguese Constitution determines which assets are to be considered public domain assets. Ordinary law regulates the terms and conditions and the limits for the use of such goods.

Under the Geological Resources Law, geological resources are divided into public domain goods (mineral deposits, mineral waters, mineral industrial waters, geothermic resources, geological resources located in the seabed and subsoil of the national maritime space) and private assets (quarries and spring waters). The granting of rights over the public domain goods is subject to the award of a concession contract, while the granting of rights over the private domain goods is subject to a licensing procedure.

12.2 Are there any State investment treaties which are applicable?

As mentioned above, Portugal is a Member State of the European Union and is subject to European legislation.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

No, there are not. Companies carrying out exploration and mining activities in Portugal will be subject to the general provisions foreseen in the Corporate Income Tax Code.

However, pursuant to the Company Tax Code, the provisions made retained against the costs in connection with the environmental damage of the mining site are tax deductible.

13.2 Are there royalties payable to the State over and above any taxes?

No, there are no specific rules in mining law concerning royalties payable to the Portuguese State. However, licensing fees, royalties, *premia* and other consideration are nevertheless usually negotiated and established in concession agreements, on a case-by-case basis.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Please note that municipal planning requirements form the basis of planning and zoning regulations (which, once adopted, constitute national law). In any case, the granting of rights regarding prospecting and research/experimental exploitation/exploitation shall occur following mandatory consultation with the relevant municipalities, which will be promoted by DGEG and the answers published on the DGEG website.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Yes, there are. Portugal has been a member of the European Union since 1986, and has been integrated in the eurozone since its implementation. Therefore, it is subject to European legislation. Accordingly, national law is in line with the European applicable common norms (principle of primacy of European law over internal law), and European Community laws are directly applicable without the need to be ratified by Parliament.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The suspension of exploitation may be authorised by DGEG due to force majeure reasons or when it refers to resources considered to be an adequate reserve of other resources in exploitation by the concessionaire. The suspension is valid for one year and cannot be extended for more than five years.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

The holder of prior entitlement rights must, upon expiry of the administrative contract, inform DGEG if it wishes to relinquish the area or request the granting of prospecting and research/exploration rights, experimental exploitation rights or mining/exploitation rights.

At each extension of the contract for prospecting and research activities, the holder of the title shall be required to make available part of the area initially covered by that title, pursuant to the terms and conditions set out in each administrative contract.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Prospecting and research, experimental exploitation or exploitation agreements may be terminated by the State on the basis of failure to comply with legal and contractual obligations. On the other hand, the holder of such rights may also terminate the agreements, provided that the works are concluded, based on the technical unfeasibility of revelation of natural recourses in the area covered by the agreement.

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

There are several main statutes that regulate mining law in the Russian Federation. First of all, there is the Constitution of the Russian Federation. The fundamental legal act in this area is the law on subsoil (Subsoil Law) and the Federal law on state regulation of coal-mining and social protection of coal industry workers. Other relevant statutes include: the Federal law on precious metals and gems; the Federal law on continental shelf of the Russian Federation; the Federal law on inland sea waters, territorial waters and contiguous zone of the Russian Federation, etc. Another important act that regulates investments in this area is the Federal law on production sharing agreements.

Norms directly affecting mining law are contained in the Civil Code, the Urban Development Code, the Land Code, the Water Code and the Tax Code of the Russian Federation.

1.2 Which Government body/ies administer the mining industry?

The state policy relating to management of natural resources, including subsoil and, thus, mining, is determined by the Government of the Russian Federation. The principal body in this field is the Ministry of Natural Resources and Environment of the Russian Federation, Federal Agency of Mineral Resources ("*Rosnedra*") and Federal Service for Supervision of Natural Resources controlled by the Ministry. Other important state bodies are the Federal Service for Environmental, Technological and Nuclear Supervision ("*Rostechnadzor*") and the Federal Service for the Oversight of Consumer Protection and Welfare, which are subordinated to the Russian Government directly. The Ministry of Energy and the Ministry of Construction, Housing and Utilities of the Russian Federation are also involved in some issues related to the mining industry. The Federal Registration Service exercises state land supervision. The state bodies of the constituent territories of Russia (including authorities of forest management) are involved as well.

1.3 Describe any other sources of law affecting the mining industry.

The Government of the Russian Federation adopts essential rules and orders related to mining law; for example, the order of bonus payments determination, provision on preparation, alignment and approval of technical projects of field development. Furthermore, there are many ministerial statutory acts regulating issues of subsoil management and matters concerning technical issues that take place in mining operations. Thus, the Ministry of Ecology and Natural Resources publishes decrees, defines the programme of licensing of deposits of certain mineral resources for specified periods, and lists of plants subject to licensing for reconnaissance and exploration at the expense of subsoil users. Rosnedra adopts administrative regulations in certain spheres related to the mining industry. First of all is the Regulation on issue, arrangement and registration of licences for the use of subsoil, reissue of licences; then the regulation on maintenance of the state register of works on geological exploration of subsoil, etc.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

To conduct reconnaissance, a licence for geological study should be obtained, which includes search and appraisal of deposits. Also there should be a licence to perform mine surveying works. If land parcels to conduct reconnaissance are in state or municipal ownership, then a permission note should be obtained according to the Land Code, and also permission for works at forested land parcels if the works do not involve felling.

2.2 What rights are required to conduct exploration?

The right to conduct exploration is obtained with a licence for exploration and mining, including management of waste and related processing works. Such a licence also should be obtained in case of oil and gas exploration and production for the purposes of water placement in rock formations. If the exploration takes place at a water body, then permission to use the water body is compulsory.

2.3 What rights are required to conduct mining?

In order to mine, apart from the exploration and mining licence, a rent or a servitude agreement should be concluded for a land parcel where the mining works would be performed (in accordance with regional legislation). Some subsoil objects are freed from the necessity to obtain construction permission (drilling, for example). There are more opportunities, according to the land legislation for hydrocarbons mining at forested parcels. At the same time, exploration and mining of widespread mineral deposits is prohibited in the water protection zones in any type of land or soil.

2.4 Are different procedures applicable to different minerals and on different types of land?

Normally, the general procedure is the same, but the rules for preparation of project documentation are different, the types of minerals should be mentioned in the licence, and the characteristics of land are to be described in the project documentation.

2.5 Are different procedures applicable to natural oil and gas?

The rules and order of preparation of the project documentation are different, and the mining is performed according to the plan of mining operations. The environmental legislation contains additional requirements.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

In general, the users of subsoil can be entrepreneurs, including partners in simple partnerships, foreign citizens, or legal entities, if otherwise not stipulated by Federal statutes. Nevertheless, participation of foreign entities and foreign capital may be narrowed by secondary legislation.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

There are certain limitations depending on the type of subsoil area (of Federal or local importance). Subsoil areas of Federal importance can be used by legal entities founded according to the legislation of the Russian Federation. The Government may specify additional limitations of pre-qualification, i.e. access to participation, in auctions for the right to use these subsoil areas by legal entities established according to Russian legislation, but with the involvement of foreign investors.

Exploration and mining of mineral resources on subsoil areas of Federal importance by a legal entity that is under the control of foreign investors or by a foreign investor itself can be performed only upon a decision of Russian Government relating to the possibility of exploration and mining in such subsoil area.

3.3 Are there any change of control restrictions applicable?

Transfer of subsoil rights under a licence is possible in case of reorganisation of a legal person in certain cases. When this occurs, the licence is subject to reissuance, but the terms of subsoil area management established by the previous licence are not subject to reconsideration. The transfer of subsoil rights in relation to subsoil areas of Federal importance to legal entities established according to Russian laws with the involvement of a foreign investor or a group of entities including a foreign investor is prohibited, if these investors:

1) have the right to directly or indirectly control (including on the basis of fiduciary management agreement, simple partnership agreement, engagement agreement, or by virtue of other deals, or on other grounds) more than 10 percent of the total amount of voting shares in the share capital (joint stock) of such legal entity;
2) by virtue of a contract or on other grounds have the right to determine decisions taken by such legal entity, including the terms of its entrepreneurial activity; and
3) have the right to appoint a sole executive body and/or more than 10 percent of the joint (collective) executive body and/or have unconditional possibility to choose more than 10 percent of the board of directors members (Board of supervisors) or other collective management body of such legal entity.

Such transfer may be allowed in exceptional cases upon a decision of the Government of the Russian Federation.

3.4 Are there requirements for ownership by indigenous persons or entities?

Generally, there are no special requirements for indigenous persons or entities, but in special cases there may be some.

3.5 Does the State have free carry rights or options to acquire shareholdings?

Normally, the acquisition of shareholdings by any entity (including the state) is possible according to civil legislation, which envisages equality of parties thereof. But, in some cases, nationalisation, requisition (in case of natural calamities) and appropriation (in case of severe violations) is possible. In case of nationalisation, a special legal act should be adopted.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are numerous regulatory technical provisions relating to processing, refining and further beneficiation of mined minerals. State technical supervision is obligatory in relation to safe mining.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are export custom duties that should be paid in case of transferring goods across the border of the Eurasian customs union. This amount is defined every two months by the Government of the Russian Federation.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The right to use subsoil areas obtained by a legal entity in accordance with established procedure cannot be transferred to third persons, including assignation of rights stated by civil law, except for some cases.

The licence to use subsoil areas obtained in accordance with established procedure cannot be transferred to third persons, including for enjoyment purposes.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

According to the civil law of the Russian Federation, if the transfer of rights to other persons is prohibited by law, these rights cannot be pledged, mortgaged or otherwise secured.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

It is possible to obtain separate licences for different types of use of subsoil areas, or a single licence for several types of use. Subdivision of a single right is not recognised in the Russian law system.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

No, under the law of the Russian Federation, these rights cannot be held in undivided shares under any circumstance.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

There are special norms that regulate mining of by-products or secondary minerals. If these are not indicated in the licence, the mining is only possible for legal entities established in accordance with Russian law and if:

- the Russian Federation has more than a 50 percent share in the share capital of such entity; and
- the Russian Federation or its constituent entity can directly or indirectly manage more than 50 percent of voting shares in the share capital of such entity.

Also the right to explore secondary minerals may be given to affiliated legal entities of enterprises that exercise geological study, exploration and mining in a determined location.

Otherwise the right to explore secondary minerals should be indicated in the licence.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

In order to exercise rights over residue deposits, an individual licence should be obtained.

6.5 Are there any special rules relating to offshore exploration and mining?

There are certain requirements for users of subsoil areas of Federal importance on the continental shelf of the Russian Federation or subsoil areas of Federal importance that are situated on the territory of the Russian Federation, but extend to its continental shelf. These users shall be legal entities which are established in accordance with Russian legislation and have no less than five years' experience of exploitation of subsoil areas at the continental shelf of the Russian Federation. The share (contribution) of the Russian Federation in the share capital of these legal entities shall be more than 50 percent and/or the Russian Federation shall have the right to directly or indirectly manage more than 50 percent of the total amount of voting shares in the share capital of such legal entities.

In case of production sharing agreements, legal entities and associations of legal entities (not being a legal entity themselves) established on the basis of a collaboration agreement (simple partnership agreement) can use subsoil areas, provided that partners are jointly liable thereto.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The holder of a right to conduct reconnaissance, exploration or mining does not automatically own the right to use the surface of land. The land parcel should be obtained in this case according to civil law, land law, forest law, water law and the Law on Subsoil.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

That depends on the terms of rent agreement or a servitude between a holder of mining rights and a landowner/lawful occupier, and by the licence terms as well. If the state owns the land parcel, then there may be mandatory norms regarding the liabilities of a subsoil user in relation to the period of the rent agreement and the size of the land parcel. In turn, the forest legislation regulates analogous terms for forested land parcels.

7.3 What rights of expropriation exist?

It is possible to take out land parcels for state or municipal purposes, including forested land parcels, if these are necessary to perform subsoil-related works. Landowners shall receive corresponding compensation. There are also specific norms in the land legislation.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The Environmental legislation requirements should be observed in all instances. The state body (*Rostechnadzor*) adopts special requirements relating to the mining operations plan. There are also other approvals to be obtained, related to activities that deteriorate atmosphere air quality and aquatic bioresources; to sanitary protection zones of potable water sources; and to soil reclamation projects and industrial waste.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Before storage of tailings and other waste products takes place, the corresponding project documentation needs to be prepared. In turn, this documentation is subject to the state environmental impact

assessment (appraisal) that is carried out at the Federal level. The mining operations plan shall envisage all these measures according to corresponding legislation on waste, sanitary and epidemiological welfare.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Mining enterprises and underground constructions not related to mining should be liquidated or shut down after expiry of the licence or in case of early termination of subsoil use.

Before the liquidation and conservation process is finished, the subsoil user is liable in accordance with the subsoil law.

In case of total or partial liquidation and conservation of an enterprise or an underground construction mine, openings and drilled holes should be brought into a condition guaranteeing life and health and safety, environmental protection and also the protection of buildings and constructions. In case of conservation, safety and integrity of deposit, mine opening and drilled holes should be guaranteed for the entire period of conservation.

The liquidation or conservation of a mining enterprise or underground construction not related to mining is regarded as complete after the signing of a liquidation/conservation act by authorities that issued a licence or by a mining inspection body.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

There are numerous obligations and provisions envisaged by the zoning legislation which the plan of mining operations should comply with. If a subsoil site is of regional importance, then it should be indicated in regional and municipal territorial planning documents. According to the zoning legislation, deposits and occurrences of minerals should be referred to industrial zones.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

According to Federal law on territories of traditional natural resource use by indigenous minorities of Northern regions, in Siberia and the Far East the use of natural resources is allowed, provided it does not violate the stated order. This order is established for each territory upon governmental provisions that can be approved only with the involvement of indigenous minorities and their communities. If a certain area is in the territory of traditional resource use, the subsoil users are obligated to coordinate their projects with population and local authorities. There is a calculation methodology of damages incurred by indigenous people approved by the Ministry of Regional Development.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Labour Code of the Russian Federation contains the main provisions regarding occupational health and safety. Other important norms specific to the mining industry are stipulated by the Federal Service for Environmental, Technical and Nuclear Supervision in its decree that establishes safety rules in mining works and processing of solid minerals. Similar rules exist for mining works in the oil and gas industry.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Russian labour law stipulates duties and obligations in relation to occupational safety for employers and employees as well. In case of harm, civil law also provides for secondary liability of persons that could be involved in taking decisions that resulted in harm to health or life. Non-compliance with occupational safety requirements entails administrative and criminal sanctions according to the Criminal Code of the Russian Federation and the Administrative Offences Code.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The government body that performs rights (i.e. licences) registration is the Federal Agency of Mineral Resources. Land rights are registered by the Federal Registration Service.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Disputes regarding use of subsoil are settled by state authorities, courts of general jurisdiction or arbitrazh courts (special courts for economic disputes in Russia) according to their powers. There is a system of appeal regarding acts, decisions and operations of state or municipal bodies.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution of the Russian Federation contains only general norms regarding distribution of authorities between the Russian Federation and its constituent territories related to subsoil.

12.2 Are there any State investment treaties which are applicable?

There is a special statute in Russia that regulates investment treaties regarding mining: the Federal law on production sharing agreements. According to this statute, such an agreement provides that the Russian Federation renders to an investor exclusive rights for search, exploration and mining of mineral resources at a subsoil area designated in the agreement and for related works on an indemnity basis and for a determined period of time, and the investor undertakes a duty to perform the mentioned works at its own expense and at its sole risk. Industrial groups of assets may be subject to public and private partnership agreement in accordance with the corresponding Federal law on public and private partnership agreements. Capital investments are regulated by the Federal law on Investment Activities carried out in the Russian Federation in the form of capital investments.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Among other taxes, subsoil users are obligated to pay a mineral production tax, which is a Federal tax. But there is a special order in case of production sharing agreements, according to which a subsoil user who is a party to that agreement is released from their duty to pay certain taxes and other compulsive payments according to the Tax Code.

13.2 Are there royalties payable to the State over and above any taxes?

The system of payments for the use of subsoil comprises single (one-time) payments, regular payments and a fee for participation in a tender (an auction).

Subsoil users granted a licence can arrange single payments upon occurrence of certain circumstances which are stipulated by the licence.

Regular payments (rentals) for the use of subsoil are raised for rendering of exclusive rights for search and assessment of mineral deposits, mineral prospecting, geological exploration and acceptability appraisal of subsoil areas for building and exploitation of constructions not related to mining, except shallow engineering structures (less than five metres) that are used according to their intended purpose.

Regular payments for the use of subsoil are charged separately for each type of work performed in the Russian Federation, on the continental shelf and in the exclusive economic zone, as well as in territories outside the Russian Federation, but under its jurisdiction (along with areas rented from foreign states or used according to an international treaty, if otherwise is not stipulated by such treaty).

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Federal legislation provides an opportunity for regional authorities of the constituent entities to pass acts of land and zoning legislation, particularly: on sites for which there is no need to obtain construction permission; on sites that should be indicated in the documents of territorial planning; and on land reserved as subsoil areas of regional importance. Several republics (e.g. Udmurt Republic, Komi Republic, Tatarstan and others) have adopted their own laws regarding subsoil use, but these should be studied carefully regarding compliance with Federal laws.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

First of all, one should take into account the legislation of the Eurasian Economic Union and some acts of Commonwealth of Independent States: significantly, the Custom Code of the Eurasian Economic Union, and the Unified Commodity Nomenclature for international economic activities, etc.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The right to subsoil use can by terminated before expiry, put on hold and limited by bodies that granted the licence in the following cases:

1) if there is immediate danger to health and life of the people who work or live in the area affected by the works related to the subsoil use; or
2) upon the occurrence of extraordinary situations (such as natural calamities, military operations and others).

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

There are no straightforward norms that regulate relinquishment of a part after a certain period of time. However, when it is declared inefficient or impossible to put a hold on the mining, the body that terminated the mining or exploration right prematurely, before the decision on a new user is taken, may render a short-term right (for less than one year) to a legal entity (temporary operator) with the issuance of a corresponding licence. This temporary operator may conclude a contract of property transfer with the previous subsoil user.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The right to subsoil use can by terminated before expiry, put on hold and limited by bodies that granted the licence in the following cases:

1) violation of the essential terms of the licence by the subsoil user;
2) systematic violation of terms of subsoil use by its users;
3) non-provision of a report envisaged by Russian subsoil legislation, non-provision of geological information on subsoil to the Federal register of geological information by the subsoil user;
4) when a subsoil user did not start its operations related to the subsoil area during the period stipulated by the licence in the designated volumes; and
5) liquidation of an enterprise or other business entity that was granted the right to use the subsoil.

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Kazakov and Partners, Attorneys at Law is a full-service law firm that renders a whole range of legal services to Russian and foreign businesses, individuals, state authorities and non-profit companies. All employees of the Office – as of today nine attorneys and over 30 legal experts – are recognised experts in different fields of law, with higher professional education in jurisprudence and extensive litigation experience both in courts of commercial disputes and courts of general jurisdiction of every instance.

According to the results of *IFLR* research, Kazakov and Partners is included in the list of recommended law firms in the sphere of legal consulting of energy companies. The law office is recommended by domestic rating Pravo-300 in the groups related to Antitrust Law, Bankruptcy and Energy Law. The firm also holds a strong position in Administrative Law. Furthermore, Kazakov and Partners, Attorneys at Law are in the TOP 50 by revenue and number of employees criteria in the Russian market.

Senegal

Dempsey Law Firm

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

First, it is to be noted that the Senegalese Mining Code has recently been amended.

Senegal is a member of WAEMU (West African Economic and Monetary Union). The laws regulating the mining sector are the following:

- Law n°2016-32 dated 8th November 2016 enacting the Mining Code (hereinafter the "**Mining Code**").
- Decree n°2017-459 dated 20th March 2017 implementing the Mining Code (hereinafter the "**Decree**").
- Regulation n°18/2003/CM/WAEMU dated 22nd December 2003 enacting the WAEMU Mining Code.

1.2 Which Government body/ies administer the mining industry?

- The Ministry of the Industry and of Mines.
- The Mines Authorities.
- Regional mines departments.

1.3 Describe any other sources of law affecting the mining industry.

They are as follows:

- The Civil Code.
- The revised Uniform Act relating to general commercial law dated 15th December 2010.
- Law n°2001-01 enacting the Environmental Code, dated 12th April 2001.
- Law n°98/03 dated 8th January 1998, enacting the Forest Code and its implementing decree, dated 20th February 1998.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Any legal entity may carry out prospection activities on all or part of the territory of Senegal subject to the granting of a prior authorisation of prospection.

Procedure:

The application for a permit for prospection is sent in three (3) original copies to the Administration of Mines (which acknowledges receipt). The authorisation is granted by the Administration of Mines for a period that may not exceed six (6) months, renewable once provided that the applicant has complied with its obligations.

Rights:

- Non-exclusive right of prospection within the authorised perimeter for the minerals specified in the permit.
- The permit for prospection may not be transferred and may not be the object of any form of pledge or guarantee.

Obligations:

- The holder of the permit must send a report setting out the results of the investigations to the mining authorities, and any other documents that enable a more in-depth knowledge of the site.

2.2 What rights are required to conduct exploration?

The exploration permit may be held by an individual or legal entity, whether or not incorporated under Senegalese law.

Procedure:

The application for an exploration permit is sent in three (3) original copies to the Ministry of Mines (that acknowledges receipt). Within a maximum period of fifteen (15) days, as from the date of the notification of admissibility, the applicant is summoned to the Mining Department for a joint study of the application. A mining convention is negotiated with the Mines Authorities for a period which cannot exceed three (3) months as from the notification of the admissibility of the file for the granting of the mining title. In the event of conclusive negotiations, the mining convention is sent to the Mines Authorities for consent. The mining convention can be signed by the applicant and by the Minister of Mines within a deadline of twenty-one (21) days as from receipt of the consent of the Minister of Finance, or upon the expiry of a period of twenty-one (21) days without any response from the latter. In the event of inconclusive negotiations, the application is rejected. After a period of twenty-one (21) days as from the signature of the mining title, the exploration permit is granted by order. The exploration permit is granted, subject to the payment of fixed duties, for a duration of no more than four (4) years, renewable twice for periods that may not exceed three (3) years and upon each renewal the surface area of the perimeter is reduced by half.

Rights:

The exploration permit confers on its holder, *inter alia*:

- Within its perimeter, surface and to an indefinite depth, the exclusive right to explore for the minerals for which it is granted.
- The right to take samples of minerals extracted during the exploration.
- The right to a mining permit if it has proven the existence of a commercially viable deposit during the period of the validity of the exploration permit.
- Priority for the granting of an exploration permit for any other substances than those included in its own mining title, and which are discovered within the scope of its own exploration permit.

Obligations:

The exploration permit confers upon its holder the following obligations, *inter alia*:

- To carry out during the initial period of the permit (and during any periods of renewal) the annual exploration works that are approved by the Minister of Mines.
- To spend the minimum amount that has been approved for the authorised works.
- To commence the exploration within six (6) months as from the date of notification of the granting of the exploration permit.
- To regularly inform the mining authorities of the works and results obtained.
- To notify the Minister of Mines of the discovery of new deposits.
- To carry out assessments, where a discovery has been made, to determine whether or not the deposit is commercially viable.
- To request a mining permit, or a mining concession, as soon as the existence of a commercially viable deposit has been established.
- To submit for approval to the Minister of Mines all contracts/documents in which the titleholder promises to assign, transfer, or transmit the rights and obligations arising under the exploration permit.

2.3 What rights are required to conduct mining?

- **Mining permit**:

  The mining permit must be held by a company incorporated under Senegalese law.

  Procedure:

  The application for a mining permit is sent in three (3) original copies to the Ministry of Mines (which acknowledges receipt). The application must be made at least four (4) months prior to the termination of the exploration permit. If all is in order, the mining permit will be granted by decree.

  Mining concessions are granted for a minimum period of five (5) years and up to twenty (20) years (renewable).

  Rights:

  The mining permit confers on the holder, *inter alia*:

  - The exclusive right to mine, and dispose of minerals for which the mining permit has been granted within the perimeter that has been attributed and to an indefinite depth.
  - The right to renewal.
  - The right to extend the rights and obligations attached to the mining title to other substances (where the request is made within six (6) months).
  - The right to occupy the land necessary for carrying out mining activities.
  - A real property right (distinct from the ownership of the land) registered as such and which may be mortgaged.
  - The right to assign, transfer or farm-out the mining permit.
  - The right to waive in whole, or in part, its rights subject to the provision of notice of one (1) year and the provisions of the Mining Convention.
  - The right to transport the extracted substances to the point of storage, processing or shipment and to dispose of them either within Senegal, or in foreign markets.
  - The right to the stability of the legal, administrative, financial and fiscal conditions of the mining operations.

  Obligations:

  - To mine the deposit.
  - To regularly inform the Minister of Mines of the methods and results of the mining, the results of exploration, and of additional proven and potential deposits, as well as their specifications.
  - To begin mining operations as soon as possible, and within one (1) year, failing which a penalty of fifty (50) million FCFA per month for the first three (3) months which will be increased by fifteen (15%) per month from the previous month starting from the fourth month and lasting until twelve (12) months' delay. If the mining operations are not carried out within two (2) years following the granting of the permit, the latter can be cancelled.

- **Production sharing contract**:

  Production sharing contracts can only be granted on promotional zones except if the titleholder of a mining title on a perimeter situated outside the promotional areas decides to carry out mining works by a production sharing contract. The beneficiary of a production sharing contract is not subject to the payment of a royalty.

  Procedure:

  On the basis of a model drawn up by the Mines Authorities, the production sharing contract is negotiated between the contractor and the Minister of Mines during a period that cannot exceed three (3) months. Once negotiated, the contract is sent to the Minister of Finance for assent. The Minister has twenty-one (21) days following receipt of the assent to render his opinion. The contract is then signed by the contractor and the Minister of Mines within twenty-one (21) days as from the notice of the Minister of Finance. The contract is granted by a decree.

- **Small mine**:

  Small mine applies to substances coming from primary or secondary flush or sub-flush deposits.

  The perimeter of a small mine cannot exceed five hundred (500) hectares.

  Procedure:

  Application for a small mine is addressed in three (3) original copies to the Ministry of Mines (which acknowledges receipt).

  If everything is in order, the authorisation will be granted by order of the Minister of Mines for a period that cannot exceed five (5) years (renewable).

  Rights:

  The exclusive right to carry out prospection and mining operations.

  Obligations:

  The holder has, *inter alia*, the following obligations:

  - To delimit the area within two (2) months as from the grant of the authorisation.

- To respect the environment.
- To rehabilitate the site.
- To compensate third parties.
- To commence the exploration within three (3) months as from the granting of the authorisation.
- To notify the Minister of Mines of any new, more important deposits found inside the area within a maximum period of one (1) month, failing which the authorisation can be cancelled.

- **Semi-automatic mining**:

  Small mine applies to substances coming from primary or secondary flush or sub-flush deposits.

  The perimeter of a semi-automatic mining cannot exceed fifty (50) hectares.

  Procedure:

  Applications for a semi-automatic mining are addressed in three (3) original copies to the Ministry of Mines (which acknowledges receipt).

  If everything is in order, the authorisation will be granted by order of the Minister of Mines for a period that cannot exceed three (3) years (renewable).

  Rights:

  The exclusive right to mine minerals for which the authorisation has been granted within the perimeter that has been attributed and to a maximal depth of fifteen (15) metres.

  Obligations:

  The holder has, *inter alia*, the following obligations:

  - To delimit the area within two (2) months following the granting of the authorisation.
  - To commence the exploration within two (2) months as from the granting of the authorisation.
  - To rehabilitate the site.
  - To compensate third parties.
  - To notify the Minister of Mines of any new, more important deposits found inside the area within a maximum delay of one (1) month, failing which the authorisation can be cancelled.

- **Artisanal mining**:

  Artisanal mining is granted to any individual who cannot ask for exclusivity.

  Procedure:

  The authorisation is granted by the Mine Authorities after consulting the administrative authorities and the local municipality. The authorisation is granted for a period that cannot exceed five (5) years (renewable).

  Obligations:

  - To pay a fixed duty to the territorial communities.
  - To comply with the environmental obligations.
  - To personally carry out the artisanal mining activity.

2.4 Are different procedures applicable to different minerals and on different types of land?

There is a different procedure for quarries.

Private and public quarries can be temporary if the exploitation does not exceed one (1) year.

- **Private quarries**
  - **Permanent private quarry**

    The application for opening and operating a permanent private quarry is addressed in three (3) original copies to the Ministry of Mines (which acknowledges receipt).

    If everything is in order, the authorisation will be granted by order of the Minister of Mines for a period that cannot exceed three (3) years (renewable). The Mines Administration proceeds with the recognition of the perimeter in the presence of the applicant and the owner of the quarries concerned. If the applicant does not participate, a formal notice is sent to the latter by the Mines Administration. If during fifteen (15) days, the formal notice remains without effect, the Mines Administration will reject the application.

    The authorisation is given by order of the Minister of Mines for a period that cannot exceed five (5) years (renewable). Three (3) months following the granting of the authorisation to open and to mine the permanent private quarry, the holder must limit the perimeter.

  - **Temporary private quarry**

    The application for opening and operating a temporary private quarry is addressed in three (3) original copies to the Mines' Administration. The authorisation is granted for a period that cannot exceed one (1) year (renewable). If the application complies with the conditions of the Decree it will then be submitted for the opinion of the authorities in charge of the registry, land, water and forests, environment and the local authority concerned by the application. The Director of Mines and Geology (or his representative) may, during the examination of the application, carry out an inspection of the area concerned. The permit is granted by way of an order from the Minister of Mines for a period of five (5) years (renewable once).

- **Public quarries**

  The authorisation to mine is taken within seven (7) days after consulting the administrative authorities after notice given to the local communities concerned. The authorisation is given for a period that cannot exceed five (5) years (renewable).

- **Rock piles, rock dumps and process release**

  The application for the granting of the authorisation for the exploitation of rock piles, rock dumps and process release is addressed in three (3) original copies to the Minister of Mines (which acknowledges receipt). The authorisation is granted by an order of the Minister of Mines.

2.5 Are different procedures applicable to natural oil and gas?

The prospection, exploration and mining for hydrocarbons are governed by law n°98-05 enacting the Petroleum Code dated 8th January 1998.

Prospection: An authorisation for up to two (2) years to carry out prospection for hydrocarbons may be granted by order of the Minister in relation to those zones not covered by hydrocarbons mining titles, or by a service agreement.

Exploration: The exploration permit is granted by way of a decree for a maximum period of four (4) years.

Exploitation: Hydrocarbon deposits may only be operated under either a temporary operating licence, or under a concession.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

No, there are not.

3.2 Are there any change of control restrictions applicable?

Where there is a total change in the control of the titleholder, prior authorisation must be obtained. Where there is a partial change in control, it will be necessary to at least inform the mining authorities of the change.

3.3 Are there requirements for ownership by indigenous persons or entities?

See the answer to question 3.4 below.

3.4 Does the State have free carry rights or options to acquire shareholdings?

The State has a 10% free participation in the mining company and may negotiate for itself an additional participation in the capital of the mining company which cannot exceed 25% of the share capital of the mining company (article 31).

3.5 Are there restrictions on the nature of a legal entity holding rights?

There are no restrictions.

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

No. Such processes are included with the definition of "mining operations" in the Mining Code.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The titleholder can freely export extracted mineral substances, their concentrates, their primary products and other derivatives (subject to completion of legal formalities).

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

A prospection permit, a small mine authorisation, a semi-automatic mining authorisation and an artisanal mining authorisation may not be transferred.

On the other hand, an exploration permit may be transferred, subject to the prior approval of the Minister of Mines. Similarly, a mining permit may be transferred but again, subject to the approval of the Minister of Mines and payment of fixed amounts.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

It is only possible to mortgage a mining permit.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

These are not provided for.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The rights under the mining permit and exploration permit are indivisible (article 19).

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Mining permit: The titleholder can ask for an extension of its permit so as to include other minerals. This extension is granted in accordance with the same conditions as for the initial mining title (article 25). **Small mine**: The titleholder can ask for an extension of its permit to a secondary mineral if the minerals are not subject to another mining authorisation or mining permit.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

According to article 27 of the Mining Code, the titleholder has the exclusive right to dispose of the minerals for which the mining permit has been granted.

6.5 Are there any special rules relating to offshore exploration and mining?

No, there are not.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The rights include the following:

- The right to occupy the land necessary for the carrying out of the exploration and mining works, the realisation of related activities and the construction of housing for personnel assigned to construction activities.

- The right to proceed with infrastructure works necessary for the realisation of operations relating to research and operations including the transportation of supplies, materials, equipment and products extracted.
- The right to carry out surveys and works required for the supply of water for the personnel.
- The right to explore and extract building materials needed for operations.
- The right to cut wood needed for the works.
- The right to use unused or unprotected waterfalls.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The titleholder is under an obligation to compensate the landowner in the event that the titleholder's activities cause damage to the land owner. (Article 93.)

7.3 What rights of expropriation exist?

The State guarantees that installations and infrastructures built or acquired during the course of the mining operations may not be subject to any measures of expropriation, except in circumstances of "*Force Majeure*" or public necessity. In such a case, the State must pay a fair compensation.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

For mining, or small mine, an environmental impact study (or "EIS") is required.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

There is an obligation to restore the site to its previous state upon the expiry of a mining title. In this regard, the holder of a mining title must open an account in a public institution designated by the State into which funds are to be paid to cover the costs of the implementation of the environmental management plan.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Please see the answer to question 8.2 above.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Protected areas:

Protected areas may be created by order of the Minister of Mines, within which prospection, exploration and mining of mineral substances are prohibited. This may be in order to protect, for example, buildings, and where it is in the general public interest.

In addition, it is to be noted that there are reserved zones within which only small-scale mining activities and artisanal mining activities may be authorised.

Promotional areas:

The State can create on all or part of the country promotional areas within which sufficient data and results are obtained and which have a mining interest that justify a competition procedure in order to promote investment.

Exploration permits or exploitation permits are granted in promotional areas according to the rules on competition.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

A person does not need to acquire an interest in land in order to apply for a mining permit.

However, it is to be noted that the titleholder must compensate any individual or legal entity for any damage caused.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Mining Code and law n°97-17 dated 1st December 1997, enacting the Labour Code.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The titleholder must inform the Minister of Mines, as well as the competent administrative authority, the regional labour inspector, the social security and the public prosecutor of any accident or any identified danger that occurs during mining activities.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mines Authorities keeps data regarding the soil and basement (article 7 of the decree).

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Subject to specific provisions contained in a mining convention, all disputes relating to the implementation and the interpretation of the Mining Code are for the Courts of Senegal.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Senegalese Constitution has both a direct and an indirect impact on mining activities.

12.2 Are there any State investment treaties which are applicable?

State investment treaties apply to the Mining Code. Senegal has signed such treaties with: Argentina; Egypt; Germany; India; Morocco; the Netherlands; Romania; South Korea; Sweden; Switzerland; Tunisia; the United Kingdom; and the United States of America.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Exploration phase:

Exoneration from custom duties, VAT and "COSEC" (COSEC: Senegalese Shippers' Council) duties and taxes for, *inter alia*, the following:

- Equipment, materials, supplies, machines, as well as spare parts, neither produced, nor manufactured in Senegal, and specific materials required for exploration activities.
- Fuel.
- Oil products.
- Materials and spare parts and components required for exploration activities.
- Temporary admission to full exoneration from import and export taxes and duties in relation to, *inter alia*, materials, machines, equipment which, once used, may be re-exported or transferred.

Mining phase:

Total exoneration from all taxes and duties charged upon entry into Senegal, including COSEC relating to, *inter alia*, the following:

- Materials, machines, equipment required for the mining operations.
- Fuel to be used for the mining operations.
- Oil products to be used to produce energy for the purposes of the mining operations.
- Spare parts and components required for the mining operations.
- Exoneration from export tax regarding products derived from their mining operations.

13.2 Are there royalties payable to the State over and above any taxes?

The titleholder must pay:

- Fixed fees for the granting, renewal, extension, prorogation, the processing, transfer or farming-out of exploration and mining titles:
  - For an exploration permit: 2,500,000 FCFA.
  - For a mining permit: 10,000,000 FCFA.
- Annual mining royalty:
  - For an exploration permit:
    - First period of validity: 5,000 FCFA/km^2/year.
    - First period of renewal: 6,500 FCFA/km^2/year.
    - Second period of renewal: 8,000 FCFA/km^2/year.
  - For a mining permit: 250,000 FCFA/km^2/year.
- A quarterly mining royalty on the market value of the marketed mineral or on the value of the FOB value of the exported mineral:
  - Cement: 1%.
  - Raw gold: 5%.
  - Gold refined in Senegal: 3.5%.
  - Gold refined outside Senegal: 5%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

An exploration or a mining company should take into account:

- the West African Economic and Monetary Union regulation 18/2003/CM/UEMOA dated 23rd December 2003 enacting the Mining Community Code; and
- Directive C/DIR3/05/09 dated 26th–27th May 2009 relating to the harmonisation of guidelines and policies in the mining sector.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The holder of an exploration permit can abandon all or part of its rights if it has satisfied all its obligations and provided it has given one (1) month's notice addressed to the Minister of Mines.

The holder of a mining permit can abandon all or part of its rights after giving one (1) year's notice addressed to the Minister of Mines and subject to the provision of the mining convention.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Not to our knowledge.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The Minister of Mines can cancel an exploration permit in the event

that a formal demand has not been complied with within three (3) months. The withdrawal is not subject to any compensation from the State.

The mining title can be revoked by a decree after a formal demand from the Minister of Mines has not been complied with by the titleholder within three (3) months. This withdrawal is pronounced, *inter alia*, in the following situations:

- persistent inactivity;
- suspension or serious restriction of the exploitation without a valid reason;
- non-compliance with the obligations and commitments provided in the mining convention and its potential addendum;
- non-payment of the rent and royalties due;
- non-fulfilment, without reason, of the work programme and annual budgets;
- the titleholder does not hold its operating records, sales and shipping regularly and does not comply with standards set by the regulations; and
- assignment, or leasehold of the rights conferred by mining title without the prior approval of the Minister for Mines.

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Christopher Dempsey is the partner and founder of "Dempsey Law Firm". He is responsible for the firm's energy and natural resources department. His practice includes, notably, large-scale energy and natural resources projects, with a particular emphasis on the mining sector in Africa (both Anglophone and Francophone Africa), where he has been active for over twenty (20) years.

South Africa

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

South African Mining Law is regulated by the Mineral and Petroleum Resources Development Act, 28 of 2002 ("**MPRDA**") which is the predominant piece of legislation dealing with acquisitions or rights to conduct reconnaissance, prospecting and mining. The MPRDA became effective on 1 May 2004 and substitutes the erstwhile hybrid system of a common law system with statutory interference. There are several other pieces of legislation which deal with such ancillary issues such as royalties (the Mineral and Petroleum Resources Royalty Act, 2008), title registration (the Mining Titles Registration Act, 1967), and health and safety (the Mine Health and Safety Act, 1996).

1.2 Which Government body/ies administer the mining industry?

The mining industry in South Africa is administered by the Department of Mineral Resources, the head office of which is situated in Pretoria, South Africa and each of the nine regions of South Africa have regional offices of the Department of Mineral Resources. There is also a mine health and safety inspectorate which falls under the auspices of the Department of Mineral Resources. In addition there is a Director-General and a Deputy Director-General both of whom have delegated powers down from the Minister to take various decisions as delegatee of the Minister.

1.3 Describe any other sources of law affecting the mining industry.

The mining industry in South Africa is also affected by the law of contract. The terms and conditions applicable to a prospecting right and mining right are those agreed between the Minister and the holder of the right in a notarially executed prospecting right and mining right. Furthermore, often mining companies enter into surface use agreements with land owners and occupiers of land in regard to the use of surface for mining.

Mining law is also affected by the common law of South Africa derived from Roman law principles through Roman Dutch law. These principles are often described and enunciated in case law, which case law also places judicial interpretation upon legislation such as the MPRDA.

The law of delict is also relevant in a mining law context. For example, downstream owners of land may have a claim in delict for damages suffered as a result of pollution of water by a mining company upstream.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance is defined in South African law as "any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo-geological surveys that includes any remote sensing techniques but does not include any prospecting operations other than acquisition and processing of new seismic data". In order to conduct a reconnaissance an applicant needs to apply for a reconnaissance permission to the DMR and demonstrate that the applicant has financial resources, technical ability and has lodged a reconnaissance work programme. Such rights are valid for one year and are not renewable or transferable. The holding of a reconnaissance permission does not grant any exclusivity to apply for, or be granted, a prospecting right or a mining right.

2.2 What rights are required to conduct exploration?

In South African law there is a distinction between prospecting and exploration. Prospecting relates to searching for minerals other than petroleum and exploration relates to searching for petroleum. Petroleum relates to liquid, solid hydrocarbons or combustible gas but excludes coal and bituminous shale. In order to conduct prospecting for minerals (other than petroleum), an applicant has to apply for and be granted a prospecting right. In order to procure the grant the applicant must apply for an environmental authorisation and consult with interested and affected parties, including land owners and lawful occupiers. The Minister is obliged to grant the prospecting right if the applicant has access to financial resources and technical ability, can conduct the prospecting in accordance with the prospecting work programme and if the prospecting will not result in unacceptable pollution, degradation or damage to the environment. Prospecting rights are granted for a maximum period of five years and are renewable once for period of up to three years. The holding of a prospecting right grants exclusivity to the holder in regard to an application for a mining right. In regard to petroleum, an applicant has to apply for an exploration right in terms of the petroleum chapter of the MPRDA.

2.3 What rights are required to conduct mining?

A person wishing to conduct mining for minerals (other than petroleum) needs to apply for a mining right in terms of the MPRDA. In order for the application to be granted, the applicant has to lodge an application for an environmental authorisation and consult with interested and affected parties, including land owners. The Minister must grant the right if the mineral can be mined optimally, the applicant has access to financial resources and technical ability and the mining will not result in unacceptable pollution, ecological degradation or damage to the environment. Furthermore, the applicant has to lodge a mining work programme and a detailed social and labour plan. A mining right is granted for a maximum period of 30 years provided that the holder is entitled to apply for renewal for periods not exceeding 30 years. In regard to petroleum, an applicant has to apply for a production right in terms of the petroleum chapter of the MPRDA.

2.4 Are different procedures applicable to different minerals and on different types of land?

Different procedures are not applicable to different minerals. Thus an application for a gold or platinum right, for example, has the same requirements as an application to prospect or mine for diamonds. The only distinction is in relation to petroleum as described above. There are no different procedures for different types of land.

2.5 Are different procedures applicable to natural oil and gas?

Different procedures are applicable to natural oil and gas as described in questions 2.2 and 2.3 above.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

There are no restrictions on the nature of a legal entity holding rights. Thus a natural person may hold rights as well as a juristic entity, including trusts and associations of persons. Furthermore, rights can be held in partnership and in joint ventures which may constitute partnerships or not.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

There are no special rules in South Africa in regard to foreign applicants. They have to comply with exactly the same criteria for the grant of a right as an indigenous applicant. Prospecting rights and mining rights in South Africa can be held by foreign entities, whether natural or juristic and the whole of a mining right can be owned directly or indirectly by a foreign entity. If a foreign company conducts business in South Africa it would have to register at least as an external company in terms of the Companies Act.

3.3 Are there any change of control restrictions applicable?

There are change of control restrictions applicable. The disposal of a controlling interest in a company holding a prospecting or mining right requires the prior consent of the Minister. This does not apply to listed entities. The wording in the MPRDA regarding disposals of controlling interests is wide enough probably also to include the changes in controlling shareholding of ultimate holding companies even offshore. There is a recent amendment to the MPRDA which has been approved by Parliament but has not yet become force of law which will provide for a disposal of any interest in a company holding a prospecting right or mining right requiring the prior written consent of the Minister provided that this restriction will only apply to a disposal of a controlling interest in the case of a listed entity.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no requirements for foreign ownership by indigenous persons or entities in entities holding prospecting rights or mining rights in South Africa. However, there is a requirement that at least 26% of the attributable units of production of prospecting or mining projects should be held by historically disadvantaged South Africans. A mining charter dealing with the transformation of the mining industry to assist the entrance of historically disadvantaged South Africans into the minerals and mining industry applies to all holders of prospecting rights and mining rights. A mining charter was published in 2004 when the MPRDA came into effect but has been substituted by an amended mining charter in 2010.

3.5 Does the State have free carry rights or options to acquire shareholdings?

The State does not have free carry rights in relation to prospecting or mining projects, nor rights to acquire shareholdings. There is a State-owned mining company which itself applies for prospecting rights or mining rights in accordance with the MPRDA.

In the petroleum industry, it is common in exploration rights and prospecting rights for the parties to agree that the State shall have an entitlement of a free carry (up to 5%) and options to acquire further shareholding provided that such shareholding will be contributory. The Amendment Bill referred to in question 3.2 above provides for a 20% free carry in favour of the State with an option to acquire a contributory interest of up to 100%.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The MPRDA provides that before any person intends to beneficiate any mineral mined in the Republic of South Africa outside the Republic, the holder may only do so after written notice and in consultation with the Minister. The holder of a mining right is entitled to process minerals mined under the auspices of a mining right as the holder of a mining right. However, there are further

statutory provisions that are applicable to processing of precious metals and diamonds and these requirements are regulated by the Precious Metals Act, 2005 and the Diamonds Act, 1986, respectively.

The Amendment Bill referred to in question 3.2 above provides that every producer of designated minerals must offer local beneficiators a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and timelines at the mine gate price or agreed priced.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are restrictions on the export of certain minerals, such as diamonds in terms of the Diamonds Act, 1956 and precious metals in terms of the Precious Metals Act, 2005. Precious metals include gold, silver and the platinum group metals. A permit is required to export and export levies are imposed.

The Amendment Bill referred to in question 3.2 above provides that no person other than a producer that has offered local beneficiators the prescribed percentage of its production of minerals may export designated minerals or mineral products without the Minister's prior written approval.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The MPRDA contains restrictions on the ability to transfer reconnaissance rights, prospecting rights, mining rights, exploration rights and production rights. The transfer of these or any interest in these through any method of disposal requires the prior written consent of the Minister of Mineral Resources. The Minister is obliged to grant such consent if the transferee satisfies the criteria for the grant of a right in the first place. Disposals are given effect to by cessions of rights which are capable of being registered in the Mining Titles Office.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Reconnaissance licences may not be bonded, but exploration, production, prospecting and mining rights are all capable of being bonded. If the bond holder is not a bank or financial institution, prior written consent from the Minister is required. If the mortgagee is a bank or financial institution and the money is used for purposes of the project, then the consent of the Minister is not required to bond the right, although, upon foreclosure, under the bond any transfer to a third party by the bond holder would require the consent of the Minister. The bonds are registered in the Mining Titles Office and constitute real security giving preference security to the holder of the bond. If the holder of a right goes into liquidation the right lapses and does not fall into the liquidator's hands. This lapsing provision does not apply in the case of a bond which is held by a bank or financial institution in which event the right continues to exist upon liquidation.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Reconnaissance rights may not be sub-divided. Production, prospecting rights and mining rights are capable of being sub-divided provided the requisite consent of the Minister is obtained in terms of the MPRDA. Any such sub-division may have to be accompanied by consultation with interested and affected parties prior to the grant of the consent, amendments to environmental management plans or programmes, amendments to work programmes and amendments to social and labour plans.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Rights to conduct reconnaissance, exploration and mining are capable of being held in undivided shares which shareholding is recognised in the MPRDA and in terms of the Mining Titles Registration Act, 1967. This situation often arises in joint ventures or partnerships in the mining industry where rights are held in undivided shares. Under the erstwhile common law system, right were held often in undivided shares and such undivided shareholders had the rights to convert their rights into new rights in terms of the MPRDA and thus the holding of rights in undivided shares is common in South African mining law.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The holder of a primary mineral is not entitled to explore or mine for secondary minerals in respect of which the primary mineral right holder is not the holder of the rights thereto. The holder of the primary minerals would have to either leave the minerals underground or stockpile such minerals on the surface without the entitlement to dispose thereof. It is common in such scenarios where there is not a third party holding the rights to the secondary minerals, for the holder of the primary right to apply to the Minister to amend the primary right to include the right to mine for secondary minerals. The Amendment Bill referred to in question 3.2 above provides for a declaration by the holder of a primary mineral of an associated mineral being a mineral which occurs in mineralogical association with and in the same core deposit as the primary mineral being mined.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The holder of a prospecting right or mining right has no entitlement to residues which existed on the land concerned prior to the holder obtaining the prospecting right or mining right. However, any residues created by the holder of the mining right would be considered to be residue stockpiles. Residue stockpiles are capable of being processed by the holder of the mining right. Upon lapse

of the mining right, the relevant residues would become residue deposits and third parties could apply for rights to prospect or mine thereover. The Amendment Bill referred to in question 3.2 above provides for owners of residue stockpiles and residue deposits located outside the ambit of the mining area to apply for mining rights or mining permits to the State within a period of two years from the Amendment Bill taking effect.

6.5 Are there any special rules relating to offshore exploration and mining?

There are no special rules in relation to the sea as defined in the MPRDA. "Sea" is defined as the bed of the sea and the sub-soil thereof below the low water mark and within the territorial waters, the exclusive economic zone and the continental shelf. If the relevant mineral is classified as petroleum then the petroleum chapter of the MPRDA will apply to exploration or production of petroleum offshore.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The rights to use the surface of a holder of a right to conduct reconnaissance, exploration or mining in terms of the MPRDA are extensive. The holder may:

- enter the land to which such right relates, bring his or her employees onto the land and bring any plant, machinery or equipment or build or construction or lay down any surface, underground or undersea infrastructure which may be required for purposes of exploration or mining;
- prospect or mine for his own account;
- remove and dispose of such mineral;
- use water in relation to prospecting or mining activities; and
- carry out any other activity incidental to exploration or mining.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a reconnaissance right, exploration right or mining right has duties towards the landowner or lawful occupier in terms of consultation, and the holder of a prospecting right or mining right has to compensate the landowner for loss or damage suffered as a result of the conduct of prospecting or mining activities. It is not necessary for the holder of a prospecting right or mining right to purchase land or even enter into an agreement to use the land with the surface owner.

7.3 What rights of expropriation exist?

There are rights of expropriation vested in the DMR to expropriate land or an interest in land if it is the national interest and for the promotion of the objectives of the MPRDA.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Currently, the holder of a prospecting right or mining right is required to have an approved environmental authorisation, prior to the conducting of the relevant activities. In addition, the right to use water is governed by the National Water Act, 1998.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The holder of a prospecting right or mining right must furnish during all stages of the project sufficient pecuniary provision for rehabilitation which is reassessed on an annual basis. This is done in terms of a deposit with the DMR, bank guarantee or a trust deed. The principle of pecuniary provision is that there must be sufficient funds at all times in the hands of the DMR apart from the mining company to attend to rehabilitation if there is a premature closure of the mine. There are provisions in separate waste legislation for the storage of tailings and the designation of areas for such storage and waste licences to be obtained in regard to waste products.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The holder of a prospecting right or mining right must apply for a closure certificate within 180 days of ceasing the relevant operation and lodge a closure plan. Furthermore the holder of a prospecting or mining right must comply with all aspects of the environmental authorisation approved in relation to the prospecting right or mining right in regard to closure.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Zoning requirements may be applicable and required to be obtained over and above the prospecting right or mining right if there are zoning restrictions in the applicable area. There may be a town planning scheme with an application over the relevant area which restricts prospecting or mining without a rezoning application.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Native title or other statutory surface use rights do not have a material impact upon reconnaissance, exploration or mining operations. Holders of such rights would be in the same position as any landowner or lawful occupier in regard to consultation by applicants and holders of prospecting rights or mining rights and the right to receive compensation in the case of damage or loss. Communities owning

land do have preferential rights to apply for rights to prospect or mine. Furthermore if any application for a mining right relates to land occupied by a community the Minister may impose such conditions as are necessary to promote the rights and interests of the community.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

There is a separate piece of legislation dealing with health and safety in mining, namely the Mine Health and Safety Act, 1996. Previously, mine health and safety was dealt with in the same ambit as the relevant mining law, namely the Minerals Act, 50 of 1991 but it was removed and placed in a separate piece of legislation as the purpose of the two pieces of legislation is often in conflict.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

There are extensive obligations imposed upon owners, employers, managers and employees in relation to health and safety, including in relation to statutory appointments, liability, committees, inquest and enquiries.

11 Administrative Aspects

11.1 Is there a central titles registration office?

There is a central titles registration office in Pretoria which registers prospecting rights, mining rights, cessions thereof, bonds there over and amendments thereto, amongst others. There is an obligation upon holders of rights to lodge for registration of the rights within certain prescribed time limits.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is a system of appeals against administrative decisions in terms of the relevant mining legislation. One has to exhaust the internal remedies before going to court to set aside an administrative decision on review in terms of the High Court rules. Appeals have to be brought within 30 days of gaining knowledge of the relevant decision.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

There is a Constitution in South Africa of 1996 which has an impact upon rights to conduct reconnaissance, exploration and mining. Section 25 of the Constitution protects property from being expropriated without just and equitable compensation; property would include prospecting rights or mining rights and is not limited to land. The law must be of the general application and there should be no arbitratory deprivation. It must also be for a public purpose or public interest.

12.2 Are there any State investment treaties which are applicable?

There are bilateral State investment agreements or treaties. For example, there is a treaty between the Republic of South Africa and the United Kingdom dated 20 September 1994 for the promotion and protection of investments. It is provided that investments of nationals or companies in the UK may not be nationalised, expropriated or subject to measures having an effect equivalent to nationalisation or expropriation except for a public purpose and against prompt, adequate and effective compensation. However, South Africa has recently cancelled some of its bilateral investment treaties.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are extensive special rules applicable to taxation of prospecting and mining companies including in relation to capital expenditure deductions. To qualify as a mining company, one has to hold a prospecting right or a mining right granted in terms of the MPRDA.

13.2 Are there royalties payable to the State over and above any taxes?

There are royalties payable to the State over and above taxes in terms of the Mineral and Petroleum Resources Royalty Act based on an earnings before interest and tax formulation.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

All exploration and mining companies needs to comply with local provincial or municipal laws to the extent that they are not overridden by National Legislation. Thus, for example, there may well be zoning requirements imposed in terms of provincial ordinances or, for example, municipal by-laws regarding smoke emission which need to be complied with by the holder of a prospecting right or mining right.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are rules relating to the SADEC Region, which govern exemptions from import duties, custom restrictions, repatriation dividends and the like which may assist companies operating in South Africa in regard to activities conducted outside South Africa but within the SADEC Region.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Section 56 of the MPRDA allows for abandonment of prospecting rights and mining rights. The standard terms and conditions contained in notarially executed prospecting rights and mining right further allow for partial abandonment as well. Upon abandonment the holder of the right has to furnish results of prospecting or mining to the Department as well as apply for a closure certificate in relation to the area so abandoned.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

There are no obligations upon the holder of a prospecting right or a mining right to relinquish a part of the area held under the prospecting right or mining right over time.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The State has the ability to suspend operations on failure to comply with the MPRDA. Furthermore the State has the power to suspend or cancel a prospecting right or a mining right itself upon breach by the holder of the terms and conditions thereof or the provisions of the MPRDA. The holder must be given an opportunity to make representations prior to suspension or cancellation.

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Chris Stevens co-lectured the LL.B. course at the University of the Witwatersrand on prospecting and mining law from 1998 to 2007. He annually lectures at the University of the Witwatersrand to mining and engineering students on compliance aspects and annually lectures at the University of Pretoria for MSc geology students in a compliance course. He sat on the Mining Law Committee of International Bar Association in 2002 to 2006.

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Turkey

Değer Boden

Ceren Akkur

Boden Law

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Under Turkish Law, mines are under the authority and disposition of the State and are not considered as a part of the land where they are located. Subject to a royalty payment (namely "**State Right**"), the State may grant certain rights concerning the mining activities to natural or legal persons for a specific period of time by issuing licences.

The principles and procedures regarding the reconnaissance, exploration, mining/operation of mines along with the right to have a possession on or abandon of the mines are regulated under the Mining Law No. 3213 published on 15 June 1985 ("**Mining Law**"). Beside this primary legislation which sets out the framework, there are several regulations including the Mining Regulation published on 21 September 2017 ("**Mining Regulation**") and the Mining Activities Permit Regulation published on 21 June 2005 ("**Mining Activities Permit Regulation**").

Other legal arrangements which constitute the secondary legislation regulating this area as of the date of this report are, including without limitation, the following:

- The Regulation on Mining Regions and Transmission of Licences published on 23 May 2018.
- The Regulation on Implementation of Group I (A) Minerals of the Mining Law published on 3 February 2015.
- The Regulation Regarding the Tender on Mine Sites published on 21 September 2017.
- The Regulation Regarding the Restoration of Degraded Lands by Mining Activities published on 23 January 2010.
- The Regulation on Mine Wastes published on 15 July 2015.

1.2 Which Government body/ies administer the mining industry?

The General Directorate of Mining and Petroleum Affairs ("**GDMPA**"), a unit of the Ministry of Energy and Natural Resources ("**MENR**") is the principle authority which is responsible for administration of the mining industry and issuance of mining licences.

In addition, it should be noted that the permission or approval of other relevant administrations might be necessary, if the mining area subject to the licence is included in the scope of other areas such as forest lands, agricultural areas, national parks, specially protected environment areas, wildlife protection and development areas, pasture areas, coastal areas, protected cultural and natural properties, tourism areas or prohibited military zones.

1.3 Describe any other sources of law affecting the mining industry.

The mining industry, by its nature, has a close relationship with other areas of law such as forestry law, environmental law, labour law, occupational health and safety law, criminal and misdemeanour law or tax law. Also, depending on the characteristic of the land subject to the mining activity, other legislation regulating municipalities, zoning plans, coasts, public lands, pasture areas or wetlands may affect the mining industry.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

According to Article 15 of the Mining Law, the exploration or operation licence holders during their licence periods may ask for the right of reconnaissance/discovery activities. If the mines are reported as "proved/apparent reserve" by technical reports and approved by the GDMPA, the licence holder shall be deemed as the "finder" and a *document of reconnaissance* shall be granted.

The right of reconnaissance is a right which is totally independent from the licence right and may be transferred even with or without the licence. The holder of the reconnaissance right shall be entitled to receive a payment if its mine is operated by another person or entity. The reconnaissance activities can be in question only for certain mine groups.

2.2 What rights are required to conduct exploration?

Natural or legal persons willing to conduct exploration activities on the mine reserves must be granted an *exploration licence* (or an *exploration certificate* for precious and semi-precious minerals regarded as Group V) by the GDMPA. With the licence, the holders are entitled to conduct exploration activities on a certain region for a specific period of time. The exploration activities consists of pre-search, general search, detail search, and, if appropriate, feasibility periods. Depending on the type/group of mines, the exploration licence periods may be between 3 (three) and 7 (seven) years. These periods may be extended upon request.

2.3 What rights are required to conduct mining?

The exploration licence holders may apply to the GDMPA for a

mining/operation licence (or an *operation certificate* for precious and semi-precious minerals regarded as Group V) in order to conduct operating activities consisting of preparatory studies for the production over the mine reserve fields that have been found as apparent, probable and possible during the exploration activities. Please note that it is possible to apply directly for an operation licence to operate a certain type/group of mines.

Depending on the type/group of mines, the operation licence periods may be between 5 (five) and 10 (ten) years. However, the operation certificate for the Group V mines can only be issued for 5 (five) years. These periods may be extended upon request. In addition to the operation licence, an *operation permit* is required for starting the production activities. The term of the operation permit shall be limited with the operation licence period.

2.4 Are different procedures applicable to different minerals and on different types of land?

The Mining Law regulates 5 (five) different groups of mine according to their mineralogical, physical and chemical properties and areas of usage that are mainly categorised as follows:

- Group I (sand and gravel, certain types of clays).
- Group II (stones and rocks).
- Group III (some sort of salts, gases and waters).
- Group IV (industrial, energy and metal minerals).
- Group V (precious and semi-precious minerals).

The types of licences, certificates and the relevant procedures change depending on the mine groups. According to Article 16 of the Mining Law, Group II (specific paragraphs), III and IV mines can be explored with an exploration licence. It is called an exploration certificate for Group V mines. For the rest of the groups, an operation licence is directly issued.

Furthermore, an approval of the relevant authorities for conducting mining activities in the special protection areas specified under Article 7 of the Mining Law (specifically protected environment areas, national parks, wildlife protection areas, forests, coastal areas, first degree protected areas or power plants, organised industrial zones, oil, natural gas and geothermal pipelines which are allocated for purposes other than mining purposes and provided with favourable opinion by the GDMPA) is required to be obtained before the licence applications.

2.5 Are different procedures applicable to natural oil and gas?

The Mining Law does not apply to oil and gas. Oil activities are governed by the Turkish Petroleum Law No. 6491 and the Petroleum Market Law No. 5015, whereas gas activities are governed by the Natural Gas Market Law No. 6464 and their implementation regulations.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Pursuant to Article 6 of the Mining Law, mining rights may only be granted to: Turkish citizens; companies established under Turkish Law with a special mining purpose; authorised state economic enterprises, subsidiaries and affiliates and other public bodies, utilities and administrations.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign legal entities cannot directly own mining rights; however, foreign capital companies established in Turkey can be entitled to have mining rights as they are deemed Turkish companies.

3.3 Are there any change of control restrictions applicable?

According to Article 82/11 of the Mining Regulation, the share transfer transactions resulting in more than 10% change in shareholding structure of the mining licence holder is subject to approval from the MENR.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no specific requirements provided under Turkish Law for the ownership by indigenous persons or entities.

3.5 Does the State have free carry rights or options to acquire shareholdings?

As per Article 16/12 of the Mining Law, the holders having a coccolith, sapropel and hydrogen sulphur licence which can be obtained from the seas are required to transfer at least 10% of its shares without any capital contribution requirement and to grant the right to appoint at least one board of directors member and one auditor member to the Turkish Petroleum Joint Stock Company ("**TPJSC**"), fully owned by the State, or one of its affiliates within one year starting from the enforceability date of the exploration licence.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Under the Mining Law, mineral processing, refining and further beneficiation activities are listed under the definition of "mining activities". The licence holder can establish processing or beneficiation facilities on the land where they have a licence right.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There is no specific restriction on the export of mines. Only for the boron mineral, where there are some specific export principles and procedures which have to be specifically determined by the President of the Republic according to Article 49 of the Mining Law.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

As per Article 5 of the Mining Law, mining (exploration and operation) licences and certificates and reconnaissance rights can be transferred to third parties who meet the conditions for using mining rights. The transfer takes place with the approval of the MENR and must be registered to the mine registry held by the GDMPA ("**Mine Registry**"). On the other hand, an operation permit cannot be transferred.

Other than transferring the mining rights, the licence holders may also execute a royalty agreement with third parties in which the operation right of the mine is granted for a certain period of time and in return for a royalty fee. The royalty agreements are subject to the approval of the MENR and must be registered with the Mine Registry.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Pursuant to Article 39 of the Mining Law, upon the request of the licence holders, ores extracted from the mine can be pledged and the pledge must be registered to the Mine Registry.

Also, Article 42 of the Mining Law regulates that a mortgage can be established on the mine in various degrees and levels for securing the debts of the operation licence holder in connection with the mining operations or for securing its future borrowings for this purpose.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

In case the necessary mining activities are not completed and the reports are not prepared as required by law, the mine reserve fields subject to the licence may be minimised/subdivided.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

According to Article 5 of the Mining Law, the rights of reconnaissance, exploration and operation licences cannot be divided into shares and each shall be treated as whole. However, there may be exceptions for licences held by public institutions who obtain approval from the MENR.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The Mining Law categorises minerals in 5 (five) different groups and such categorisation determines the types of licences. According to Article 16/10 of the Mining Law, a licence granted for one of the groups will not grant rights for mines in the other groups. However, for the production of mines subject to the licence, other groups of minerals extracted as a result of inevitable consequence of the operational activity may be disposed by obtaining permission from the GDMPA.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

There is no specific provision entitling licence holders to exercise rights over the residue deposits.

6.5 Are there any special rules relating to offshore exploration and mining?

Offshore exploration and operation activities are subject to the general principles and procedures of the Mining Law and the Mining Regulation. It may be required to obtain specific permissions from the relevant authorities for such activities. Special requirements depend on the type/group of the mine and where the mine reserve field is located.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Under Turkish Law, the reconnaissance, exploration or operation rights do not constitute automatic ownership or usage rights to the licence holder over the land where the mine is located. According to Article 46 of the Mining Law, if the land is subject to private property, the licence holder is required to obtain a usufruct or easement right from the MENR in return for remuneration. The same procedure also applies for the State-owned lands; however, for such lands the licence holder does not require to pay any amount to the State in return for its usage right.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

If the subject land is privately-owned property, the mutual obligations of the licence holder and the landowner or lawful occupier shall be determined by an agreement and the obligations of the parties depend on the type of contract between the parties (whether it is a sale or lease contract) and the special terms and conditions of the contract. Mainly, the licence holder is required to pay the sale price (in sale contracts) or rental (in lease contracts) or any amount needed to be paid in return for the usage right arising from the usufruct or easement rights. On the other hand, the main obligation of the landowner or lawful occupier is to transfer the ownership (in sale contracts) or provide usage rights (in other contracts) to the licence holder.

7.3 What rights of expropriation exist?

Pursuant to Article 46 of the Mining Law, during the operation licence period if the parties cannot reach a consensus on the immovable property subject to private ownership and if such property is essential for operating activities, such property can be expropriated upon the licence holder's application and provided that the MENR decides that there is a public interest. The expropriation

procedure shall be carried out according to the provisions of the Expropriation Law No. 2942. The expropriation price and costs shall be paid by the licence holder. The expropriated immovable shall be registered to the title deed in the name of the treasury and shall be allocated to the licence holder in order for usage in mining activities.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Article 7/11 of the Mining Law dictates that environmental requirements (namely environmental impact assessment) need to be fulfilled for mining activities affecting the environment and the necessary approvals of the Ministry of Environment and Urbanisation ("**MEU**") shall be obtained in line with environmental legislation.

As per Article 10 of the Environmental Law No. 2872, activities which may result in environmentally negative effects are required to obtain an environmental impact assessment report ("**EIA Report**"). The procedures and criteria along with the activities and projects subject to such a requirement are determined under the Regulation on Environmental Impact Assessment ("**EIA Regulation**"). Accordingly, unless an "**EIA Positive Decision**" (affirming that the project does not have negative effects on environment) or "**EIA Not Necessary Decision**" (subject to the election-elimination criteria meaning that the concerned project is initially reviewed and then a decision is made whether the project will be subject to an EIA Report obligation) is obtained, the required approvals, permits and licences for the relevant activities and projects will not be granted. In addition to the EIA Regulation, the Mining Activities Permit Regulation provides specific criteria for the determination of which mining projects affecting the environment are subject to the EIA.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The Regulation on Mine Wastes provides certain measures on storage of tailings and other waste products resulting from the search, extraction, preparation/enrichment or storage of mines. The most nature-friendly and least harmful methods should be preferred while performing these operations. It is forbidden to pollute the environment by pouring mine wastes into the soil, seas, lakes, rivers and similar receiving environments, directly filling and storing. The most developed technological methods should be followed.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Pursuant to the Regulation on Regaining to the Nature the Lands Disrupted by Mining Activities, before the closure of a mine reserve field, the licence holder is required to follow a procedure to regain nature in the area. Closure obligations include the removal of all construction and installations, the removal and delivery of all waste to a final destination in a duly licenced facility and the environmental recovery of the area according to an environmental landscape recovery plan.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Pursuant to Article 7/12 of the Mining Law, if mining activities are to be conducted within the zoning areas (*i.e.* areas with zoning plans), a permit shall be obtained from the local authorities. However, this provision shall not apply to the mine fields the zoning area decision of which are issued following the issuance of the licence. No zoning plan is required **(i)** if the mining activities to be conducted or temporary facilities (in connection with these mining activities) are to be built on an area without a zoning plan, or **(ii)** if the mining activities are to be conducted on a forest area and necessary permit for usage of this forest area is obtained from the forest administration. Moreover, the temporary facilities required for mining activities to be constructed on areas without a zoning plan shall not be subject to a construction and occupancy permit.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

There is no concept of native title and no other statutory surface use right holder, other than the State, is available in Turkey.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Occupational Health and Safety Law No. 6331 is the main legislation which regulates the provisions of occupational health and safety of the employees along with the Labour Law No. 4857. The Regulation on Occupational Health and Safety in Mine Workplaces also regulates the rights and obligations of the employees' working in mining workplaces and the conditions of the working environment.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

According to the Regulation on Occupational Health and Safety in Mine Workplaces, the employer is the party primarily responsible for organising, managing, using and curing the workplace and equipment in a manner which does not cause danger for employees' safety and health, and to ensure all works are conducted under the surveillance and liability of the authorised persons. Specific health and safety regulations to be applied in a mining workplace are individually regulated for each mining type. These regulations must be followed by all parties (employers, managers and employees) and also by the royalty holder, if any.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mine Registry containing all the technical and financial issues regarding mining rights and activities shall be kept by the

GDMPA. The Registry is open to the public and the transfer, pledge and mortgage or termination status of the mines shall be registered at this Registry. The relevant rights shall become effective once they are registered to the Mine Registry.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Any kind of actions or decisions taken by the administrative bodies regarding the implementation of the mining legislation shall be subject to judicial review and administrative lawsuits may be filed against the relevant administrative body.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The authority and disposition of the State over the mines originates from Article 168 of the Constitution of the Republic of Turkey. Accordingly, the rights for exploration and operation of the natural resources belong to the State and it may transfer these rights to the natural or legal persons for a specific time period by issuing licences.

12.2 Are there any State investment treaties which are applicable?

Yes, there are a number of bilateral agreements signed by the Republic of Turkey for the promotion and protection of investments.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Under Article 13 of the Mining Law, it is obligatory for the exploration and operation licence holders to pay licence fees every year. The fees are determined by the State in every year depending on the type/group of the mine and the reserve field size.

13.2 Are there royalties payable to the State over and above any taxes?

In addition to the licence fees, the licence holders shall also pay the royalty payment, namely State Right, to be made to the State for the extracted mine. As per Article 14 of the Mining Law, the State Right is imposed on the sales price of the mine extracted at the pit and the rate of the State Right varies according to the different types/groups of mines.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The mining legislation referred hereby with this document is applicable to the whole country.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are no such regional rules and protocols in any particular region.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Article 32 of the Mining Law enables licence holders to apply for abandonment. In such circumstances, the licence holder willing to abandon the mine is obliged to take the required security measures at the field and submit the necessary technical documentation regarding the field to the GDMPA within 1 (one) year.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

No, there are no obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time. However, as per Article 32 of the Mining Law, licence holders whose licences have been relinquished for any reason are also obliged to take the required security measures and to submit to the GDMPA the technical documents showing the latest status of the field.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Under the Mining Law, the State is entitled to cancel the exploration or operation licences in case of a failure to comply with the terms and conditions specified in the legislation, such as the necessary approvals or permits have not been obtained or the required reports are not submitted or the licence fees are not paid within the given time period, etc.

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Boden Law is a top-tier law firm providing advice and representation particularly with respect to cross-border transactions, project development and finance transactions, mergers and acquisitions, joint ventures, alliances, and dispute resolution with special emphasis on arbitration, and restructuring and creditor rights.

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

There is no single UK regulatory regime for mining. Instead, UK mining is governed by different sources of law, dependent upon the mineral type and the relevant aspect of mining activity which is being considered. Broadly, regulation can be categorised by reference to specific minerals as follows: (i) gold and silver; (ii) coal; (iii) oil and gas; and (iv) all other minerals.

Gold and silver

At common law gold and silver belong to the Crown and gold and silver mines constitute "Mines Royal" dating back to the Inclosure Awards and Acts of the early nineteenth century.

The Crown Estate grants exclusive options to take a lease of 'Mines Royal' for a specific area. Leases are obtained from Wardell Armstrong, the Crown Estate Mineral Agent. Permission of the Crown Estate is needed to remove gold in any form, in addition to the need for rights of access from the owner of the surface of the land. The option is in a standard form and is for a one-year period (two in Northern Ireland).

Coal

By statute (the Coal Industry Act), the vast majority of unworked coal and coal mines are owned by the Coal Authority. The Coal Authority is an executive, non-departmental public body, sponsored by the Department for Business, Energy & Industrial Strategy. The Coal Authority's responsibilities include, among others, the licensing of coal mining operations in the UK and the administering of coal mining subsidence damage claims.

Oil and gas

Oil and gas in the UK (both onshore and in territorial waters and the UK Continental Shelf) also vests with the Crown pursuant to the Petroleum Act 1998 and the Continental Shelf Act 1964.

In order to conduct onshore exploration, a licence is required. The licence grants exclusive rights to exploit for and develop oil and gas onshore within Great Britain. The rights granted under such licences do not include any rights of access, and the licensees must also obtain any consent under current legislation, including planning permissions. The Oil and Gas Authority ("**OGA**"), was created in April 2015 as an Executive Agency of the DECC (as it was in 2015). In October 2016, OGA became a Government company limited by shares with the Secretary of State for the Department for Business, Energy and Industrial Strategy as the sole shareholder. It is responsible for the regulation of offshore and onshore oil and gas operations in the UK, including licensing, exploration and production, and oil and gas infrastructure.

All other minerals

Other than in respect of gold and silver, coal and oil and gas, the Crown and/or the State do not own mineral rights in the UK (with the exception of Northern Ireland – see below). As such, mineral rights generally belong to the landowner. They are held in private ownership where the owner of the surface land is entitled to everything beneath or within it, down to the centre of the earth. The Land Registry holds information regarding minerals held in private ownership, along with details of the land surface ownership.

Although there is no specific UK licensing system for exploration and extraction activities in the mining sector, planning permission must be obtained from a mineral planning authority for the extraction of minerals, and a number of environmental consents and safety systems must be in place in order for any specific mining operation to be conducted lawfully.

In Northern Ireland, the Mineral Development Act (Northern Ireland) 1969 vested most minerals in Northern Ireland in the Department of the Economy ("**DE**") (formerly, the Department of Enterprise, Trade and Investment). This enables the DE to grant prospecting and mining licences to commercial companies for exploration and development of minerals. There are three main exceptions: (1) gold and silver; (2) minerals which were being worked at the time of the 1969 Act; and (3) 'common' substances (including aggregates, sand and gravel).

1.2 Which Government body/ies administer the mining industry?

The primary bodies responsible for administering mineral rights which vest in the Crown, are the Coal Authority, the Crown Estate, and the Marine Management Organisation ("**MMO**"). The MMO is an executive, non-departmental public body sponsored by the Department for Environment, Food and Rural Affairs ("**DEFRA**").

Planning authorities play a large part in the regulation of mines in the UK. This is both at a regional level (regional planning policies for mineral extraction) and at a project-specific level (granting permission for specific mining projects).

Environmental regulation is undertaken by independent Government regulators. The principal environmental regulator for England is the Environment Agency. However, in some cases, the regulator will be the relevant local authority or Natural England. As of 1 April 2013, Natural Resources Wales is the environmental regulator for Wales. The Scottish Environmental Protection Agency together with Scottish Natural Heritage is the regulator for Scotland and the Northern Ireland Environment Agency is Northern Ireland's environmental regulator.

The Health and Safety Executive ("**HSE**") enforces health and safety law in England, Wales and Scotland, together with local authorities and other bodies authorised under statute. The Health and Safety Executive for Northern Ireland enforces health and safety at work standards in Northern Ireland.

1.3 Describe any other sources of law affecting the mining industry.

General principles of the law of nuisance will apply to the use of land as a mine or quarry. Examples of mining activities capable of creating a nuisance include emission of dust or noxious fumes, the discharge of polluting effluents into a river, the creation of noise and vibration, and the projection of debris by blasting. The emission of smoke or fumes and the lack of proper fencing of abandoned and disused mines and quarries are in certain circumstances a statutory nuisance.

An employer of workers at a mine or quarry owes a common law duty to each employee to take reasonable care for safety in all circumstances and exposure against unnecessary risk. Similarly, the occupier of a mine or quarry owes a common law duty of care to those lawfully visiting the premises under the Occupiers' Liability Act 1957.

With effect from 6 April 2015, the Mines Regulations 2014 replaced all previous legislation specifically relating to health and safety in mines. Where a person suffers injury by reason of a breach of any mining legislation creating a duty that person may be entitled to recover damages in a civil action for breach of statutory duty.

A mine or quarry owner may potentially be liable both in negligence and for breach of statutory duty as the Mines Regulations 2014 are not to be construed as derogating from the legal duties owed by an employer to his employees.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

See question 2.2 below.

2.2 What rights are required to conduct exploration?

Any onshore exploration activity will require access rights granted by the landowner or obtained through the acquisition of land.

For coal, an exploration licence from the Coal Authority is required, together with the necessary surface rights and any other necessary permissions or consents (i.e. planning consents). Exploration licence application forms can be found on the Coal Authority website and should be submitted along with the application fee to their Licensing & Permissions Department. Model exploration licences are also available on its website (as required by the Coal Industry Act 1994).

2.3 What rights are required to conduct mining?

Again, any onshore mining operator will require rights of access granted by the landowner, generally in the form of a lease, or obtained through the acquisition of land.

For coal, pursuant to the Coal Industry Act 1994, certain mining operations require a statutory licence from the Coal Authority. These are: (i) "*the winning, working and getting*" of coal by surface or underground methods; and (ii) the treatment of coal in the strata and the winning, working or getting of coal resulting from such treatment – in any part of Great Britain, under the territorial sea adjacent to Great Britain or on the UKCS.

In order to commence mining operations, in addition to such statutory operating licence conferring the authorisation to mine, an operator would need a proprietary interest in the coal (which is likely to be vested in the Coal Authority, and therefore would be granted in conjunction with the licence), together with all the necessary surface rights, and any other permissions or consents (i.e. planning permission). Model licences and leases are available and published by the Coal Authority. These are required to be entered into to comply with the Coal Industry Act 1994.

There are different applications for surface and underground mining. All applications are published by the Coal Authority. When carrying out its licensing function, the Coal Authority's duties are broadly to act in a manner it considers best to secure that those authorised to carry out coal mining operations ensure that: (i) an economically viable coal mining industry is maintained and developed; (ii) they are able to finance both the proper carrying on of those operations and the discharge of liabilities arising from those operations; and (iii) they do not sustain loss as a result of historic subsidence damage (inherited from coal mining operations that failed to adequately fund their liabilities in this regard).

The Coal Authority may also grant a "conditional" licence and an option for lease of coal and any other minerals in its ownership, whereby the authorisation to mine is deferred until certain requirements have been met (i.e. the obtaining of planning consent).

In order to mine gold or silver, a licence for the exploration and development of the relevant mineral must be obtained from Wardell Armstrong, the Crown Estate Mineral Agent (as stated previously). There is no standard application form or licence: applications must be accompanied by a proposed work programme and details of the applicant's financial resources and technical ability. The exploration licence can be converted into a mining lease, subject to the applicant's progress and prospects. The exploration licence confers no rights of entry and the applicant has to negotiate access with the relevant surface rights owners and obtain planning permission from the local authority (if necessary).

The rights to other minerals in the UK are mainly in private ownership. Regardless of this fact, any onshore mining operator will require rights of access granted by the landowner, generally in the form of a lease, or obtained through the acquisition of land.

2.4 Are different procedures applicable to different minerals and on different types of land?

Yes. A range of different procedures are applicable for applying for mineral rights which vest in the Crown. The procedures relating to coal, gold and silver and other minerals are discussed above. However, the ability to mine for all minerals is contingent on achieving necessary planning approval and access rights, which will be influenced by the laws and regulations relating to the specific area.

2.5 Are different procedures applicable to natural oil and gas?

Yes. The Petroleum Act 1998 established the regulatory regime applicable to oil and gas exploration and production in the UK (other than onshore in Northern Ireland) as well as the UKCS. Under the 1998 Act, all rights to petroleum including the rights to "*search and bore for, and get*" petroleum, are vested in the Crown. The Act provides the licensing regime for oil and gas companies, as supplemented by environmental and health and safety regulation.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Generally, mineral rights, whether they derive from the Crown or are leased from the landowner, can be held either by natural persons or corporate entities.

Direct ownership of mineral rights via land ownership is subject to a number of rules specific to landownership (e.g. land cannot be owned by minors) though generally both natural and corporate entities can own such rights.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

There are currently no special rules relating to foreign investment in the UK mining sector.

3.3 Are there any change of control restrictions applicable?

Any change in ownership or operatorship of a mine is likely to require a range of regulatory approvals, notifications, and landowner or third party consents (see section 5 for more details on transfers of operational rights).

For example, a change in name and/or address of the owner of a mine or quarry must be reported to the HSE within 28 days. The owner of a quarry must notify the HSE within 14 days of appointing or changing the operator.

3.4 Are there requirements for ownership by indigenous persons or entities?

There are no indigenous ownership requirements in the UK (except those relating to Crown reservation).

3.5 Does the State have free carry rights or options to acquire shareholdings?

Whilst there are currently no such rights in respect of equity shareholdings, the Crown Estate Commissioners have certain powers of sale over mines and minerals comprised in land which is the property of the Crown. Notably, the Crown automatically gains ownership of any gold and silver mined in the UK. Similarly, property in petroleum existing in its natural condition (in strata) is vested by statute in the Crown.

The Duchy of Cornwall may, either by way of absolute sale or for a limited period, dispose of any mines, minerals or rights of entry or other rights in respect of mines and minerals forming part of the possessions of the Duchy.

The Coal Authority has powers, pursuant to section 4 of the Opencast Coal Act 1958, to compulsorily purchase land with minerals; however these have rarely been exercised. The Acquisition of Land Act 1981 states in Part I that a Compulsory Purchase Order may provide for the incorporation with it of Part II of the Act, which allows for the digging and carrying away of minerals by statutory undertakers if necessary for construction work.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The processing of mined substances is likely to be subject to a range of operational controls relating to environmental protection and safety (see sections 8 and 10).

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Restrictions may apply depending on the class of mineral that is being exported. Licences are required for the export of certain controlled goods outside of the EU (only particularly sensitive goods require a licence for EU Member States).

An export licence is required in order to export specified goods with military uses, or for trade in strategically controlled goods between overseas countries. Mineral exporters may require an export licence for goods with a "potential military use". These would include, for example, alloys with particular characteristics (such as the ability to withstand very high temperatures).

Certain substances, provided they are not chemically modified, are partially exempt from the requirements of the EU Regulation on the Registration, Evaluation and Authorisation of Chemicals ("**REACH**"). Very broadly, Annex V of REACH includes generic exemptions from registration requirements under REACH for minerals, ores, ore concentrates and coal that meet certain requirements. Even if an exemption applies, REACH may require certain information to be provided down the supply chain to enable the safe use of the substances. Chemically modified minerals, ores, ore concentrates and coal may be subject to registration requirements under REACH at the point of placing on the market (i.e. manufacture or import) within the EU. We are not currently aware of any restrictions on levies payable on the export of minerals.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Transfer restrictions will depend on the nature of the rights being transferred.

Where the owner of a freehold estate transfers that interest in the land to a third party, the third party buyer will inherit the full title to that property (including, subject to those exceptions already mentioned, any precious minerals therein). Planning Consents authorising various kinds of mining activities will run with the land, unless the consent expressly indicates otherwise. Where mineral rights are held through licences granted by Government bodies, there will generally be a formal statutory process to arrange for the licences to be transferred to a new entity.

Operational permits such as environmental permits authorising particular activities will also need to be transferred to any new operator. Again, there are statutory rules governing the permit transfer process.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Where rights to conduct reconnaissance, exploration and mining arise by virtue of being the owner to the land under which the activity takes place, and on the condition that the requisite planning consents are obtained, the interest in the land will be mortgageable in the usual manner.

Where such rights arise by virtue of a Coal Authority licence, permit or lease they will be mortgageable, provided the instrument conferring the rights comprise a mortgageable interest. Terms of specific instruments should be consulted to determine if there are any restrictions in this regard.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The ownership of mines under land may be severed from the ownership of the surface, by the sale of the mines and minerals themselves, or the reservation of them on a sale of the surface of the land to a third party. Further, the presumption arising from surface ownership may be rebutted by evidence showing that the ownership of the land has been severed from the mines beneath where this is stated in (a) a conveyance or demise of land excluding the mines, (b) a conveyance or demise of the mines excepting the surface, (c) an Act of Parliament, or (d) evidence of long and continuous enjoyment of the mines by a person other than the surface owner.

The different strata of a parcel of land may similarly be shown to be in different ownership, and proof of ownership of a mine under a parcel of land does not raise any presumption of evidence regarding ownership of the surface, or *vice versa*.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

In relation to coal licences, only one party can be responsible for the conditions of the licences. In relation to aggregates, licences can be held by two entities for the same area (i.e. for joint development).

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

In relation to coal, any rights to secondary minerals (owned by the Coal Authority) would need to be stipulated within the licence/lease application in order for the holder of the licence to be permitted to work that mineral.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Mines, quarries and minerals (including any debris dumps, residue deposits, tailings and mine dumps) in their original position are part and parcel of the land. Consequently, the owner of the surface land is generally entitled to everything beneath or within it, down to the centre of the earth. This principle applies even where title to the surface has been acquired by prescription, but it is subject to exceptions.

Any minerals removed from land under a compulsory rights order for opencast working of coal become the property of the person entitled to the rights conferred by the order.

6.5 Are there any special rules relating to offshore exploration and mining?

There are special rules for offshore exploration and mining. Rights with respect to the sea bed (other than coal) are vested by statute in the Crown. Rights to exploit coal under the territorial sea, and designated areas of the continental shelf, are vested in the Coal Authority.

The majority of offshore mining in the UK relates to aggregates. Licence applications are made to the MMO, and require approval by the Maritime and Coastguard Agency (an executive Government agency sponsored by the Department for Transport) for navigational risk assessment.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

There are two main rights that are required to use the surface of land. First, there is governmental permission for the proposed land use which is governed by the UK planning regime (Town and Country Planning Act 1990). An operator will need to apply for planning permission which involves a public consultation process, a key part of which will be an Environmental Impact Assessment ("**EIA**").

Second, there are the necessary land rights, i.e. rights of access to conduct operations. These would be dependent on the terms of the deed or document that granted the rights to conduct reconnaissance, exploration or mining. Any mining company would have to ensure that the deed granting such rights also granted all suitable and necessary rights in respect of use of the surface land that the mining company would require. This, in effect, would be a discussion and negotiation of terms between the mining company and surface landowner.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The deed or other documentation that granted such rights would specify the obligations owed to the landowner and these can be as the parties choose and agree. We would expect these obligations to include:

a. payment for the grant of the rights either via a one-off payment or perhaps daily/weekly/monthly payments (in the form of lease payments, royalties or otherwise) based on how long the rights are to be exercised;

b. for the rights holder to make good any damage caused to the surface as soon as reasonably practicable or immediately and to the satisfaction of the surface owner;

c. obligations on the rights holder to make good and make safe any excavations, shafts, etc.; and

d. obligations on the rights holder to ensure support for the surface of the land and to excavate in a manner so as to ensure adequate surface support at all times.

Other general matters would be for the rights holder to comply with all relevant planning matters, statutes and applicable laws and there would possibly also be a general indemnity in favour of the landowner indemnifying it against any losses and costs it incurs as a result of the exercise of the rights by the rights holder. The rights holder may wish to prevent the surface owner from developing or building on the surface.

7.3 What rights of expropriation exist?

Compulsory acquisition of land and rights for mining and extraction is available. In England and Wales, the Mines (Working Facilities Support) Act 1966 is available, but does not appear to envisage the acquisition of freehold interests in land, only rights over land. The procedure involves an application to central Government, who will then instigate proceedings in the High Court. Rights under the Mines (Working Facilities Support) Act 1966 will not be granted unless the court is satisfied that the grant is "*expedient in the national interest*". The local planning authority may also acquire land compulsorily for planning purposes. These powers can be used if the acquisition of interests in land will facilitate the carrying out of development (mining operations fall within the scope of "development" for these purposes), redevelopment or improvement on, or in relation to, that land and it is not certain that the land can be acquired by way of agreement. The authority must not exercise its powers of compulsory purchase unless it considers that the proposed development is likely to contribute to the achievement of the promotion or improvement of the economic and/or social and/or environmental wellbeing of its area.

In either case, compensation will be payable to landowners who have land taken from them, or otherwise suffered as a result of the compulsory acquisition, and there is a specialist tribunal to assess compensation if it is not agreed.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Regulatory environmental controls and restrictions are imposed on UK mining operations from a number of sources. Perhaps the most fundamental source is the planning regime. Any UK mine will require planning permission and the conditions imposed through such permissions generally include operational environmental controls: e.g. limitations on the numbers of vehicle movements; and limitations on total quantities to be extracted, etc. See question 8.4 for further discussion of the planning regime.

In addition to planning controls, a range of environmental permits are likely to be required. One of the most important environmental consents relating to mining operations is a mining waste permit to manage extractive waste. The legal requirement for such a permit derives from the EU Mining Waste Directive (Directive 2006/21/EC) and is implemented in England and Wales through the Environmental Permitting (England and Wales) Regulations 2016 ("**EPR**"). In addition to mining waste, the EPR covers other operational aspects of onshore mining and quarrying including discharges to water, emissions to air, quarrying and mineral crushing processes.

If mining or quarrying operations require the abstraction of surface and/or ground water, or for water to be moved from one location to another without intervening use, a licence may be required under the Water Resources Act 1991.

Mining and quarrying projects may also give rise to the need for licences to disturb species or habitats protected by conservation legislation including the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2017 (which consolidated and updated the Conservation of Habitats and Species Regulations 2010), the Protection of Badgers Act 1992 and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2017 (which consolidated and updated the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007).

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Coal mining leases and licences issued by the Coal Authority contain provisions relating to the provision of financial security in various forms such as bonds, charges, deposits, guarantees, indemnities, mortgages or trusts. For example, the Coal Authority's model underground mining lease requires the tenant to provide security to cover its lease obligations which include yielding up the site in a satisfactory condition.

An application for a mining waste permit under the EPR will need to include details of a financial guarantee or equivalent that will need to be in place prior to the commencement of any extractive waste operations.

Restoration bonds may also be required in connection with planning consents.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Closure obligations are regulated by environmental legislation as well as contractual arrangements (which could contain more onerous requirements than statute) such as leases of land. Planning permissions are also likely to include site restoration programmes that need to be complied with.

To surrender certain environmental permits including those for mining waste operations, the operator will need to satisfy the regulator that necessary measures have been taken to avoid a risk of pollution and to return the site to a satisfactory state.

As required by the Directive 2006/21/EC, operators managing extractive waste will need to include a closure plan (dealing with rehabilitation, after-closure procedures and monitoring) in their waste management plan delivered by an environmental permit.

Clean up, investigation, mitigation and monitoring of contamination may also be required if the regulator identifies land as contaminated and serves a remediation notice.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Planning permission is required in order to extract minerals. In England and Wales, planning permission is granted by the mineral planning authority ("**MPA**"). This means that in areas where there is a County Council, the County grants planning permission for mineral working. In unitary areas, metropolitan districts and London Boroughs, the local planning authority grants permission. In Scotland, mineral planning permissions are granted by the local planning authority and in Northern Ireland, the strategic planning unit deals with applications for planning permission for mineral working centrally. If permission

is refused, there is a right of appeal to central Government, which also has the power to recover jurisdiction of certain applications where it considers them to have more than local importance.

All four countries operate what is called a "plan-led" system, which means that permission for mining should be granted in accordance with the minerals development plan for the area unless there are material considerations which indicate otherwise. These "other considerations" can be wide-ranging, which does not help with certainty, but in the majority of cases will relate to the impact of the development, particularly on protected natural assets (e.g. countryside of protected value, or on watercourses). Most minerals-related developments will require assessment under the respective domestic applications of the EU-wide environmental impact assessment regime.

Planning Permissions granted for the working of minerals will almost always include conditions, which can regulate how the development is carried out and which will usually impose restoration and aftercare requirements. Conditions will, crucially, determine the life of the mineral planning permission by imposing a time limit. The body which granted the planning permission will be responsible for all aspects of development control including, for example, taking steps to enforce any breach of planning conditions imposed.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

There is no concept of native title in English law.

In certain circumstances some entities (such as services providers for gas and electricity) have statutory rights of access on to land including privately-owned land.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Mines Regulations 2014 and the Quarries Regulations 1999 constitute the primary legislation governing health and safety in mines and quarries.

Further, the Health and Safety at Work Act 1974 ("**HSWA**") and the Management of Health and Safety at Work Regulations 1999 ("**MHSWR**") govern health and safety in the workplace generally. The HSWA and the MHSWR establish a "goal setting" safety regime. Under this regime, employers have a statutory duty to ensure that risks associated with mining are reduced as low as reasonably practicable through a system of constant risk assessment.

In addition to this primary legislation, there is a wide range of industry-specific secondary legislation governing health and safety in mining. This includes regulations on: the control of noise, vibration, electricity and explosives at work; dangerous substances and explosive atmospheres; the reporting of incidents, diseases and dangerous occurrences; and the provision and use of work equipment.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Health and safety obligations are imposed on owners, employers, managers and employees.

The HSWA imposes general duties on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees and that of non-employees who could be affected by their undertaking. It requires employees to take reasonable care for their own health and safety and that of others who may be affected by their acts or omissions.

Employers are required under the regulations to make, and implement, measures identified by a suitable and sufficient risk assessment considering risks to the health and safety of employees and third parties.

Regulations impose a wide range of additional duties and obligations on managers, operators, owners, employers, employees and workers relating to health and safety at mines and quarries.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Land Registry is the central title registration office in the UK and keeps a register of interests in land in England and Wales. In addition, the British Geological Survey, through its "BritPits" database, holds extensive information on mines and quarries in Great Britain, Northern Ireland, the Isle of Man and the Channel Islands. This information includes details of the name of the mines and quarries, their location and address, the geology and mineral commodities produced, the name of the operator and the responsible mineral planning authority.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Legislation governing mining in the UK does not provide for any bespoke appeals system reserved solely for mining matters. Those wishing to challenge or appeal against administrative decisions are required to initiate court proceedings in the usual manner where an actionable cause of action arises. Where parties disagree with particular administrative decisions of Government regulatory bodies they may bring a claim for judicial review. Grounds for bringing judicial review claims include illegality, irrationality and procedural impropriety, each as regards the administrative decision being challenged. A successful judicial review claim will not result in the court substituting an alternative administrative decision. The authority in question will, however, be required to reconsider their decision with reference to those factors the court deems relevant.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The UK does not have a formally-adopted written (codified) constitution but rather it relies on foundational principles of common law and equity (together with certain key statutes) that provide a constitutional framework. Any restrictions affecting rights of reconnaissance, exploration and mining will be as set out in mining-specific legislation and case law.

12.2 Are there any State investment treaties which are applicable?

The UK has ratified a number of bilateral and multilateral investment treaties with others States that provide protections to foreign

investors that are operating in the UK. These treaties are governed by public international law and provide companies with protections that are independent of any protections afforded by contractual relationships or domestic laws. For a list of the relevant treaties, see the UK Foreign & Commonwealth Office, International Centre for Settlement of Investment Disputes, and the United Nations Conference on Trade and Development websites.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are no special rules applicable to taxation of exploration and mining entities.

13.2 Are there royalties payable to the State over and above any taxes?

There are no royalties payable to the State over and above any taxes.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

In Britain, the legal framework for land use planning is largely provided by the Town and Country Planning Act 1990. The division of local Government responsibilities between England, Scotland, Wales and Northern Ireland is through regionalisation. Currently within England, nine regions are defined (North West, North East, Yorkshire and the Humber, East of England, East Midlands, West Midlands, South West, South East and London). This aims to secure the most efficient and effective use of land in the public interest and to reconcile the competing needs of development and environmental protection. Please also refer to the detail provided in question 8.4.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Yes. Particularly in the context of environmental and health and safety, legislation from the EU may be applicable.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

When granting a licence, the Coal Authority will agree to and include provisions for the transfer of the rights. Standard form licence provisions provide that a licensee may at any time surrender or determine the licence by giving one month's notice to the Coal Authority of its intention to do so.

The OGA seeks to avoid unworked licences. Licences to explore for oil and gas can be voluntarily surrendered, in part or in their entirety, at any time, provided that the surrender does not result in a failure to fulfil an obligation assumed at the time of the licensing. The abandonment of offshore installations and pipelines is controlled through the Petroleum Act 1998.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Coal

The Coal Industry Act 1994 provides that the Coal Authority may grant a conditional licence to an applicant. This will make the right to explore conditional or further requirements, such as gaining access and planning permission, and will provide that the licence lapses after a specified period if these conditions are not met.

Oil and gas

When a licence is granted to explore for oil and gas, an agreement will be reached specifying a work programme for exploration over a specified period. The licence will expire at the end of this term unless the work programme has been completed. At this stage, the licence holder will be obliged to surrender a percentage of the land leased for the exploration.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Gold and silver

Whilst there is no clear guidance provided by the Crown Estate on this, it is assumed that the Crown Estate would be able to impose conditions on the lease, if granted, and that a material breach of these conditions would be grounds for the revocation of the lease by the Crown.

Coal

The Coal Industry Act 1994 permits the Coal Authority to impose conditions and obligations within mining licences, in pursuit of the Coal Authority's general duties to the UK coal industry. The Act makes provision for the authority to take enforcement action, including the removal of exploration and mining rights, if the licensee is in material breach of these conditions. If, after six months of the grant of an exploration licence, a licensee has demonstrated no intention to exercise the right granted, the Coal Authority may determine the licence.

Oil and gas

The model exploration licence clauses provided by the OGA list numerous circumstances that will give rise to a right to revoke a licence. The OGA reserves the right to immediately revoke a licence if it has been assigned to a third party without the express prior consent of the Secretary of State. This will apply equally to assignments made between companies within the same group.

Planning consent will also be subject to ongoing conditions, and non-compliance with those conditions will be grounds for cancellation of the relevant consents.

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Tom Eldridge is a partner in the Banking & Finance practice of Mayer Brown International LLP. He has 20 years' experience in UK and cross-border transactions. He has worked on a variety of lending transactions in the mining and metals sector including project and export credit finance, pre-export and prepayment (producer and trader) facilities, forfaiting and discounting arrangements, letters of credit, borrowing base and reserve base facilities, inventory and warehouse arrangements, royalty and streaming structures and other forms of offtaker finance.

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The US legal system consists of many levels of codified and uncodified federal, state, and local laws. The Government's regulatory authority at each level may originate from constitutions, statutes, administrative regulations or ordinances, and judicial common law. The US Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting state and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, state, and local statutes and administrative regulations.

1.2 Which Government body/ies administer the mining industry?

Federal and state Governments have developed comprehensive mining regulatory schemes. Although the US is a common law nation, practising US mining law often resembles practising mining law in civil law countries because the regulatory schemes are set out in detailed codifications. See, e.g., 43 C.F.R. §§ 3000.0-5-3936.40 (US Bureau of Land Management (BLM) minerals management regulations). However, these mining law codifications are subject to precedential interpretation by courts pursuant to common law principles (and in some situations by quasi-judicial administrative bodies). US mining law may originate from federal, state, and local laws, including constitutions, statutes, administrative regulations or ordinances, and judicial and administrative body common law.

Determining which level of Government has jurisdiction over mining activities largely depends on surface and mineral ownership. A substantial amount of mining in the United States occurs on federal lands where the federal Government owns both the surface and mineral estates. Federal law primarily governs mineral ownership, operations, and environmental compliance, with state and local Governments having concurrent or independent authority over certain aspects of federal land mining projects (e.g. permitting, water rights and access authorisations). If the resource occurs on private land, estate ownership is a matter of state contract law, but operations and environmental compliance are still regulated by applicable federal and state laws. Estate ownership on state-owned land is regulated by state law, and operations and environmental compliance are regulated by applicable federal and state laws, and in some cases local zoning ordinances.

1.3 Describe any other sources of law affecting the mining industry.

The Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. §§ 1701–1787, governs federal land use, including access to, and exercise of, mining rights on lands administered by the BLM and the US Forest Service (USFS). FLPMA recognises 'the Nation's need for domestic sources of minerals', 43 U.S.C. § 1701(a)(12), and provides that FLPMA shall not impair GML rights, including, but not limited to, rights of ingress and egress. 43 U.S.C. § 1732(b). However, FLPMA also provides that mining authorisations must not 'result in unnecessary or undue degradation of public lands'. 43 C.F.R. § 3809.411(d)(3)(iii); see also 43 U.S.C. § 1732(b). BLM and USFS have promulgated extensive FLPMA mining regulations. See, e.g., 36 C.F.R. §§ 228.1-228.116, 43 C.F.R. §§ 3000.0-5-3936.40. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370m-12, requires federal agencies to prepare an environmental impact statement (EIS) for all major federal actions significantly affecting the quality of the human environment. Mining operations on federal lands or with a federal nexus generally will involve an EIS or a less intensive environmental assessment (EA) examining environmental impacts. The NEPA process involves consideration of other substantive environmental statutes.

The US Securities and Exchange Commission (SEC) regulates mineral resources and reserves reporting by entities subject to SEC filing and reporting requirements. The SEC's reporting classification system is based on the SEC's 1992 'Industry Guide 7', which provides for a declaration only of proven and probable reserves. The SEC is currently contemplating new rules for its reporting classification system. If adopted, the new rules would require additional disclosures for mining companies, including exploration results, mineral resources, and mineral reserves and would bring the SEC disclosure requirements more in line with the disclosure standards of Canada's National Instrument 43-101 and the Committee for Mineral Reserves International Reporting Standards.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

In order to conduct reconnaissance, miners must demonstrate that they hold a right to access the minerals. Such rights may be based on fee ownership, lease or contracting of privately owned minerals,

or through locations, leases, or contracts of federal and/or state-owned mineral. Where the surface and minerals have been severed, surface access rights may need to be demonstrated as well.

Depending on the proposed level of mining activity, permits and licences required to conduct mining activities may include:

a. mine plan of operations;
b. a reclamation plan, bonding and permits;
c. air quality permits;
d. water pollution permits (pollutant discharge elimination system discharge permit, storm water pollution prevention plan, spill prevention control and countermeasure plan);
e. dam safety permits;
f. artificial pond permits;
g. hazardous waste materials storage and transfer permits;
h. well drilling permits;
i. road use and access authorisations, right-of-way authorisations; and
j. water rights.

2.2 What rights are required to conduct exploration?

See the response to question 2.1.

2.3 What rights are required to conduct mining?

See the response to question 2.1.

2.4 Are different procedures applicable to different minerals and on different types of land?

The General Mining Law of 1872 (GML), 30 U.S.C. §§ 21–54, 611–615, as amended, is the principal law governing locatable minerals on federal lands. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. Locatable minerals include non-metallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals including gold, silver, lead, copper, zinc, and nickel. Locating these mineral deposits entitles the locator to certain possessory interests: unpatented mining claims, which provide the locator an exclusive possessory interest in surface and subsurface lands and the right to develop the minerals; and patented mining claims, which pass title from the federal Government to the locator, converting the property to private land. However, a mining patent moratorium has been in place since 1994 and no new patents are being issued. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. The process for developing locatable mineral rights on federal lands under the GML involves:

a. discovery of a 'valuable mineral deposit', which under federal law means that a prudent person would be justified in developing the deposit with a reasonable prospect of developing a successful mine, and that the claims can be mined and marketed at a profit;
b. locating mining claims by posting notice and marking claim boundaries;
c. recording mining claims by filing a location certificate with the proper BLM state office within 90 days of the location date and recording pursuant to county requirements;
d. maintaining the claim through assessment work, paying an annual maintenance fee, and filing of affidavits; and
e. additional requirements for mineral patents (as mentioned above, there is a moratorium on patents).

The Materials Disposal Act of 1947, 30 U.S.C. §§ 601–615, as amended, provides for the disposal of common minerals found on federal lands, including, but not limited to, cinders, clay, gravel, pumice, sand or stone, or other materials used for agriculture, animal husbandry, building, abrasion, construction, landscaping and similar uses. These minerals may be sold through competitive bids, non-competitive bids in certain circumstances or through free use by Government entities and non-profit entities.

The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181–287, as amended, establishes a prospecting permit and leasing system for all deposits of coal, phosphate, sodium, potassium, oil, gas, oil shale, and gilsonite on lands owned by the United States, including national forests. In addition, sulphur deposits found on public lands in Louisiana and New Mexico are leasable, as are geothermal steam and associated geothermal resources, uranium, and hardrock mineral resources. These same deposits found in some acquired federal lands, including acquired forest lands, are leasable.

Acquired lands are those obtained by the federal government from private owners through purchase, condemnation, or gift, or by exchange. These lands are not subject to location. However, the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351–360, authorises the leasing of coal, phosphate, oil and gas, oil shale, sodium, potassium, and sulphur found in acquired lands. Leasing also is allowed for those minerals that would be considered locatable if found on the public domain, as well as geothermal resources.

Areas designated as national parks, national monuments, most Reclamation Act project areas, military reservations, wilderness areas, and wild and scenic river corridors are generally not open to mining locations and leases. Project proponents should research mineral access when considering exploration activities on federal lands.

Prospecting and mining are prohibited after an area is incorporated into the National Park System; rights acquired prior to an area's inclusion into the system may remain valid if properly located and maintained, but will be subject to control of the National Park Service which regulates use of privately owned reserved and other mineral interests on lands within the boundaries of the National Park System in addition to controlling surface and subsurface uses of both patented and unpatented claims.

National Recreation Areas are generally closed to mineral locations and leasing surface coal mining operations are prohibited in these areas.

States have the authority to lease, sell, exchange, or otherwise manage state-owned mineral lands pursuant to constitutional or statutory provisions, and as regulated by state boards or officers, through either a single agency or a combination of agencies. Most states use a procedure of issuing either a mining claim location or prospecting permit as a preliminary step toward obtaining a mineral lease on state mineral land. A few states provide for both mining claims and permits, while others allow prospecting rights under mineral leases. Some require neither. The purpose is to generally allow the applicant to obtain an exclusive right to explore untested or undeveloped ground while giving the state some control over mineral activities. Once minerals of value are located and described, applicant typically obtains a preferred right to a mineral lease. In some instances, competitive bidding is required.

Rights to privately-owned minerals may be obtained through purchase, lease or contract.

2.5 Are different procedures applicable to natural oil and gas?

The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181–287, as amended, provides US citizens the opportunity to obtain a prospecting permit or lease for coal, gas, gilsonite, oil, oil shale, phosphate, potassium, and sodium deposits on federal lands. The process for obtaining a permit or lease involves filing an application with the federal agency office with jurisdiction over the affected land. Depending on the type of permit or lease applied for, applicants may be required to:

a. pay rental payments;
b. file an exploration plan;
c. pay royalty payments based on production; or
d. furnish a bond covering closure and reclamation costs.

These permits and leases are often subject to conditions and stipulations directed at protecting resource values.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

The GML and Mineral Lands Leasing Act require mine claimants, permittees and lessees be US citizens. A 'citizen' can include a US-incorporated entity, incorporated in any state in the US.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

The GML requires that mine claimants, permittees and lessees must be US citizens. A 'citizen' can include a US-incorporated entity that is wholly owned by non-US entities or corporations. There generally are no restrictions on foreign acquisition of these types of US mining rights through parent-subsidiary corporate structures. The Mineral Lands Leasing Act, Mineral Leasing Act for Acquired Lands and Reorganization Plan No. 3, require that the holder of a mineral lease or prospecting permit must be a citizen of the United States. 30 U.S.C. § 181, 352; 43 C.F.R. § 3502.10(a). Corporations organised under the laws of the United States or any state or territory of the US may qualify to hold leases or prospecting permits. While foreign persons are permitted to be shareholders, the citizenship of the shareholders is significant. The country of citizenship of each shareholder must be a country that does not deny similar or like privileges to U.S. citizens. 30 U.S.C. § 181 (such countries are referred to as 'non-reciprocal countries'). Disclosure of foreign ownership is not required unless it meets the 10% threshold. 43 C.F.R. § 3502.30(b). Therefore, even foreign stockholders from non-reciprocal countries may own less than 10%.

Foreign investments are subject to US national security laws. The Committee on Foreign Investment in the US, for example, is an inter-agency committee chaired by the Secretary of the Treasury that has authority to review foreign investments to protect national security and make recommendations to the President to block the same. 50 U.S.C. § 4565. The President may exercise this authority if the President finds that the foreign interest might take action impairing national security and other provisions of the law do not provide the President with appropriate authority to act to protect national security. 50 U.S.C. § 4565(d)(4).

Foreign employees are governed by general US immigration laws and are required to obtain a work visa or other authorisation. A limited number of visas are available for skilled workers, professionals and non-skilled workers, but these workers must be performing work for which qualified US workers are not available. 8 U.S.C. § 1153(b)(3)(C).

3.3 Are there any change of control restrictions applicable?

The GML does not contain change of control restrictions. Mineral leases and contracts may contain change of control restrictions by their terms.

3.4 Are there requirements for ownership by indigenous persons or entities?

No, but see the response to question 9.1.

3.5 Does the State have free carry rights or options to acquire shareholdings?

There are no carry rights or shareholding options under US law.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are no specific provisions relating to processing or beneficiating mined minerals in US law except for general environmental laws.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are no restrictions or limitations on the sale, import, or export of extracted or processed minerals, unless such minerals are deemed a national security risk by the US Department of Homeland Security or State Department.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

No, except that the transferee must be qualified to hold the interest. See the responses to questions 3.1 and 3.2.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes, subject to the underlying mineral ownership rights of the Government.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Privately held mineral rights and the rights to conduct reconnaissance, exploration and mining on such rights may be subdivided among numerous parties. Rights to conduct such operations on federal and state mineral interests are governed by the instruments conveying such rights and may or may not permit subdivision.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, such rights may be held in undivided shares.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Generally, the holder of a mining claim or lease for a primary mineral is entitled to extract from a claim/lease those 'associated minerals' or secondary minerals which may be economically recovered along with the primary mineral(s).

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Generally, the holder of a mining claim or lease may exercise rights over residue deposits on the land concerned. However, certain residue deposits may be subject to ownership by another party and may not be contemplated by a mining lease.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes. There are special federal and state rules relating to offshore exploration and mining, depending on whether exploration and mining are taking place in state-owned or federal waters. Generally, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, *et seq.*, provides the US Bureau of Ocean Energy Management (BOEM) with authority to manage minerals on the US outer continental shelf. Minerals may be offered for lease by the BOEM in accordance with federal regulations at 30 C.F.R. Parts 580–582.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Upon making a discovery of valuable minerals, the locator of a federal mining claim receives the 'exclusive right of possession and enjoyment' of all 'veins, lodes, and ledges throughout their entire depth' which have apexes within the mining claim. The locator also receives the exclusive right to possess all surface areas within the claim *for mining purposes*, but the United States retains the right to manage the surface of the property for other purposes. A locator's possessory rights are considered vested property rights in real property with full attributes and benefits of ownership exercisable against third parties, and these rights may be sold, transferred and mortgaged.

Holders of federal and state mineral leases and contracts may obtain surface access rights under the terms of the instrument, but in some instances additional access rights may have to be obtained through rights-of-way regulations.

FLPMA governs federal land use, including access to, and exercise of, GML rights on lands administered by the BLM and the USFS. FLPMA recognises 'the Nation's need for domestic sources of minerals', and provides that FLPMA shall not impair GML rights, including, but not limited to, rights of ingress and egress. However, FLPMA also provides that mining authorisations must not 'result in unnecessary or undue degradation of public lands'. BLM and USFS have promulgated extensive FLPMA mining regulations.

Split-estate lands are lands where the ownership of the surface estate and mineral estate have been severed. In such instances, surface rights may have been granted to private parties, with the minerals reserved to the United States. Even where surface and mineral interests are in private ownership, these interests may be held by different parties. When surface rights and mineral rights are owned by different parties, the mineral rights owner (or lessee or locator) has the legal the right to use as much of the surface as is reasonably necessary to mineral development. However, the mineral estate owner must show due regard for the interest of the surface estate owner. In such cases, the mineral rights holder must comply with notice requirements and other state and federal requirements that protect the surface owner.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Federal mining laws do not require community engagement or corporate responsibility. Those projects that require NEPA review, however, will be subject to public notice and comment requirements and the review will involve consideration of the project's cultural, societal and economic impacts. State laws may impose a 'public interest' standard for projects requiring state approval. For example, mining operations that require state water rights may need to show that the use of the water is in the 'public interest', which may include consideration of wildlife, fisheries and aquatic habitat values.

As discussed in question 7.1, the law governing split estates requires both the mineral estate owner and the surface estate owner to proceed with "due regard" for the other, and to 'accommodate' the use of the other. The mineral rights owner is generally entitled to use as much of the surface and subsurface as is 'reasonably necessary' to exploit its interest in the minerals, but this entitlement must be balanced against the surface owner's right to use his property. Federal and state legislation has granted additional protections to surface owners, which may include notice and consent requirements, bonding for reclamation, and the payment of damages for surface destruction.

7.3 What rights of expropriation exist?

There is little risk of expropriation of mining operations by Government seizure or political unrest. Rights may only be expropriated following due process and payment of due compensation to the holder.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

NEPA is the principal environmental law implicated by mining on federal lands. NEPA requires federal agencies to take a 'hard look' at the environmental consequences of its projects before action is taken. An agency must prepare an EIS for all major federal actions significantly affecting the quality of the human environment. An agency may first prepare an EA to determine whether the effects are significant. If the effects are significant, the agency must prepare the more comprehensive EIS. If the effects are insignificant, the agency generally will issue a finding of no significant impact, ending the process. NEPA does not dictate a substantive outcome, however, the analysis generally requires consideration of other substantive environmental statutes and regulations, including the Clean Air Act, 42 U.S.C. §§ 7401–7671q, the Clean Water Act, 33 U.S.C. §§ 1251–1388, and the Endangered Species Act, 16 U.S.C. §§ 1531–1544. NEPA is administered by the federal agency making the decision that may significantly affect the environment.

Mining projects on federal lands, or that otherwise have a federal nexus, will likely have to go through some level of NEPA environmental review. State laws may also require environmental analysis. Where analysis is required by different agencies, it may be possible to pursue an agreement among the agencies to allow the operator to produce one comprehensive environmental review document that all agencies can rely on.

There is no statutory deadline for federal agencies to complete their NEPA review. Small mine project reviews may take in excess of a year to complete. Larger project reviews likely will take longer. Third parties may sue the federal agency completing the review to ensure that the agency considered all relevant factors and had a rational basis for the decisions made based on the facts found. Prosecuting the litigation would extend the project approval time, and if the agency loses, additional time would be required for the agency to redo its flawed NEPA analysis. In some instances where mines were proposed in especially sensitive areas, it has taken decades to obtain approval.

The Clean Air Act regulates air emissions from stationary and mobile sources. The Clean Air Act is administered by the Environmental Protection Agency and states with delegated authority. The Clean Water Act regulates pollutant discharges into the 'waters of the US, including the territorial seas'. 33 U.S.C. § 1311(a). The Clean Water Act is administered by the Environmental Protection Agency, US Army Corps of Engineers, and states with delegated authority. The Endangered Species Act requires federal agencies to ensure their actions are not likely to jeopardise the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat and prohibits the unauthorised taking of such species. The US Fish and Wildlife Service and National Marine Fisheries Service administer the Endangered Species Act.

States also have a wide range of environmental laws that govern permitting and reclamation on mining projects.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

A variety of federal and state laws govern the storage of tailings and other waste products on mining operations and for the closure of mines. In general, a mine plan must provide a detailed description of how the mine operations will comply with such requirements.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

FLPMA requires BLM and USFS to prevent 'unnecessary or undue degradation' of public lands. 43 U.S.C. § 1732(b). Casual use hardrock mining operations on BLM lands that will result in no, or negligible, surface disturbance do not require any reclamation planning. Notice-level exploration operations requiring less than five acres of surface disturbance must meet BLM reclamation standards and provide financial guarantees that the reclamation will occur. 43 C.F.R. §§ 3809.320, 3809.500(b). Plan-level operations require a plan of operations that includes a detailed reclamation plan. 43 C.F.R. §§ 3809.11, 3809.401. BLM reclamation standards include saving topsoil for reshaping disturbed areas, erosion and water control measures, toxic materials measures, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat. 43 C.F.R. § 3809.420. Mining in BLM wilderness study areas additionally requires surface disturbances be 'reclaimed to the point of being substantially unnoticeable in the area as a whole'. 43 C.F.R. § 3802.0-5(d).

Mining activities on National Forest lands must be conducted 'so as to minimise adverse environmental impacts on National Forest System surface resources'. 36 C.F.R. § 228.1. Operators must take measures that will 'prevent or control on-site and off-site damage to the environment and forest surface resources', including erosion control, water run-off control, toxic materials control, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat. 36 C.F.R. § 228.8(g). State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects can often address both federal and state requirements through a single closure and reclamation plan and financial guarantee.

Federal and state laws generally require financial guarantees prior to commencing operations to cover closure and reclamation costs. These reclamation bonds ensure that the regulatory authorities will have sufficient funds to reclaim the mine site if the permittee fails to complete the reclamation plan approved in the permit.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Individual counties and municipalities may impose certain zoning requirements on lands subject to their jurisdiction.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The US contains numerous reservations comprised of federal lands set aside by treaty, Congressional Act or administrative directive for specific Native American tribes or Alaska natives. Tribal reservation title generally is held by the US in trust for the tribes, and the US Bureau of Indian Affairs administers the reservations. Alaska native lands are owned and administered by Alaska native

corporations. Mineral development within the tribal reservations and Alaska native lands requires negotiation with the appropriate administrator, leases with tribes for tribally-owned mineral rights and tribal consent for access rights.

Tribal cultural interests are considered through NEPA and two specific laws. The National Historic Preservation Act (NHPA), 54 U.S.C. § 300101, *et seq.*, requires an analysis that includes social and cultural impacts, and may require tribal consultation. Section 106 of NHPA requires federal agencies to inventorise historic properties on federal lands and lands subject to federal permitting, and to consult with interested parties and the State Historic Preservation Office. 54 U.S.C. § 306108. The Native Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013, imposes procedural requirements that apply to inadvertent discovery and intentional excavation of tribal graves and cultural items on federal or tribal lands. Locatable minerals found on American Indian reservations are subject to lease only. Under the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108, tribes may enter private negotiations with mineral developers for the exploration and extraction, subject to the Interior Secretary's approval.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Federal Mine Safety and Health Act, 30 U.S.C. § 801–966, requires the Mine Safety and Health Administration (MSHA) to inspect all mines each year to ensure safe and healthy work environments. 30 U.S.C. § 813. MSHA is prohibited from giving advance notice of an inspection, and may enter mine property without a warrant. 30 U.S.C. § 813. MSHA regulations set out detailed safety and health standards for preventing hazardous and unhealthy conditions, including measures addressing fire prevention, air quality, explosives, aerial tramways, electricity use, personal protection, illumination and others. See, e.g., 30 C.F.R. §§ 56.1-56.20014 (safety and health standards for surface metal and non-metal mines). MSHA regulations also establish requirements for: testing, evaluating, and approving mining products; miner and rescue team training programmes; and notification of accidents, injuries, and illnesses at the mine. 30 C.F.R. §§ 5.10-36.50, 46.1-49.60, 50.10.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Yes. Owners, employers, managers and employees all have obligations under the laws described in question 10.1.

11 Administrative Aspects

11.1 Is there a central titles registration office?

No. Land and mineral title records are kept in the having jurisdiction over the mining rights (e.g., the BLM) and in the real property records of each county in which the property is located. All relevant sources must be consulted to determine title.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes. Appeals may be made to administrative tribunals and to the judicial system.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The US Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting state and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, state, and local statutes and administrative regulations.

12.2 Are there any State investment treaties which are applicable?

Many international treaties of general application apply to mining industry investment by foreign persons into the United States, but none specifically address investment in the mining industry or trading in various minerals. See the response to question 14.2.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are no federal taxes specific to minerals extraction. General federal, state, county and municipal taxes apply to mining companies, including income taxes, payroll taxes, sales taxes, property taxes and use taxes.

Federal tax laws generally do not distinguish between domestic and foreign mining operators. However, if a non-US citizen acquires real property, the buyer must deposit 10% of the sale's price in cash with the US Internal Revenue Service as insurance against the seller's income tax liability. The cash requirement can be problematic for a cash-strapped buyer that may have purchased the mine property with stock.

There are no federal tax advantages or incentives specific to mining.

There are no federal duties on minerals extraction.

Locatable minerals claimants must pay an annual maintenance fee of $155 per claim *in lieu* of performing assessment work required pursuant to GML and FLPMA. 43 C.F.R. §§ 3834.11(a), 3830.21. Failure to perform assessment work or pay a maintenance fee will open the claim to relocation by a rival claimant as if no location had been made. 43 C.F.R. § 3836.15. Certain waivers and deferments apply.

Leasable minerals permittees and lessees must pay annual rent based on acreage. The rental rates differ by mineral and some rates increase over time. 43 C.F.R. § 3504.15. Prospecting permits automatically terminate if rent is not paid on time; the BLM will notify late lessees that they have 30 days to pay. 43 C.F.R. § 3504.17. State laws may also include closure and reclamation requirements, including, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects often can address both federal and state requirements through a single closure and reclamation plan and financial guarantee.

13.2 Are there royalties payable to the State over and above any taxes?

There are generally no royalties levied on the extraction of federally owned locatable minerals under the GLO. However, mineral leases generally carry royalty obligations. Many states, however, charge royalties on mineral operations on state-owned lands and taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. These functional royalties can differ depending on land ownership and the minerals extracted.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

As noted above, state and local Governments having concurrent or independent authority over certain aspects of mining projects (e.g. permitting, water rights and access authorisations). Ownership of state-owned land and minerals is controlled by state law and varies by state. State laws generally are similar to federal laws in that title remains with the state until the minerals are severed pursuant to statutory procedures. State and local laws may impose a 'public interest' standard for projects requiring state approval. State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Many state laws require financial guarantees prior to commencing operations to cover closure and reclamation costs. In addition, some states charge royalties on mineral operations on state-owned lands and impose taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. Local zoning laws may prohibit or limit mining in certain areas.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

The North American Free Trade Agreement (NAFTA) among the US, Canada and Mexico, in Chapter 11, requires equal treatment between the NAFTA country's own citizens and those from another NAFTA country, and requires that the NAFTA country protect those investors and their investments. Among the most important protections are the broad prohibitions on 'expropriation' of the investor's rights, including a prohibition on the NAFTA country implementing measures 'tantamount to expropriation' except in accordance with approved criteria, and requiring payment of compensation resulting from losses incurred by the investor.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Under the GML, rights in unpatented mining claims can be abandoned voluntarily or by non-payment of annual maintenance fees. Minerals leased under Federal law (energy minerals such as coal), minerals owned by States, and minerals owned by private entities can only be abandoned in accordance with the terms of the lease or other grant from the mineral owner to the holder of the right to develop the minerals.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Under the GML, there is no obligation to relinquish an exploration or mining right after a certain period of time. The terms of Federal mineral leases, State mineral leases or private leases generally set the term limits of mining rights, but may permit rights to continue past an initial or extended term as long as minerals are continuing to be produced and sold.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Under the GML, unpatented mining claims may be cancelled for failure to pay annual maintenance fees, or, in some instances, the Federal government can challenge the validity of unpatented mining claims for failure to make a valid discovery of a valuable mineral. The terms of Federal, State and private leases often contain default provisions allowing cancelation upon failure to comply with conditions of the lease.

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Zambia

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The primary law governing the mining sector in Zambia is the Mines and Minerals Development Act No. 11 of 2015 of the Laws of Zambia (MMDA) as read together with the Mines and Minerals Development (Amendment) Act No. 14 of 2016. The MMDA became effective on 1st July, 2015 although the date of assent is 14th August, 2015. It repealed and replaced the Mines and Minerals Development Act No. 7 of 2008. The MMDA deals with mining rights, licences, large-scale mining in Zambia, gemstone mining, health and safety, environmental protection, and geological services on analysis, royalties and charges. Other pieces of legislation, other than the Mines and Minerals Development Act, include: the Mines Acquisition (Special Provisions) Act, Chapter 218, Volume 13 of the Laws of Zambia; and the Mines Acquisition (Special Provisions) (No. 2) Act Chapter 219, Volume 13 of the Laws of Zambia.

1.2 Which Government body/ies administer the mining industry?

The mining industry is administered by the Ministry of Mines and Minerals Development previously called Ministry of Mines, Energy and Water Development, specifically by the office of the Director of Mines. The MMDA gives primary power to the Director of Mines, Director of Mines Safety, Director of Mining Cadastre and Director of Geological Survey, while the Minister enjoys an appellate and supervisory role over the respective Directors' actions.

The aforementioned departments all have their head offices situated in Lusaka, except the Department of Mine Safety which is situated in Kitwe in the Copperbelt Province.

1.3 Describe any other sources of law affecting the mining industry.

Other than the Mines and Minerals Development Act, the Zambian mining industry is also affected by the provisions of the Mines and Minerals (Trading in Reserved Minerals) Regulations Statutory Instrument No. 110 of 1995, the Mines and Minerals (Application for Mining Rights) Regulations Statutory Instrument No. 123 of 1996, the Mines and Minerals (Application for Mining Rights) (Amendment) Regulations No. 29 of 1997, the Mines and Minerals (Environmental Protection Fund) Regulations Statutory Instrument No. 102 of 1998, the Mines and Minerals (Royalty) (Remission) Order, 2000 Statutory Instrument No. 18 of 2000, the Mines and Minerals (Environmental) (Exemption) (Amendment) Order, 2000 Statutory Instrument No. 31 of 2000, the Mines and Minerals Development (General) Regulations Statutory Instrument No. 84 of 2008, the Mines and Minerals Development (Prospecting, Mining and Milling of Uranium Ores and other Radioactive Minerals Ores) Regulations Statutory Instrument No. 85 of 2008, the Mines and Minerals Development (Mining Rights and Non-Mining Rights) Order, Statutory Instrument No. 27 of 2009, the Mines and Minerals Development (Remission of Mineral Royalties) (Luanshya Copper Mines Plc) Regulations Statutory Instrument No. 66 of 2009, the Mines and Minerals Development (Mining Rights and Non-Mining Rights) Order Statutory Instrument No. 26 of 2010, the Mines and Minerals Development (General) (Amendment) Regulations Statutory Instrument No. 34 of 2012, the Mines and Minerals Development (General) (Amendment) Regulations Statutory Instrument No. 17 of 2013, the Mines and Minerals Development (General) Regulations Statutory Instrument No. 7 of 2016, Income Tax, the Value Added Tax Act, the Environmental Management Act No. 12 of 2011, the Zambia Development Agency Act 2006, Pneumoconiosis Act Chapter 217, Volume 13 of the Laws of Zambia, the Medical Examination of Young Persons (underground work) Act Chapter 216, Volume 13 of the Laws of Zambia, Workers Compensation Act No. 10 of 1999, the National Pension Scheme (Amendment) Act No. 7 of 2015, Industrial and Labour Relations Act Chapter 269, Volume 15 of the Laws of Zambia, Ironising Radiation Protection Act No. 16 of 2005, the National Health Services Act No. 17 of 2005, the Factories Act Chapter 441, Volume 24 of the Laws of Zambia, the Fire Arms Act Chapter 110, Volume 8 of the Laws of Zambia, Explosives Act Chapter 115, Volume 9 of the Laws of Zambia, the Employment Act Chapter 268, Volume 15 of the Laws of Zambia as read with Employment Act No. 15 of 2015, the Apprenticeship Act Chapter 275, Volume 15 of the Laws of Zambia, the Citizenship Empowerment Act 2006 as read with the Citizen Empowerment (Amendment) Act No. 44 of 2010, the Zambia Revenue Authority Act, the Zambia Wild Life Act 2015, the Lands Act, the Land and Deeds Act, and the Arbitration Act. In the event of a dispute, the courts also apply the English principles of Common Law and Equity.

English common law and doctrines of equity are applicable in this jurisdiction. When it gained independence in 1964, Zambia inherited the English legal system and certain pieces of English legislation are still applicable to Zambia through the English Law (Extent of Application) Act, Chapter 11, Volume 2, of the Laws of Zambia. The statutes that were in force in England on 17th August, 1911, as well as the Northern Rhodesia Order in Council, 1911 and the British Acts (Extension) Act, Chapter 10, Volume 2 of the Laws of Zambia which are statutes passed after 17th August, 1911, are contained in the schedule. In applying common law to mining, Zambian courts

have replicated decisions from Commonwealth and foreign countries with similar socio-economic conditions. For example, Zambia has looked more frequently to Commonwealth countries like England and Australia which have an equally active mining industry.

Customary law has some influence with respect to surface rights on land held under customary law tenure.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

In order to conduct reconnaissance, a person must apply to the Director of Mining Cadastre. Section 12 of the MMDA prohibits any person from undertaking any reconnaissance activity without a mining right, a mineral processing licence or a gold panning certificate. Section 18(2) of the MMDA provides that a holder of a mining right or a mineral processing licence shall, within one hundred and eighty (180) days of the grant of the licence, survey and demarcate the area covered by the licence in the prescribed manner and register a pegging certificate at the Mining Cadastre Office.

2.2 What rights are required to conduct exploration?

In order to acquire prospecting rights, the applicant has to apply for an exploration licence to the Director of the Mining Cadastre in the prescribed form upon payment of the prescribed fee. The Mining Licence Committee in the Ministry of Mines, which includes all the directors mentioned in question 1.2 above, grants, within sixty (60) days of receipt of an application, the applicant an exploration licence, in the prescribed form, if the application complies with the provisions of the MMDA. An exploration licence confers on the holder exclusive rights to carry on exploration in the exploration area for the minerals specified in the licence and to do all such other acts and things as are necessary for, or incidental to, the carrying on of those operations.

2.3 What rights are required to conduct mining?

A person wishing to conduct mining and dispose of minerals is required to first acquire a mining right or a mining licence granted under the MMDA. In order to acquire mining rights, the applicant has to apply for a mining right. The applicant is required to address the application to the Mining Cadastre Office. The Director of Mining Cadastre may, before issuing a mining right or mining licence, require that the land over which the mining right or mining licence is to be issued be properly surveyed in accordance with the provisions of the MMDA.

2.4 Are different procedures applicable to different minerals and on different types of land?

The procedure is the same for all other types of minerals and land held under either state land or customary land.

2.5 Are different procedures applicable to natural oil and gas?

The legal regime regulating natural oil and gas is different. The exploration and production of natural oil and gas is regulated by a separate piece of legislation known as the Petroleum (Exploration and Production) Act No. 10 of 2008, which repealed and replaced the Petroleum (Exploration and Production) Act No. 13 of 1985.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Both foreign and indigenous entities can own reconnaissance, exploration and mining rights.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

A prospecting permit, small-scale mining licence, small-scale gemstone licence and an artisan's mining right cannot be granted to a person who is not a citizen of Zambia or a company which is not a citizen-owned company. According to the MMDA, a citizen-owned company means a company where at least 50.1% of its equity is owned by Zambian citizens, and in which the Zambian citizens have significant control of the management of the company.

It is important to note that there are no restrictions with respect to foreign ownership with regard to holders of large-scale mining licences.

3.3 Are there any change of control restrictions applicable?

The MMDA prohibits the transfer or assignment of any mining right without the approval of the Minister of Mines through the office of the Director. In addition, the MMDA requires that any change in the controlling interest in the holder of a mining licence must be notified to the Minister not less than thirty (30) days before the date of the effective transfer.

Section 67 of MMDA further requires that a holder of a mining right or mineral processing licence shall not, after the date of the grant of the right or licence, without the prior written approval of the Minister: register the transfer of any share or shares in the company to any person, or that person's nominee, if the effect of doing so would give that person control of the company; or enter into an agreement with any person, if the effect of doing so would be to give that person control of the company.

3.4 Are there requirements for ownership by indigenous persons or entities?

Section 29 of the MMDA provides restrictive requirements; however, these restrictions only apply to artisanal mining, small-scale mining, mineral trading permit under Section 45(1) and gold panning certificate under Section 42(1). These cannot be granted to a person who is not a citizen of Zambia or a company which is not a citizen-owned company. Artisanal mining shall only be undertaken by a citizen or a co-operative wholly composed of citizens. Small-scale mining shall only be undertaken by a citizen-owned, citizen-influenced or citizen-empowered company. An applicant for artisanal mining or small-scale mining shall not be granted a mining licence in respect of radioactive minerals. A mining right over an area between a minimum of two (2) cadastre units and a maximum of one hundred and twenty (120) cadastre units in extent shall only be granted to the following companies:

(a) a citizen-influenced company has the meaning assigned to it in the Citizens Economic Empowerment Act 2006;

(b) a citizen-empowered company, meaning a company where 25–50% of its equity is owned by a citizen; and

(c) a citizen-owned company has the meaning assigned to it in the Citizens Economic Empowerment Act 2006.

There are no restrictions for exploration, large-scale mining, mineral processing and mineral import and export permits.

3.5 Does the State have free carry rights or options to acquire shareholdings?

Free carry rights or options to acquire do not exist. However, mines that have been previously owned by the Government but sold to international mining houses feature what is referred to as 'a golden share'. This is in respect to the minority shares the state continues to hold in these mines. Under the provisions of Section 27 of the Zambia Development Agency Act No. 11 of 2006, the Minister of Finance may retain a golden share in a state-owned enterprise.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

A licence is required for any person who wishes to undertake the processing of any minerals under Section 38. In addition, under Section 13(2), a person may apply for a mineral trading permit, a mineral import permit, a mineral export permit and a gold panning certificate.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Approval is required from the Director of Mines under the provisions of Section 47 for the export or import of minerals upon payment of statutory fees. Additional approval is required for the export of radioactive minerals. A mineral export permit requires a mineral analysis and evaluation certificate issued by the Director of the Geological Survey, a verification report from the Commissioner General of the Zambia Revenue Authority for the payment of mineral royalties, security clearance by the police, production returns and mineral right or mineral processing certificate of the source of the mineral, or the mineral product.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The MMDA provides for restrictions on the ability to transfer reconnaissance, exploration and mining rights. The transfer of these rights requires the prior consent of the Minister of Mines and the production of a tax clearance certificate. Upon satisfaction of the provided criteria in Section 66, the Minister is obliged to grant such consent unless the transferee is disqualified from holding a mining right or a non-mining right under the general provisions of the MMDA.

In addition, we must point out that a change of control of the company, either by way of shares or an agreement whose effect is to change control, is subject to approval by the Minister of Mines.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The MMDA does not make specific provision for this; however, rights may be assigned to a financial institution subject to approval by the Minister, under the provisions of Section 66 of the MMDA, who has to approve any assignment or encumbrance of any mining or mineral processing licence.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

No, they are not.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

No, they are not.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

No, they are not.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

No, they are not.

6.5 Are there any special rules relating to offshore exploration and mining?

No, they are not.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The holder of a right to conduct reconnaissance, exploration or mining does not automatically own the right to use the surface of land. However, the holder may have the following rights to use the surface of land:

(i) To enter the mining area and take reasonable measures on or under the surface for the purpose of mining operations.

(ii) To carry on mining operations and to do all such other acts and things as are necessary for carrying on of those operations.

(iii) To dispose of any mineral products recovered.

(iv) To stack or dump any mineral or waste product.

(v) To erect the necessary equipment, plant and buildings for the purpose of mining, transporting, dressing or treating the minerals recovered in the course of the mining operations.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a reconnaissance, exploration or mining right has an obligation towards the landowner or the lawful occupier, subject to the mining right, to pay fair and reasonable compensation for any disturbance of the rights of the occupier, including any damage done to the surface of the land by the operations.

Where the holder requires exclusive or other use of the whole or any portion of the prospecting or mining area, he has an obligation to acquire a lease to use the same as agreed between such holder and the landowner or lawful occupier. This is referred to as an access agreement. Section 57 of the MMDA, however, provides for exceptions to the above statement. Any dispute with respect to compensation between the surface rights holder and holder of a mining right with the consent of the parties, may be resolved by the Director of Mining Cadastre, or the Director may require the parties to submit to arbitration in accordance with the provisions of the Arbitration Act.

7.3 What rights of expropriation exist?

The Lands (Compulsory Acquisition) Act allows the President of the Republic of Zambia to compulsorily acquire any real property (land), interest and personal property for the public benefit. Appropriation under the Constitution is subject to the granting of fair and reasonable compensation. There is also a provision for an Investment Protection Agreement.

The Constitution of Zambia (Amendment) Act No. 2 of 2016 has made special provision with regards to protection of international investment. In addition, Zambia has, through the provisions of Investments Disputes Convention Act Chapter 42, Volume 4 of the Laws of Zambia, domesticated into National Law the Convention on the Settlement of Investment Disputes between states and nationals (multinationals) of other states. Zambia has also ratified the SADC Protocol on Finance and Investment, the COMESA treaty and the investment agreement for the COMESA Common Investment Area (CCIA) Agreement. Zambia has bilateral investment treaties with the United Kingdom (2009), Mauritius (2015), the Netherlands (2003), the Belgium-Luxembourg Economic Union (2001), China (1996), France (2002), Germany (1996), Egypt (2000), Cuba (2000), and Switzerland (1994).

Under Section 69, the Director of Mines may consider the nature of mining operations if it is in the best interests of the Republic that the holders of artisanal or small-scale mining operations covering a neighbouring area will be improved by the coordination of the mining operations. This is only with respect to artisanal and small-scale mining operations.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The holder of a mining right is required to have approved environmental authorisation from the Zambia Environmental Management Agency (ZEMA).

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The Environmental Management Act No. 12 of 2011 provides for the issuance of a waste management licence.

Section 55(2) of the Environmental Management Act provides as follows:

The Agency may, upon application, issue a hazardous waste licence to a person to allow the person to:

(a) generate, pre-treat or treat hazardous waste;

(b) handle, transport or store hazardous waste;

(c) dispose of hazardous waste; or

(d) transit, trade in or export hazardous waste.

A mine can only be closed upon the issue of a certificate of abandonment by the mining rights holder. The certificate will state the conditions to be satisfied for the mine to be closed. However, it is important to note that any liability incurred before the date on which the abandonment was effected in respect of the land, and any legal proceedings that might have been commenced or continued in respect of any liability against the holder of a mining licence for the certificate, may be commenced or continued against that applicant.

It is important that insurance and indemnities be identified prior to closure of the mine.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The mining rights holder is expected to give notice of the discovery of any minerals of possible commercial value, keep a full and accurate record of the prospecting operations and preserve records for the protection of the environment. The removal of any minerals without written permission is prohibited.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

A zoning map of the abandoned or closed mine is required by the Director of the Geological Survey. This is a prerequisite to the issue of a certificate of abandonment.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes; to the extent that permission is required from appropriate authorities; for example, if the land is a traditional burial site, is a village with land held under customary tenure, is a national heritage site, is located within ninety (90) metres of Government buildings or areas regulated by the Aviation Act, is a National Park or Game Protected Area by the Zambia Wildlife Authority, Railway Administration, etc.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The 1969 Mines and Mineral Act gave way for the Government to introduce the Mining Regulations 1971 and the Mining Regulations 1973. Further, these two regulations have been amalgamated to form the Guide to the Mining Regulations booklet currently being used in the copper mining industry.

The other Acts referred to also include the Medical Examination of Young Persons (Underground Work) Act, Chapter 216 of the Laws of Zambia, Pneumoconiosis Act, Chapter 217 of the Laws of Zambia, Occupational Health and Safety Act, Act 36 of 2010, the Workers' Compensation Act No. 10 of 1999 and either environmental-related or general medicine.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Guide to the Mining Regulations has imposed obligations upon owners, employers, managers and employees regarding health and safety.

The Chief Inspector of Mines, under the Mines Safety Department (MSD), ensures that the regulations are being followed. Note that any deviations from the regulations call for penalties such as fines or closure of the mines.

11 Administrative Aspects

11.1 Is there a central titles registration office?

There is a Central Mining Cadastre Office which is responsible for receiving and processing applications for mining rights.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is a system of appeals against administrative decisions in terms of the relevant mining legislation. An aggrieved person may appeal to the Minister of Mines against the decision of the Director of Mining Cadastre, Director of Mines Safety, Director of Mines, Director of Geological Survey or the Mining Licence Committee under MMDA. If said person is not satisfied with the decision made by the Minister, he can appeal to the Mining Appeals Tribunal. A person aggrieved with the decision of the Mining Appeals Tribunal can appeal to the High Court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Zambian Constitution has an impact upon the rights to conduct reconnaissance, exploration and mining. Article 16 of the Bill of Rights of the Constitution provides for the protection of property from being deprived without just cause. Property includes prospecting rights or mining rights. In addition, the recent amendments to the Constitution in Article 10 (3) have made special provision reconfirming the protection of investment in Zambia to promote foreign investment and to protect and guarantee such investments through agreement with investors and other countries and any compulsory acquirement of an investment may only be done under customary international law and is subject to Article 16(1) of the Constitution (Bill of Rights) of 1996 Constitution Amendment.

12.2 Are there any State investment treaties which are applicable?

There is a provision for treaties and for bilateral agreements to be signed and Zambia has entered into a number of multilateral and bilateral treaties. Zambia, as stated earlier in question 7.3 on expropriation, has entered into a number of bilateral and multilateral treaties which include: the Convention on the Settlement of Investment Disputes between states and nationals (multinationals) of other states; the SADC Protocol on Finance and Investment and the COMESA treaty; and the investment agreement for the COMESA Common Investment Area (CCIA) Agreement.

Zambia has bilateral investment treaties with the United Kingdom (2009), Mauritius (2015), the Netherlands (2003), the Belgium-Luxembourg Economic Union (2001), China (1996), France (2002), Germany (1996), Egypt (2000), Cuba (2000), and Switzerland (1994).

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Under the Income Tax Act, the corporate income tax rate applicable to companies carrying out mining operations will be 30%. Variable profits tax of up to 15% no longer applies; however, there is a limitation on the deduction of losses to 50% of taxable income.

Withholding tax on dividends declared by a company carrying out mining operations is charged at the rate of 0%.

13.2 Are there royalties payable to the State over and above any taxes?

Mineral royalties for holders of mining rights are payable at the rate of 5% on base metals (except copper) and energy and industrial minerals, and 6% for gemstones and precious metals. Where the mineral is copper, the mineral royalty rate will be: 4% when the price of copper is less than US$4,500 per tonnes; 5% where the price of copper is more than US$4,500 but less than US$6,000 per tonne; and 6% where the price of copper is more than US$6,000 per tonne.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes; the Common Market for Eastern and the Southern Africa (COMESA) and the Southern African Development Community (SADC).

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Yes; the Common Market for Eastern and the Southern Africa (COMESA) and the Southern African Development Community (SADC).

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

The Mines and Minerals Development Act contains a provision entitling the holder of a right to abandon it either totally or partially, subject to the licence or permit, upon application to the Director of Mining Cadastre for a certificate of abandonment, not later than ninety (90) days before the date on which the holder wishes the abandonment to have effect.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Yes, an exploration licence is valid for a period of four (4) years. It may be renewed for two further periods not exceeding three (3) years each but the maximum period from the initial grant of the licence shall not exceed ten (10) years. A holder of an exploration licence shall relinquish 50% of the exploration at each renewal. However, an exploration licence for small-scale exploration and gemstones, other than diamonds, is not renewable.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Under the MMDA, the State has vested powers to the Mining Licensing Committee which consists of the the Director of Mines, Director of the Geological Survey, Director of Mines Safety, Director of Mining Cadastre and other representatives to cancel an exploration or mining right on the basis of failure to comply with conditions relating to mining rights or non-mining rights.

A mining right may be cancelled in the following circumstances, if:

(a) it contravenes a condition of the mining right or non-mining right;

(b) it fails to comply with any requirement of the MMDA relating to the mining right or non-mining right;

(c) it fails to comply with a direction lawfully given under the MMDA;

(d) it fails to comply with a condition on which any certificate of abandonment is issued or on which any exemption or consent is given under the MMDA;

(e) there is a conviction on account of safety, health or environmental matters;

(f) in the case of a large-scale mining licence or large-scale gemstone licence, the holder has failed to carry on mining operations in accordance with the proposed plan of mining operations, and the gross proceeds of sale of mineral from an area subject to such licence in each of any three (3) successive years is less than half of the deemed turnover application to that licence in each of those years; and

(g) there is conviction on the giving of false information on recovery of ores and mineral products, production costs or sale.

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Eric Silwamba, Jalasi and Linyama Legal Practitioners

Eric Silwamba, Jalasi and Linyama Legal Practitioners is a Zambian law firm. The firm has been in existence for over 30 years as Eric Silwamba and Company. In 2013, it was rebranded to Eric Silwamba, Jalasi and Linyama Legal Practitioners following the admission to partnership of Joseph Jalasi and Lubinda Linyama. It has over the years developed to the level of being among the top law firms in Zambia. The renowned *Chambers and Partners* (www.chamberandpartners.com) describes the firm as follows:

"*This well-known team maintains a solid foothold in the Zambian market, and continues to be a popular choice for dispute resolution. Key areas of focus include public law litigation, IP matters, commercial agreements and shareholder agreements. It has experience in advising clients from the mining, construction, agricultural and retail sectors. Sources say: 'It's a very professional firm with gravitas in the market'.*"

"*This firm enjoys a highly regarded reputation in public law litigation. Other key areas of expertise include intellectual property, commercial agreements and shareholder agreements. Market observers say: 'They have a solid practice and represent several multinational clients'.*"

The World Legal 500 describes the firm as follows:

"'*Heavyweight litigation' firm Eric Silwamba, Jalasi and Linyama Legal Practitioners is strong in administrative, constitutional and tax-related matters. 'Noted practitioner' Eric Silwamba is 'well known for his court skills'. The firm also has expertise in commercial, mining, banking and finance work.*"

Zimbabwe

Nikita Madya

Farai Chigavazira

Wintertons

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law is regulated mostly by legislation in the form of the Mines and Minerals Act (Chapter 21:05) and various regulations that stem therefrom, such as:

- the Mining (General) Regulations;
- the Mining (Managements and Safety) Regulations;
- the Mining (Health and Sanitation) Regulations; and
- the Mines and Minerals (Custom Milling Plants) Regulations.

1.2 Which Government body/ies administer the mining industry?

According to the Mines and Minerals Act, the mining industry is administered by:

- the Ministry of Mines and Mining Development;
- the Mining Affairs Board; and
- Mining Commissioners.

1.3 Describe any other sources of law affecting the mining industry.

- The Labour Act (Chapter 28:01) – regulates the relationship between employers and their employees as well as their rights thereto;
- the Environmental Management Act (Chapter 20:27) – ensures the protection of the environment;
- the Explosives Act (Chapter 10:08) – regulates the importation, transportation and use of explosives;
- the Gold Trade Act (Chapter 21:03) – prohibits the possession of gold by unauthorised persons and regulates dealings in gold;
- the Water Act (Chapter 20:24) – deals with the use and control of water bodies and the requirements for a water permit;
- the Precious Stones Trade Act (Chapter 21:06) – regulates the possession of and dealings in precious stones;
- the Chamber of Mines of Zimbabwe Incorporation (Private) Act (Chapter 21:02) – provides for the incorporation of the Chamber of Mines of Zimbabwe, and for the dissolution of the previous entity which was the Rhodesia Chamber of Mines and of the Chamber of Mines;
- the Urban Councils Act (Chapter 29:15) – provides for the establishment of municipalities and towns and the administration of municipalities and towns by local boards, municipal and town councils; to provide for the conferring of town and city status on growth points, municipalities and towns; the declaration of local government areas and the administration of local government areas by local boards; to confer functions and powers and impose duties upon municipal and town councils and local boards; and to provide for the establishment of the Local Government Board and to provide for the functions thereof;
- the Forest Act (Chapter 19:05) – provides for the setting aside of State forests and for the protection of private forests, trees and forest produce; establishes a Mining Timber Permit Board to control the cutting and taking of timber for mining purposes; provides for the conservation of timber resources and the compulsory afforestation of private land; and regulates and controls the burning of vegetation;
- the Roads Act (Chapter 13:18) – provides for the planning, development, construction, rehabilitation and management of the roads network of Zimbabwe and to provide for the regulation of the standards applicable in the planning, design, construction, maintenance and rehabilitation of roads with due regard to safety and environmental considerations;
- the Communal Land Act (Chapter 20:04) – alters and regulates the occupation and use of Communal Land;
- the District Development Fund Act (Chapter 29:06) – provides for the control and application of a fund to be used for the purpose of developing Communal Land and such other areas as may be declared by the Minister;
- the Exchange Control Act (Chapter 22:05) – confers powers and impose duties and restrictions in relation to gold, currency, securities, exchange transactions, payments and debts, and the import, export, transfer and settlement of property;
- the Land Acquisition Act (Chapter 20:10) – empowers the President and other authorities to acquire land and other immovable property compulsorily in certain circumstances; and to make special provision for the compensation payable for agricultural land required for resettlement purposes;
- the Minerals Marketing Corporation of Zimbabwe Act (Chapter 21:04) – regulates the Corporation which is mandated to sell the minerals in Zimbabwe;
- the Zimbabwe Mining Development Corporation Act (Chapter 21:08) – provides for the establishment, constitution, functions, powers and duties of the Mining Development Board and regulates the financial affairs of the Zimbabwe Mining Development Corporation;
- the Base Minerals Export Control Act (Chapter 21:01) – prohibits or regulates and controls the export of base minerals from Zimbabwe;

- the Indigenisation and Economic Empowerment Act (Chapter 14:33) – provides for support measures for the economic empowerment of indigenous Zimbabweans;
- the Mining (General) Regulations;
- the Mining (Managements and Safety) Regulations;
- the Mining (Health and Sanitation) Regulations;
- the Mines and Minerals (Custom Milling Plants) Regulations; and
- the Zimbabwe Investment Authority Act – deals with investment coming into the country and the necessary permits that investors need to work in the country.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance – a preliminary survey to gain information. There is no legislation that deals with this in Zimbabwe.

2.2 What rights are required to conduct exploration?

Rights are required for prospecting. Rights to conduct exploration are conferred by a prospecting licence/licences upon payment of the appropriate fee prescribed in respect of each such licence to the Mining Commissioner. The holder can exercise these rights or appoint an agent to exercise them on his behalf. The prospecting licence is valid for two years. The prospectors' licence itself is valid for five years. Both are renewable. The licence confers the right of prospecting and searching for any minerals, mineral oils and natural gases on land open to prospecting, but not of removing or disposing of any mineral discovered save for the *bona fide* purpose of having it assayed or of determining the nature thereof or with the permission in writing of the Mining Commissioner and pegging. The licence entitles the holder to prospect, peg and register claims in terms of the Act. A registered claim is a mining location where mining activities can take place.

An exclusive prospecting order confers exclusive rights to prospect for specified minerals in any identified location within Zimbabwe. Exclusive prospective orders are issued for a maximum of six years, being renewable for a period of three years.

2.3 What rights are required to conduct mining?

The rights to conduct mining are conferred by having a mining claim(s). For ease of administration, several claims forming a block can be transformed into a mining lease through an application made in terms of the Act. A mining lease generally confers longer term rights which are renewable in terms of the Act.

2.4 Are different procedures applicable to different minerals and on different types of land?

The only difference applies to mining coal, mineral oil or natural gas. A special mining lease is required when mining for such.

2.5 Are different procedures applicable to natural oil and gas?

According to section 299 of the Mines and Minerals Act, any person wishing to mine for oil or gas has to apply for a special lease which is granted only by the President or a Minister authorised by the president to do so.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Any person can own these rights. Person refers to:

- any company incorporated or registered as such under an enactment;
- any body of persons, corporate or unincorporated; or
- any local or other similar authority.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

A recent amendment to the Indigenisation and Economic Empowerment Act now allows foreign entities to own 100% mining rights except for platinum and diamond.

All new foreign investment into Zimbabwe requires an investment licence issued by the Zimbabwe Investment Authority in terms of the Zimbabwe Investment Authority Act.

Residence and Work Permits issued by Immigration are also required for foreigners.

Investment into an existing company requires Exchange Control Authority of RBZ's approval.

3.3 Are there any change of control restrictions applicable?

When any registered mining location or any interest therein is sold or otherwise alienated, the seller or person who so alienates shall notify the Commissioner of the transaction within 60 days of the date of transaction. The seller shall provide the following information to the Mining Commissioner:

- the name of the person to whom such location or interest is sold or otherwise alienated;
- the amount of the valuable consideration, if any, agreed upon; and
- the date of the transaction.

The agreement should be registered with the Mining Commissioner. A transfer duty is payable by the purchaser on the sale at a fee prescribed by parliament. This duty should be paid within six months. If payment is partly in cash and partly in shares of a company, the nominal value of the shares shall be used. In the case where payment is contingent upon some future event, the purchaser shall give security to the satisfaction of the Mining Commissioner that he will pay the transfer duty at a fixed rate when the consideration becomes due.

No transfer is possible if:

- the mining location is liable for forfeiture or under attachment;
- duties, fees, royalties, rentals and other payments in respect of the mining location are outstanding with the Mining Commissioner's office; and/or
- there are outstanding payments due to the Rural District Council.

Transfers can only be made to permanent residents of Zimbabwe. In the case where transfer is to be made to non-residents, the Mining Commissioner has to receive assurance from the Reserve Bank of Zimbabwe that all exchange Control requirements have been fully complied with.

On receipt of the fee, the Mining Commissioner will then issue the new owner with a new certificate of registration.

3.4 Are there requirements for ownership by indigenous persons or entities?

Indigenous persons or entities simply have to make an application for a mining lease or purchase claims to own such rights. The Indigenisation and Economic Empowerment Act dictates that indigenous persons or entities should own a 51% stake in platinum and diamond mines.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No legislation provides for the state to own shareholding.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Although value addition is encouraged, there is currently no legislation that prohibits exporting raw minerals.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

According to the Minerals Marketing Corporation of Zimbabwe Act, no person other than the Corporation shall export any mineral from Zimbabwe except in terms of a contract negotiated by the Corporation on behalf of the seller, or when authorised to do so by the Corporation subject to such terms and conditions as the Corporation may impose. A commission is payable to the Corporation for its services promulgated by the Minister of Mines and Mining Development from time to time in statutory instruments.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

As stated above, the consent of the Minister of Mines and Mining Development is required before the transfer of rights.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes. However, as mentioned above, the consent of the Minister is required before this can be done. Where the approval of the Minister or government is required to alienate mining rights, the use of the rights as security to raise capital becomes substantially reduced. Therefore, there is a lack of easy marketability, transferability and "mortgage ability" of mining assets.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

A lease holder can choose to abandon a part of his lease upon application to the Mining Commissioner. A single claim cannot be divided but if one is a holder of several claims, s/he can choose to abandon some claims.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, they are.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Yes, unless it is coal, gas or oil. In these cases, there is a need to apply for a special lease.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Yes, but acquisition and removal of same from the mining location has to be declared to the Mining Commissioner and any returns from it rendered to the Commissioner as prescribed.

6.5 Are there any special rules relating to offshore exploration and mining?

There is no legislation covering that aspect as Zimbabwe is landlocked.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Holders of these rights have the right, subject to any existing rights:

- to the use of any surface within the boundaries thereof for all necessary mining purposes of his location; and as against the holder of a prospecting licence or of any other mining location the right, except as in section 357 provided, to the use of all surface within such boundaries;
- to use, free of charge, soil, waste rock or indigenous grass situated within his location for all necessary mining purposes of such location;
- to sell or otherwise dispose of waste rock recovered by him from his location in the course of *bona fide* mining operations;
- the same right of taking water for primary purposes as is possessed by the holder of a prospecting licence; and

- subject to the Forest Act [Chapter 19:05] and to such conditions as may be prescribed and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood or for the purposes of his mining location any indigenous wood or timber from land open to prospecting, which is neither Communal Land nor land in regard to which a reservation has been made under section 36/37. Provided that nothing in this paragraph shall be construed so as to permit a miner to use any wood or timber taken by him for firewood elsewhere than on his location or, where his location is a block forming part of a property, on that property.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a right:

- should give notice to the occupier of his intention to exercise his rights;
- cannot interfere with the use of water for primary purposes by the owner or occupier of the land;
- should pay the occupier for taking and using any wood;
- has to remove any structures that have been erected on the land after the expiration of the lease;
- should compensate the occupier who is injuriously affected by the exercise of any such rights;
- should notify the occupier of the intention to house/accommodate employees on the land; and
- should allow the occupier to let his livestock graze and to cultivate his crops.

7.3 What rights of expropriation exist?

Although the Constitution provides for the protection of private property, this also leaves too much room for when such property can also be expropriated. However, when such land is being expropriated, the owner of such property should be given notice and also be compensated.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The following authorisations are required:

- Environmental Impact Assessment Certificate;
- Waste Disposal Licence;
- Effluent Discharge Licence;
- Emission Licence; and
- import/export for controlled substances.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

One has to include a decommissioning plan in the Environmental Impact Assessment Report outlining how the area will be rehabilitated and returned to its original state.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Restoring the land to its original state which is inclusive of:

- filling up any pits;
- removing any unsafe structures, equipment, disused surface pipes, pump stations and facilities from the site; and
- re-vegetation which will be commenced during the operational stage, etc.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes, this is governed by the:

- Regional, Town and Country Planning Act;
- Urban Councils Act; and
- Rural District Councils Act.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes. There are some payments made to the local authorities so that one can exercise his/her mining rights in a particular area.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The legislation that governs health and saftey is:

- the Environmental Management Act;
- the Pneumoconiosis Act; and
- the Public Health Act;

and the regulations stemming from these.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

There are various such obligations especially as encapsulated in the Mining (Management & Safety) Regulations S.I. 109 of 1990, and the Mining (Health & Sanitation) Regulations S.I. 185 of 1995.

11 Administrative Aspects

11.1 Is there a central titles registration office?

All registered claims, leases and mining locations are kept by the Commissioner.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is a system of appeals. Anyone aggrieved by the decision of the Secretary may appeal to the Minister of Mines. Anyone aggrieved by the decision of the Mining Commissioner may appeal to the Administrative Court and thereafter the Supreme Court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution of Zimbabwe has an impact on mining rights. It allows for the right to private property and the right to a clean environment.

12.2 Are there any State investment treaties which are applicable?

Zimbabwe has signed the following bilateral investment treaties:

NO.	COUNTRY	STATUS	DATE SIGNED	DATE OF ENTRY INTO FORCE
1.	Austria	Signed (not in force)	10/11/2000	-
2.	Botswana	Signed (not in force)	30/06/2003	-
3.	Botswana	Signed (not in force)	21/03/2011	-
4.	China	In force	21/05/1996	01/03/1998
5.	Croatia	Signed (not in force)	18/02/2000	-
6.	Czech Republic	Signed (not in force)	13/09/1999	-
7.	Denmark	In force	25/10/1996	07/02/1999
8.	Egypt	Signed (not in force)	02/06/1999	-
9.	France	Signed (not in force)	04/05/2001	-
10.	Germany	In force	29/09/1995	14/04/2000
11.	Ghana	Signed (not in force)	30/06/2003	-
12.	India	Signed (not in force)	10/02/1999	-
13.	Indonesia	Signed (not in force)	10/02/1999	-
14.	Iran, Islamic Republic of	Terminated	21/09/1996	-
15.	Iran, Islamic Republic of	In force	09/05/1999	26/01/2015
16.	Italy	Signed (not in force)	16/04/1999	-
17.	Jamaica	Signed (not in force)	10/02/1999	-
18.	Korea, Republic of	Signed (not in force)	24/05/2010	-
19.	Kuwait	In force	07/03/2000	22/11/2008
20.	Malawi	Signed (not in force)	04/07/2003	-
21.	Malaysia	Signed (not in force)	28/04/1994	-
22.	Mauritius	Signed (not in force)	17/05/2000	-
23.	Mozambique	Signed (not in force)	12/09/1990	-
24.	Netherlands	In force	11/12/1996	01/05/1998
25.	Portugal	Signed (not in force)	05/05/1994	-
26.	Russian Federation	In force	07/10/2012	10/09/2014
27.	Serbia	In force	19/09/1996	22/07/1997
28.	Singapore	Signed (not in force)	01/09/2000	-
29.	South Africa	In force	27/11/2009	15/09/2010
30.	Sweden	Signed (not in force)	06/10/1997	-
31.	Switzerland	In force	15/08/1996	09/02/2001
32.	Tanzania, United Republic of	Signed (not in force)	03/07/2003	-
33.	Thailand	Signed (not in force)	18/02/2000	-
34.	Uganda	Signed (not in force)	01/07/2003	-
35.	United Kingdom	Signed (not in force)	01/03/1995	-

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

- Income tax on mining operations is levied at a flat rate of 15% for all minerals, and all capital expenditure incurred exclusively for mining operations is deductible at a rate of 100%.
- Mining companies enjoy indefinite carry forward of their tax losses.
- Investors are allowed to borrow locally for working capital purposes. Offshore borrowings require Reserve Bank approval, and interest paid on borrowings of a debt-to-equity ratio of up to a maximum of three to one is tax deductible.
- A rebate of duty shall be granted to a holder of a mining location in respect of specified goods which, during a specified period, are imported by a holder for use solely and exclusively for mining development operations by the holder.
- A rebate on duty is granted on all capital goods imported for mining development operations and during the exploration phase of a mining project.

13.2 Are there royalties payable to the State over and above any taxes?

There are royalties payable to the State calculated as a percentage of the gross fair market value of minerals produced and sold as follows:

- Precious Stones – 10%.
- Precious Metals – 3.5%.
- Base Metals – 2%.
- Industrial Minerals – 2%.
- Coal Bed Methane Gas – 2%.
- Coal – 1%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Yes, this is governed by:

- the Regional, Town and Country Planning Act;
- the Urban Councils Act; and
- the Rural District Councils Act.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are no specific policies, rules or laws relating to this.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes. A holder may abandon his rights upon written application to the Board through the Mining Commissioner.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

There are none.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes. If a Mining Commissioner has reason to believe that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, he shall inspect the registered mining location forthwith and report to the Board accordingly, which can cancel such mining rights. Also, if the Minister has reason to believe that a miner:

- has failed, within a reasonable period after commencing mining operations, to declare any output from his mining location;
- has knowingly rendered a false return or declaration regarding the output from his mining location; or
- has, in relation to his mining location or the output thereof, contravened the Gold Trade Act [Chapter 21:03]; or the Precious Stones Trade Act [Chapter 21:06], or the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04], whether or not he has been convicted thereof by a court,

then the Minister may cause the cancellation of the mining rights.

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Nikita Madya joined the firm on 1 July 2000 and became a Partner on 1 July 2003. He heads the firm's Energy, Infrastructure and Natural Resources Department and is co-head of the Commercial and Corporate Department. He has a large commercial practice and advises several listed and unlisted companies in relation to acquisitions, mergers, disposals and various types of contracts. He is currently involved in greenfield projects in the energy sector with work covering all aspects including the construction elements involved in such projects. He has handled several completed transactions for companies listed on the Zimbabwe Stock Exchange, including share option schemes, rights issues, mandatory offers to minorities, Zimbabwe Stock Exchange Rules compliance and related matters. He has acted and continues to act as local counsel for a number of international law firms handling investment transactions into Zimbabwe. He is also involved in advising local, regional and international financial institutions in various loan transactions.

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Farai Chigavazira is a Legal Practitioner in Wintertons' Energy, Infrastructure and Natural Resources Department, where he has gained considerable experience. His practice involves corporate & commercial law, infrastructure & energy, mining, investment, regulatory compliance and regulatory risk management matters. Prior to joining the firm, he worked for Coghlan, Welsh & Guest and for the Law Society of Zimbabwe as a Legal Assistant. He graduated with a Bachelor of Laws (LL.B.) from the University of Fort Hare and went on to graduate from the same University with a Master of Laws (LL.M.) in International Trade and Business Law. He focuses particularly on corporate and commercial regulatory compliance, regulatory risk management matters, drafting and reviewing contracts such as power purchase agreements, concessions, co-ordination and joint venture agreements, together with general due diligence on renewable energy projects.

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