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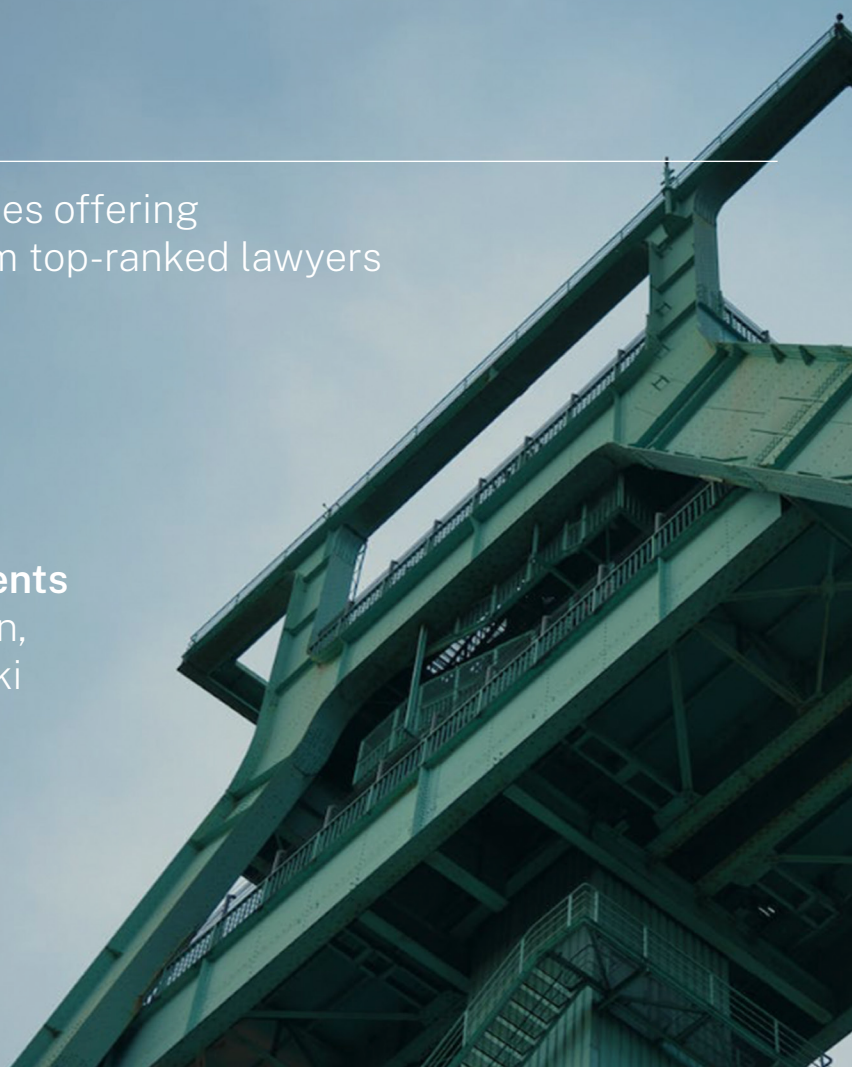

Finland: Law & Practice and Trends & Developments

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HPP Attorneys Ltd

FINLAND

Law and Practice

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HPP Attorneys Ltd (HPP) is one of the leading legal service providers with regard to mining and mineral exploration in Finland, offering a full range of legal services required for the establishment and successful implementation of a mining project. The team offers sector-specific knowledge and expertise in mining, energy and infrastructure projects law, including – eg, mining law, environmental law, land use, financing and transactions. In M&A, real estate and finance transactions where environmental aspects and additional investments are of central importance, HPP is ideally positioned to assess risks and offer solutions that take the special characteristics of mining and exploration, as well as the environmental law issues related thereto, into consideration.

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1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Finland has a strong mineral cluster, which in addition to mining of minerals also has a high capacity for refining and further processing. In addition, Finland is a producer of high-quality mining technology.

According to the 2023 sector report on the mining industry published by the Ministry of Employment and the Economy, in 2022, a total of 33.2 million tonnes of ore was extracted from Finland's nine metallic mineral mines (eg, gold, chrome, copper, nickel, zinc, cobalt and silver), and 16.3 million tonnes of industrial mineral ore was extracted from the 26 industrial mineral mines (eg, calcite, dolomite, apatite, talc and quartz).

1.2 Legal System and Sources of Mining Law

The legal system in Finland is based on civil law, and mining operations are regulated both at a national and an EU-law level. Exploration and mining operations are regulated by the Mining Act (No 621/2011, *kaivoslaki*), which regulates exploration and mining and the organising of the use of areas required for mining and exploration. The Mining Act lays down provisions for the exploration and exploitation of a deposit containing mining minerals, for (non-mechanised) gold panning in an area owned by the state and for the termination of related operations, as well as the proceedings for the establishment of a mining area.

The regulations of the Mining Act are supplemented by the Government Decree on Mining Activities (No 391/2012, *valtioneuvoston asetus kaivostoiminnasta*), the Decree of the Ministry of Employment and the Economy on Mine Hoists (No 1455/2011, *työ- ja elinkeinoministeriön asetus kaivosten nostolaitoksista*), the Government Decree on Mining Safety (No 1571/2011, *valtioneuvoston asetus kaivosturvallisuudesta*) and the Government Decree on Extractive Waste (No 190/2013, valtioneuvoston asetus kaivannaisjätteistä).

1.3 Ownership of Mineral Resources

In Finland, the privilege to exploit a deposit belongs to the finder of the deposit, but the state controls and supervises the mining operations through the granting and supervision of exploration and mining permits under the Mining Act and Government Decree on Mining Activities.

The party first applying for a permit in accordance with the provisions laid down in the Mining Act shall have priority for the permit. If a mining permit is applied for with respect to a deposit located within an area covered by a valid exploration permit, the exploration permit-holder shall have priority for the mining permit if it submits a mining-permit application as set out in the Mining Act during the validity of the exploration permit. For the purpose of preparing an exploration-permit application, an applicant may reserve an area by submitting notification to the mining authority about the matter (reservation notification). A reservation only provides priority for an exploration permit, not other rights.

The landowner is entitled to an exploration fee with respect to exploration permits, and excavation fee and by-product fee with respect to mining permits.

The exploration permit-holder must pay an annual compensation to the owners of land included in the exploration area, which is EUR20 per hectare for each of the first four years, EUR30 per hectare from the fifth to seventh year; EUR40

per hectare from the eighth to tenth year; and EUR50 per hectare for the 11th and for further years of validity of the exploration permit, up to the maximum validity of 15 years.

A mining permit-holder must pay an annual excavation fee to the owners of the land included in the mining area. The excavation fee consists of fixed annual amount of EUR50 per hectare and a variable fee which is based on the value of the executed and exploited minerals. If the permit authority has postponed the expiry of the mining permit prior to mining having started, or if mining operations have been interrupted for more than five years, the fixed excavation fee is EUR100 per hectare until mining activities are commenced or resumed.

The variable excavation fee is 0.15% of the calculated value of mining minerals included in the metal ores that are excavated and exploited in the course of a year or, if mining minerals other than metallic minerals are in question, taking into consideration the grounds influencing the financial value of the mining minerals, a reasonable compensation for excavated and exploited mining minerals in accordance with either an agreement between the property owner and the holder of a mining permit, or confirmation by the mining authority. The mining authority confirms the amount of the excavation fee annually by its decision based on information that is to be submitted by the holder of the mining permit for that purpose by 15 March each year.

In addition, the mining permit-holder must pay annual property-specific compensation (by-product fee) to each landowner in the mining area for the benefit gained from by-products of mining activities that are used for purposes other than mining activity. The by-product fee shall be moderate, considering the factors influencing the financial value of the by-product. If the mining permit-holder and landowner do not agree on the compensation, it shall be a maximum of 10% of the sales proceeds gained from the by-product. If an agreement is not made on the by-product, it shall be ordered officially in a proceeding establishing a mining area, conducted upon application by the party claiming compensation, the party concerned responsible for prospecting work, or the permit-holder.

1.4 Role of the State in Mining Law and Regulations

The state has a grantor-regulator role in Finland. The parliament enacts the laws. The state controls and supervises the mining operations through the granting and supervision of the exploration and mining permits by the relevant state authorities. The Ministry of Employment and the Economy is responsible for the general guidance, monitoring and development of exploration and mining activities under the Mining Act.

The Finnish Safety and Chemicals Agency (*Tukes*) acts as the general mining authority responsible for granting exploration and mining permits and enforcement of compliance with the Mining Act. The government, however, decides on matters concerning a redemption permit for a mining area and on mining permits related to the production of uranium or thorium.

Otherwise, there is no mandatory national or government joint venture, contracting or participation in relation to exploration or mining operations in Finland. If an exploration or mining project is located on state-owned properties, the state as a landowner is represented by *Metsähallitus*, the state-owned enterprise that administrates the state-owned land and water areas.

1.5 Nature of Mineral Rights

Mineral rights are transferrable permits granted by state authorities based on the Mining Act for exploration or utilisation of mining minerals which have a property value and can be pledged as a security.

Prospecting Work

Based on the Mining Act, everyone has a right to conduct geological measurements and make observations and to take minor samples in order to find mining minerals, even on another's land, provided that the activities do not cause damage or more than minor inconvenience or disturbance (prospecting work). The right to carry out prospecting work can be compared to a so-called everyman's right – ie, the general public's right which allows the freedom to roam the countryside. Sampling is considered to be allowed as prospecting work if it is carried out – eg, with a hand-held hammer, shovel or hand-held drill, provided that the sampling does not cause damage or more than minor inconvenience or disturbance, and the sampling site is restored.

However, prospecting work may not be carried out on certain restricted areas such as a public cemetery, traffic routes or passages in public use, area used by the defence forces or controlled by Border Guard, as well as areas within 150 metres of buildings intended for residential or work use or comparable space and within 50 metres of a public building or utility, a power line with voltage of over 35,000 volts or a transformer station. In addition, other areas corresponding to the above list that are designated for special use are restricted areas.

Exploration Permit

An exploration permit is needed if the exploration causes damage or more than minor inconvenience or disturbance, and the landowner has not given permission for exploration. The exploration permit is also required if the activity poses any risk to people's health, general safety or other industrial and commercial activity, as well as any deterioration of values concerning the landscape or nature conservation. Exploration targeted at uranium or thorium always requires an exploration permit.

An exploration permit allows the holder to explore the permitted area and the structures and composition of geological formations, and to conduct other exploration in order to prepare for mining activity and other ore-prospecting in order to locate a deposit and investigate its quality, extent and degree of exploitation. It does not authorise exploitation of the deposit and, subject to the activities allowed based on the exploration permit, does not limit the property-owner's right to use the area or to dispose of it.

The exploration permit-holder shall limit exploration and other use of the exploration area to measures necessary for the purposes of exploration activity which shall be planned so as not to cause an infringement of public or private interests that is avoidable by reasonable means. Exploration pursuant to an exploration permit, and other use of the exploration area, may not cause harm to people's health or a danger to public safety; essential damage to other industrial and commercial activity; significant changes in natural conditions; essential damage to rare or valuable natural occurrences; or significant damage to the landscape.

Mining Permit

Establishment of a mine and the undertaking of mining activity requires a mining permit. A mining permit entitles the holder to exploit the mining minerals found in the mining area: the organic and inorganic surface materials, excess rock,

and tailings generated as a by-product of mining activities (by-product of mining activity); and other materials belonging to the bedrock and soil of the mining area, insofar as the use thereof is necessary for the purposes of mining operations in the mining area. Moreover, the mining permit entitles its holder to perform exploration within the mining area within the limits set out for exploration under the Mining Act, and possibly more detailed conditions specified in the mining permit.

A mining permit alone does not automatically provide the permit-holder a right to use the mining area or auxiliary area (surface rights). If the applicant for the mining permit does not own the land for which the mining permit is applied or has not secured the right to use the area otherwise contractually, the right to use an area in the possession of another party as a mining area requires a permit from the government (redemption permit for a mining area). A redemption permit for a mining area may be granted if the mining project is based on public need and the mining area meets the requirements laid down in the Mining Act. The requirement of public need shall be assessed particularly on the basis of the impact of the mining project on the local and regional economy and employment, and the social need for raw material supply.

In addition to the redemption permit for a mining area, unless otherwise provided by law, a limited right of use and other rights may be granted in the mining permit to an auxiliary area to a mine that is not owned by the mining permit-holder, provided that the auxiliary area is an area that is indispensable as regards mining activity, is located in the vicinity of the mining area and is necessary for the purposes of road access, transport equipment, power lines or water pipes, sewers, treatment of waters, or a transport route to be excavated to a sufficient distance from the surface. Such a right can be granted only as far as the placement of functions planned for the area cannot be otherwise arranged in a satisfactory manner, and at moderate cost.

1.6 Granting of Mineral Rights

The Finnish Safety and Chemicals Agency (*Tukes*) is the national mining authority that grants exploration and mining permits under the Mining Act and supervises and enforces compliance with the Mining Act. However, mining permit matters relating to production of uranium or thorium under the Mining Act and Nuclear Energy Act (No 990/1987, *ydinenergialaki*) and a redemption permit for a mining area is handled and granted by the government. Within certain limits, exploration can also be carried out on a contractual basis with the landowner's permission (see **1.5 Nature of Mineral Rights**). However, operators carrying out exploration based on a landowner's permission are obliged to notify the Finnish Safety and Chemicals Agency (*Tukes*) in writing of any exploration works prior to the commencement of the works.

1.7 Mining: Security of Tenure

An exploration permit shall remain valid for a maximum of four years after the decision has become legally valid, with the possibility of extending its validity for a maximum of three years at a time. In total, the permit may remain valid for a maximum of 15 years. The prerequisites for extending the validity of the permit are that exploration has been effective and systematic and further research is necessary in order to establish the possibilities for exploiting the deposit. Further, it is required that the permit-holder has complied with the obligations laid down in the Mining Act, as well as the permit regulations, and that the extension to the validity will not cause an undue burden to public or

private interests. When applying for an extension of a permit that has been valid for at least ten years, extension must have consent of at least half of the landowners of the exploration area.

A mining permit shall remain valid until further notice after becoming legally valid. A mining permit can also be granted for a fixed term, if this is justified in view of the quality and extent of the deposit, the applicant's ability to meet the conditions for ensuring the commencement of mining activities, and other factors that have emerged during processing of the application. A fixed-term mining permit may remain valid for a maximum of ten years after the decision has become legally valid, after which its validity can be extended until further notice or by ten years at a time.

The permit authority shall review the regulations of a mining permit that is in force until further notice at a maximum interval of ten years. In order to secure essential public or private interests, or for other special reasons, an order can also be given for the regulations of a fixed-term mining permit to be revisited at regular intervals. The revision of permit regulations shall not in any significant way decrease the benefit gained from the mining project.

The permit authority shall decide that the mining permit will expire if the permit-holder has not initiated mining activity within the time limit specified in the permit, or the preparatory work to indicate that the permit-holder is seriously aiming towards actual mining operations. The permit authority shall also decide that the mining permit will expire if mining activities have been interrupted because of a factor dependent on the permit-holder continuously for a minimum of five years, or if mining activities can be considered to have actually ended. The matter may be raised by the permit authority on its own initiative, by the local authority, or by a party suffering damage.

However, the permit authority may postpone the expiry of the mining permit, twice at the most, and specify a new deadline for commencing mining activity or continuing operations. The expiry of a permit can be postponed for a maximum of ten years in total. The permit-holder shall submit an application to the permit authority prior to the expiry of the mining permit, stating a reason for the granting of a time limit and setting forth a plan for commencing or continuing mining activity. Furthermore, the permit authority shall decide that the mining permit will expire if the mining area does not belong to the permit-holder or if the permit-holder has not gained possession of it within five years of the granting of the permit, or if the permit-holder submits an application concerning this.

The mining authority shall alter an exploration or a mining permit, either on its own initiative or upon application by the relevant authority supervising the securing of the public interest in its field or a party suffering damage, if the activities cause a consequence prohibited by the Mining Act, or the detrimental impacts of the activities deviate substantially from the assessments made during permit consideration.

The permit authority may cancel an exploration or a mining permit if incorrect or incomplete information has been given in the application or appendices thereto, such that it has essentially affected the conditions set for granting a permit or the permit consideration in other ways, if the permit-holder no longer meets the requirements for the granting of a permit or if the permit-holder has materially neglected or violated the obligations, restrictions, or permit regula-

tions laid down in the Mining Act. Permits may also be cancelled if the activities are estimated to jeopardise national defence, security of supply, the operation of infrastructure necessary for the functioning of society or other comparable national security interests. If the deficiencies, violations or neglect can be corrected or are insignificant, the permit authority shall set a time limit for the permit-holder in question to rectify the defect, violation or neglect, before making an above-mentioned decision.

An exploration permit or a mining permit may be assigned to another party. The assignee shall fulfil requirements corresponding to those applicable to the permit-holder under the Mining Act. Furthermore, the assignee of a mining permit concerning the production of uranium or thorium shall hold a permit for mining operations as specified in the Nuclear Energy Act. Assignment may be cancelled on the basis of national security (please see the paragraph above).

2. Impact of Environmental Protection and Community Relations on Mining Projects

2.1 Environmental Protection and Licensing of Mining Projects

Environmental Legislation

Environmental issues are regulated by many different national environmental laws and policies. As Finland is a European Union member state, a considerable share of Finnish environmental legislation and policies is based on EU environmental policy and regulation, either as directly applicable EU regulations or through the implementation of EU directives.

The principal environmental laws affecting the mining industry include the Environmental Protection Act, the EPA, (No 527/2014, *ympäristönsuojelulaki*); the Act on Environmental Impact Assessment Procedures, the EIA Act (No 252/2017, *laki ympäristövaikutusten arviointimenettelystä*), the Water Act (No 587/2011, *vesilaki*), which governs water-related construction projects and the use of water resources and the aquatic environment; the Waste Act (No 646/2011, *jätelaki*), which governs waste management and littering, the prevention of waste generation, and the prevention of danger and harm to human health and the environment caused by waste; the Nature Conservation Act (No 9/2023, *luonnonsuojelulaki*), which governs nature and landscape conservation and management; the Land Use and Building Act (No 132/1999, *maankäyttö- ja rakennuslaki*), which governs planning of areas and the construction and use of areas; and the Chemicals Act (No 599/2013, *kemikaalilaki*), which governs the enforcement of European Union chemicals legislation and certain national obligations regarding chemicals.

Environmental Authorities

The main general authority to control environmental policy, draft environmental legislation and guide other authorities' work relating to environmental issues is the Ministry of the Environment (*ympäristöministeriö*).

The competent permitting authorities for environmental permits relating to mining operations are the Regional State Administrative Agencies (*aluehallintovirasto*), which are charged with issuing environmental permits for activities with major environmental impacts, as well as all permits under the Water Act.

The competent environmental supervisory authorities in relation to mining operations are the regional Centres for Economic Development,

Transport and the Environment, ELY Centre (*elinkeino-, liikenne- ja ympäristökeskus, ELY-keskus*), which supervise – eg, the compliance with the EPA and the environmental permits. ELY Centres also act as contact authorities and issue justified statements in the environmental impact assessments carried out in accordance with the EIA Act.

Municipalities have a central role in land use planning, and wide discretional powers to decide whether to approve or reject a plan. Municipalities also function as permit authorities for construction permits and other land use and building permits.

Environmental Permit

Pursuant to the EPA, an environmental permit is required for activities that involve a risk of environmental pollution. Mining operations and the excavation of gold with machines require an environmental permit, as does an ore or mineral concentration plant. The majority of exploration is of a nature that can be carried out without an environmental permit, but exploration may also require an environmental permit if the impacts of the planned activities (eg, test mining) exceed the criteria set out in the EPA.

An environmental permit shall be applied for in accordance with the EPA. The permit consideration is based on judicial discretion, which means that the environmental permit must be granted to the operator should the requirements set in the EPA be fulfilled.

Rejection of a permit application or permit decision and its individual regulations may be appealed against. In addition to the parties concerned – ie, permit applicant, neighbours and other persons affected by the activity, environmental NGOs and those who may be affected by the operations have the right to appeal a permit decision.

The first appellate instance is the Administrative Court of Vaasa and the second and final instance is the Supreme Administrative Court. However, it should be noted that the right to appeal to the Supreme Administrative Court in environmental cases is subject to a requirement of leave to appeal. Leave to appeal is granted under the Administrative Judicial Procedure Act (No 808/2019, *laki oikeudenkäynnistä hallintoasioissa*), if the matter involves a need for a precedent or an obvious error, or if there is another serious reason for issuing a decision on the merits of the case.

The EPA governs an integrated permit regime for emissions into air, water and soil, and the generation of waste. However, the environmental permit does not necessarily cover all activities on the project site, in which case other permits or notifications pursuant to other environmental laws may be required. A mining operation often requires a water permit for intake of water for the purposes of mining operations or building of ponds. Any such water permit is processed together with the environmental permit and both permits are included in one decision unless this is deemed unnecessary for a special reason.

EIA Procedure

Pursuant to Annex 1 of the EIA Act, mining, concentration and processing of metal ore or other mining minerals requires an EIA when the aggregate amount of the excavated material is at the minimum 550,000 tonnes per year, or the mine covers an area of more than 25 hectares. The mining, concentration and processing of uranium or thorium requires an EIA. The results of an EIA procedure are reflected in the EIA report and a justified statement issued based thereon

by the ELY Centre and are to be taken into consideration when issuing a permit for a project. The right of appeal on the grounds of lack or inadequacy of the EIA is linked to the approval of/appeal against the permit decision.

2.2 Impact of Environmentally Protected Areas on Mining

The areas included in the European Community's Natura 2000 network are subject to specific limitations on allowed operations, as set out in the Nature Conservation Act. If a project or plan, either individually or in combination with other projects and plans, is likely to have a significant adverse effect on the ecological value of a site included in the Natura 2000 network, and the site has been included in, or is intended for inclusion in the Natura 2000 network for the purpose of protecting this ecological value, the planner or implementer of the project is required to conduct an appropriate assessment of its impacts (Natura Assessment). The same correspondingly applies to any project or plan outside the site which is likely to have a significantly harmful impact on the site.

The mining authority shall ensure that the Natura Assessment is carried out and shall thereafter request an opinion on the Natura Assessment from the ELY Centre and the authority in charge of the site in question. No authority is empowered to grant a permit for the implementation of a project, or to adopt or ratify a plan, if the assessment procedure indicates that the project or plan would have a significant adverse impact on the particular ecological values for the protection of which the site has been included in, or is intended for inclusion in, the Natura 2000 network.

In the above-mentioned case, a permit can only be granted if the government decides that the project or plan must, in the absence of alternative solutions, be carried out for imperative reasons of overriding public interest. Furthermore, where a site hosts a priority natural habitat type referred to in Annex I of the Habitats Directive (92/43/ETY), or a priority species referred to in Annex II, a further precondition for granting a permit or adopting or ratifying a plan is that a reason relating to human health or public safety, or to beneficial consequences of primary importance for the environment, or any other imperative reason of overriding public interest so demands. In the latter case, an opinion shall be requested from the European Commission.

In addition, geological surveys and prospecting are not allowed in national parks or strict nature reserves. In other nature reserves, those operations are allowed only with permission from the authority or agency in charge of the site, provided that the conservation objectives of the site are not jeopardised.

Protection of plant and animal species including but not limited to important resting places of protected species and trees hosting a large bird of prey may also restrict exploration or mining activities, even outside an enforced conservation area based on the mandatory regulations of the Nature Conservation Act, unless a derogation from the protection provisions is granted for the planned operations.

Further, protection of antiquities may result in restrictions on exploration or mining based on the Antiquities Act (No 295/1963, *muinaismuistolaki*).

2.3 Impact of Community Relations on Mining Projects

As a requirement for granting a mining permit, the relationship of the mining area and any aux-

iliary area to other usage of land needs to have been clarified. Mining activity shall be based on a local detailed plan or a legally binding local master plan in accordance with the Land Use and Building Act. The municipalities have a monopoly on land use planning with above-mentioned plans.

In addition, municipalities can impact the mining activities within the municipality, since an exploration permit cannot be granted over an area in terms of which the local authority opposes the granting of a permit, for a reason concerning planning or other good cause related to land use, unless there is a specific reason for granting the permit.

The permit authority will request statements on an exploration or a mining permit application from the relevant municipalities, which also have the right to appeal a decision concerning the granting of such a permit.

2.4 Prior and Informed Consultation on Mining Projects

The permit authority will request statements on an exploration or a mining permit application from the municipalities, the ELY Centre and the responsible authorities or institutions within the area affected by the activities that are the object of the permit. In addition, the parties concerned are given an opportunity to lodge complaints concerning the permit, and parties other than those involved will also be afforded the opportunity to express their opinions.

Any effects caused by the proposed activity on the rights of the Sami as an indigenous people, to the Skolts or to reindeer herding must also be established and evaluated in co-operation with the respective representative entities and the applicant. The permit authority shall publish the application on its noticeboard and, when the matter is of major significance, in at least one newspaper in general circulation in the affected area. In addition, the parties and the municipalities involved shall be informed separately. A decision concerning an exploration or a mining permit or redemption permit for a mining area shall be issued after the public notice.

2.5 Impact of Specially Protected Communities on Mining Projects

The Sami Homeland and Skolt area are subject to specific protection.

An exploration or a mining permit must not be granted if activities under the permit would, in the Sami Homeland, alone or together with other corresponding permits and other forms of land use, substantially undermine the preconditions for engaging in traditional Sami sources of livelihood or otherwise to maintain and develop the Sami culture or in the Skolt area would substantially impair the living conditions of Skolts and the possibilities for pursuing a livelihood in the Skolt area. Further, an exploration or a mining permit must not be granted in a special reindeer herding area if activities under the permit would cause considerable harm to reindeer herding. However, a permit may be granted regardless of an impediment referred to above if it is possible to remove that impediment through permit regulations.

In the Sámi Homeland, the permit authority shall – based on the report submitted by the applicant in its permit application and in co-operation with the permit applicant, Sámi Parliament, Skolt village meeting, local reindeer herding co-operatives and the authority or institution responsible for management of the area – assess the effects caused by activity in accordance with the exploration or mining permit on the rights of the Sámi

as an indigenous people to maintain and develop their own language and culture and traditional livelihoods and shall consider measures required for decreasing and preventing damage. The Sámi Parliament, the Skolt village meeting and the local reindeer herding co-operative must be given an opportunity to comment on the report before the start of co-operation.

In order to clarify the matter, the permit authority can arrange an event to which the representatives of the Sámi Parliament, the Skolt village meeting, the Skolt Council, the local reindeer owners' associations concerned, the applicant and the authority or institution responsible for management of the area, the municipality, the local fishing area and forests in joint ownership are invited for consultation.

In an area specifically intended for reindeer husbandry, the permit authority shall, in co-operation with the reindeer herding co-operatives operating in the area, investigate the harm caused to reindeer husbandry by the activities covered by the permit.

In the Skolt area, the permit authority shall request a statement from a Skolt village meeting concerning assessment of the impacts caused by activity under the permit on the sources of livelihood and living conditions of the Skolt people.

2.6 Community Development Agreement for Mining Projects

Community development agreements are neither mandatory nor usual in Finland.

2.7 Environmental, Social and Governance (ESG) Guidelines and Regulations

The Finnish Network for Sustainable Mining has published a concise CSR report on 19 companies operating in Finland in the field of mining and ore exploration; a toolbox for local actions for companies that are planning to begin ore exploration or mining activities in a specific region in Finland; and a new sustainability standard for mining based on the Canadian initiative Towards Sustainable Mining (TSM). The Finnish TSM was adapted to Finnish legislation and complemented with two protocols (water management and mine closure), whereby it now covers the entire lifecycle of mining operations.

2.8 Good and Bad Examples of Community Relations/Consultation Impacting Mining Projects

Most confrontation regarding mining projects has been seen in situations where the planned location of a mining project is in the vicinity of a tourist resort. This has even resulted in attempts by the municipality to prohibit mining on certain areas by an explicit restriction in master plan regulations. The Supreme Administrative Court, however, ruled in May 2019 (KHO 2019:67) that master plan regulations specifically prohibiting mining operations entirely in certain areas of the municipality are illegal. However, it should be noted that the municipalities currently have more control in the matter, as the mining activity shall be based on a local detailed plan or a legally binding local master plan.

The Finnish Network for Sustainable Mining was established in 2014 as a discussion and co-operation forum for the mining industry and its stakeholders. The work of the network created a solid foundation for the joint responsibility work of mines by developing tools to promote more

responsible and sustainable exploration and mining and to increase dialogue between mines and stakeholders. In particular, stakeholder co-operation was of primary importance in starting and establishing the industry-level responsibility work. The application of the TSM standard to Finland was a significant joint effort and the result achieved was meritorious in many ways. Thereafter, focus of the network's work shifted to implementing the standard. As a result, the responsibility of organising the responsibility work in the mining sector was taken over and is currently being carried by the Finnish Mining Association. The next step is to strengthen the standard and change the way of working to match TSM's international model.

3. Climate Change, Energy Transition and Sustainable Development in Mining

3.1 Climate Change Effects

In general, initiatives to deal with climate change are appearing in the mining industry in the form of tighter emission limits in environmental permits. The limitations on use of coal in energy production and promoting of biofuels and green energy may also have an impact on the mining industry, since mining companies will aim to reduce their carbon emissions.

3.2 Climate Change Legislation and Proposals Related to Mining

Finland's most central climate change legislation, the Climate Act (No 423/2022, *ilmastolaki*), was renewed in 2022. According to the Act, Finland's goal is to become carbon neutral by 2035. The law also aims to ensure that the greenhouse gas emissions from the effort sharing, and emissions trading sectors decrease by at least 60% by 2030 and by at least 80% by 2040 compared to the 1990 levels. The aim is also to decrease 90-95% by 2050. According to the Act, Finland should also take national measures to adapt to climate change by promoting climate change resilience and the management of climate risks. Central government authorities shall promote the achievement of these objectives in their activities.

According to the new Government Programme published on 20 June 2023, the government will prepare a new energy and climate strategy aimed at carbon negativity, with the promotion of clean transition and investments in industry as key elements.

Previous regulations related to mining and climate issues included, for example, the Act on prohibiting the use of coal in energy production (416/2019, *laki hiilen energiakäytön kieltämisestä*). This Act entered into force on 1 April 2019, and it prohibited the use of coal as a source for electricity and heat production as of 1 May 2029. Also, the Act on promoting biofuels (No 418/2019, *laki biopolttoöljyn käytön edistämisestä*) entered into force on 1 April 2019, with the intention of promoting the use of biofuels in heat production, working machines and some engines in order to achieve the goals to reduce carbon emissions agreed upon in the EU.

3.3 Sustainable Development Initiatives Related to Mining

The new Government Programme published in 2023 aims to influence the climate primarily through effective emission-reduction measures, increasing carbon sinks and innovative clean solutions that replace solutions based on polluting energy sources and raw materials in both Finland and other countries.

The government will review the Carbon Neutrality strategy in connection with the preparation of the new Energy and Climate strategy. One of the priorities of the Energy and Climate Strategy is that Finland will reduce emissions faster than anticipated in industry and energy production. The aim is also to update low-carbon road maps for industries.

In addition to government-led projects, the Finnish Network of Sustainable Mining has been part of developing more sustainable mining in Finland since 2014. The network provides an ongoing forum for discussion and co-operation between the mining industry and its stakeholders. It develops suitable tools for Finland to promote more responsible and sustainable mining, to exploit synergies between different industries and to prevent conflicts. In the network's vision, Finland will develop into a pioneer in sustainable mining, where the industry will take into account natural values, cultural and social environment and other industries.

3.4 Energy-Transition Minerals

According to the Government Programme published in June 2023, the government will promote the growth of the domestic mineral and battery cluster in order to strengthen the clean transition and strategic autonomy of Europe. There is not yet any legislative initiative regarding the matter, but the topic is expected to be visible in some way during the next four-year government term.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

In addition to the exploration, excavation and by-product fees payable by the permit-holder to the landowners, a reservation fee of EUR1/hectare is payable to the state by the party making the reservation notification for the reserved area.

New Mining Mineral Tax Act (314/2023, *kaivosmineraaliverolaki*) took effect on 1 January 2024. The Act will be applied for mining of minerals referred to in the Mining Act, except for minerals found in gold panning. The mining company, as a holder of the mining permit, is liable to pay mining mineral tax. The obligation to pay mining mineral tax arises for metallic minerals (Ag, Co, Cr, Au, Cu, Li, Ni, Pd, Pt, Zn, Pb, U) at the time when the mining mineral is delivered for enrichment. According to the guidance issued by the Finnish Tax Administration (FTA), the tax is levied also from such metallic mineral which cannot be utilised during enrichment. For other mining minerals referred to in the Mining Act, the obligation to pay mining mineral tax arises at the time of extraction. In case the mining permit is transferred to another operator, the new holder of the permit is liable to pay mining mineral tax after the mining authority's approval of the transfer has become enforceable.

The tax for metallic minerals is 0.6% of the ore's taxable value. FTA will assess taxable values annually based on arithmetic means on previous years, with international prices using sources such as LBMA, LME and NYMEX. Tax for other mining minerals is EUR0.2 per tonne.

The mining operators must register with FTA before starting activities subject to the mining mineral tax. Existing operators must register as mining operators by 1 March 2024. The tax period for mining mineral tax is a calendar year and therefore the first tax return must be filed, and the tax paid, by 12 March 2025. The revenue collected from the mining mineral tax is estimated to be around EUR25 million annually.

In addition to the mining mineral tax, a Finnish-resident entity is subject to corporate income tax on its worldwide income, and a non-resident entity on its Finnish source income. A company is resident in Finland on the basis of incorporation. Entities whose place of effective management is located in Finland are also considered to be resident taxpayers. A permanent establishment (PE) is created according to the applicable tax treaty and principles of OECD model convention. For example, mine, quarry, oil well, natural gas well, or other site for the extraction of natural resources, as well as a branch, creates a PE. The income tax rate for limited liability companies and other corporate entities is 20%.

As a rule, the Finnish tax resident payor must withhold 20% tax at source from dividends paid to a non-resident corporate entity, unless a tax treaty limits Finland's right to tax. Most Finnish tax treaties provide the source state with the right to withhold tax at source of 10–15% on dividends other than direct investment dividends received by corporate entities. Tax at source of 0–5% can usually be withheld on direct investment dividends. No withholding tax is imposed on dividends paid to a company referred in the EC Parent-Subsidiary Directive owning at least 10% of the capital of the payer. Interest payments to non-residents are usually tax-exempt according to the Finnish Income Tax Act.

Finland has adopted ATAD 1 interest deduction limitation rules. According to Finnish legislation, interest expenses are deductible if the total net interest expenses to both related and unrelated parties of a company do not exceed a EUR500,000 threshold in a tax year. If net interest expenses exceed this threshold, the limitations would be applied to the total amount and not just the amount exceeding the threshold. If the threshold is exceeded, only net interest expenses of up to 25% of the adjusted taxable profit (taxable EBITD) are deductible. The net interest expenses to third-party debts are deductible with a EUR3 million limitation.

The land and buildings of properties used for mining are subject to real estate tax, just like other properties of industrial plants. General real estate tax is paid to municipalities, and it varies between 0.93% to 2%.

The New Environmental Damage Fund will take effect on 1 January 2025. These funds are part of the secondary environmental liability systems, and they are collected as tax-like environmental liability contributions from operators whose activities may pose a risk of environmental pollution. The liability contribution for mining operators is between EUR2,700 and EUR30,000 annually.

4.2 Tax Incentives for Mining Investors and Projects

Electricity tax for class I electricity is 2,253 cent/KWH. The lower electricity tax rate of 0,063 cent/KWH is for electricity used for industry, such as mining and enrichment (class II).

Energy-intensive industry, such as mining and enrichment, may obtain a refund from the energy taxes from excise taxes paid by the company which are over 3.7% of the company's added value. The refund is 45% of the excise taxes paid that exceed the 3.7% limit. However, this tax incentive for energy-intensive industry will be abolished starting from 1 January 2025.

There are no tax stabilisation agreements available in Finland.

4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects

The sale of goods is generally subject to 24% VAT, but if assets belonging to a business are transferred in connection with the sale of the business, the sale of assets is exempted from VAT, provided that the purchaser continues to use the assets in the business.

Transfer of real estate located in Finland is subject to transfer tax of 3% of the sales price. The transfer of shares in Finnish companies is subject to a transfer tax of 1.5% if one of the parties to the transaction is a Finnish resident.

Capital gains from the disposal of business assets are taxed as normal income with a tax rate of 20%. Among other requirements, if the seller has owned at least 10% of the fixed-asset shares in the company for at least one year, the sale of shares may be treated as tax-exempted.

Non-Finnish-resident entities are subject to capital gains tax on the transfer of real estate located in Finland. Transfer of shares or similar rights is subject to capital gains tax if more than 50% of the total assets consists directly or indirectly of Finnish real estate. Some of the Finnish tax treaties may, however, prevent taxation of capital gains on indirectly owned Finnish real estate.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Finland's good infrastructure, the large, sparsely populated areas and the availability of detailed and extensive geological data produced by the Geological Survey of Finland make Finland an attractive mining country. Furthermore, Finland's stable political and economic situation are positive factors. In addition, Finland has leading knowledge and suppliers in the area of mining technology.

Finland has geological potential for minerals required for green transition – eg, cobalt, copper, lithium, nickel and graphite.

5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors

There are no special rules on foreign investment approval or restriction on foreign direct investment in the exploration and mining sectors. The Finnish Act on the Screening of Foreign Corporate Acquisitions (No 172/2012, *laki ulkomaalaisten yritysostojen seurannasta*) applies where at least 10%, one-third or 50% of voting rights in a Finnish target are acquired by a foreign investor – ie, a natural or legal person not domiciled/registered in Finland or in the EU or one of the EFTA member states, depending on the sector in which the Finnish corporate target operates.

For acquisitions in the defence and security industry, a mandatory, pre-closing approval must be sought from the Ministry of Economic Affairs and Employment of Finland. With respect to a Finnish target that, based on its industry, business operations or commitments, is considered critical for securing vital societal functions, the acquisition can be voluntarily notified pre- or post-closing. The Ministry of Economic Affairs and Employment of Finland also has the power to request such a notification within three months after becoming aware of the specific acquisition in case no notification has been submitted.

A few transactions in the exploration and mining sectors have been notified under the Screening Act, and it is therefore recommended to conduct an assessment pursuant to the Screening Act when other criteria of application are met. The

obligation to comply with the Screening Act's notification obligation rests with the foreign investor – ie, the acquiring party.

The timeline of FDI screening process varies depending on the sector involved. For a mandatory application, there is no prescribed timeline for decision-making. For a voluntary notification, Phase I is six weeks and potential Phase II is three months (both calculated from the receipt of complete information), at the end of which the notified foreign corporate acquisition must either be approved or referred to the Finnish government for decision-making with no prescribed timeline. The confirmation of a foreign corporate acquisition may only be refused if it is necessary due to a key national interest, but the acquisition may also be approved subject to commitments. A notification fee is charged to the investor.

5.3 International Treaties Related to Exploration and Mining

Finland does not have investment protection agreements concerning the mining sector specifically, but Finland has both bilateral trade agreements and multilateral trade agreements as part of the EU. Some of these agreements mention a common goal for promoting the mining sector.

One example is the free-trade agreement between Canada and the EU and its member states, CETA. CETA is a remarkably investor-friendly agreement due to the wide protection it offers to foreign investors. It includes an investment-protection clause, the purpose of which is to ensure that Canadian investments are treated in the EU on an equal footing with European investments.

Another noteworthy example is the free-trade agreement that is currently being negotiated between Australia and the EU. These negotiations began in 2018 but are currently stalled due to disagreements over agricultural products.

5.4 Sources of Finance for Exploration, Development and Mining

Many companies operating in exploration and mining projects in Finland are owned by foreign companies and often have a group parent company listed in a foreign exchange – eg, in Canada, Australia, Sweden or London. The operations are then financed by the foreign parent company who raises financing through the foreign exchange. There is not enough domestic capital funding available in Finland for the mining sector, which is why a large part of the capital comes from abroad. Foreign companies have also invested in Finland. Many companies finance exploration and development, as well as construction and mining with financing raised from industrial, institutional or private investors. Public sources of financing in Finland are – eg, Business Finland or Sitra for research, development and innovations and Finnvera for loans and guarantees. EU financing may also be available for research and development projects.

Other sources of financing for running operations in the mining sector in Finland include – eg, different types of loans and facilities from commercial banks or other lending institutions, receivables finance or reverse factoring arrangements, prepayment arrangements, leasing arrangements and financing arrangements to cover environmental guarantee obligations. Financiers operating in Finland for the mentioned purposes are both local and foreign banks, other lending institutions and financiers and insurance companies and sureties.

5.5 Role of Domestic and International Securities Markets in the Financing of Exploration, Development and Mining

Financing for many exploration and mining projects in Finland is raised through foreign exchanges – eg, in Canada, Australia or Sweden. Some companies are dual listed in Finland but in general the securities market in Finland is not considered to be as strong as, for example, in Sweden.

5.6 Security over Mining Tenements and Related Assets

The permit-holder can pledge the right to exploit mining minerals, based on a mining permit, or the privilege under an exploration permit. The right to pledge becomes effective when the mining authority receives written notification of the pledge from the permit holder. The mining authority issues the permit-holder with a certificate of receipt of the notification. The security package related to a mining project may consist of the permits, the properties owned by the permit-holder and a floating charge.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Energy transition, green transition and the challenges of EU self-sufficiency will support demand for domestic raw material and refining operations.

It is likely that mining companies' interest to increase production and exploration of the critical minerals needed for the green transition will continue. As a result, interest towards exploration and production of – eg, cobalt, copper, nickel, lithium and graphite can be expected to continue. Critical minerals are also likely to impact mergers and acquisitions, when companies continue to prepare their operations for the green transition. Companies will also aim to reduce their own carbon emissions.

Key challenges for mines, in relation to environmental issues, are likely to be discharge into water bodies and the impact of environmental objectives for water management in relation thereto, extractive waste management, including guarantees, and requirements for land use planning.

Trends and Developments

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HPP Attorneys Ltd

HPP Attorneys Ltd (HPP) is one of the leading legal service providers with regard to mining and mineral exploration in Finland, offering a full range of legal services required for the establishment and successful implementation of a mining project. The team offers sector-specific knowledge and expertise in mining, energy and infrastructure projects law, including – eg, mining law, environmental law, land use, financing and transactions. In M&A, real estate and finance transactions where environmental aspects and additional investments are of central importance, HPP is ideally positioned to assess risks and offer solutions that take the special characteristics of mining and exploration, as well as the environmental law issues related thereto, into consideration.

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Finland's Potential for Battery Minerals

The increasing need for electric transport, the use of renewable energy and the storage of electrical energy results in an increased need for battery minerals.

Finland has good potential for battery minerals such as cobalt, nickel, lithium and graphite, which appears as activity in exploration for such minerals. Finland is the only producer of cobalt in the EU and is also a major producer of copper, which is essential in the energy transition. Further, Finland is profiled as a country that refines and processes metals. Several processed metals are produced in Finland in larger quantities than the amount of raw materials extracted for them from Finnish mines.

Finland has expertise in the whole production chain of battery minerals from the mining industry to the further processing of battery raw materials, the technology related to manufacture, use and charging of batteries, and recycling. Companies can also benefit from the high quality geodata sets of the Geological Survey of Finland, as well as the good infrastructure and a good and stable operating environment.

Reform of the Finnish Mining Act

The Finnish Mining Act was recently reformed. The amendments came into force on 1 June 2023.

The amendments aim, for example, to:

- improve local residents' opportunities to exert influence and obtain information;
- give local communities more decision-making power;
- prevent unnecessarily large reservations;
- give more consideration to other sources of livelihood and local businesses, including the rights of the Sámi, and environmental aspects;
- clarify and tighten the regulations on securities; and
- strengthen national security.

Impacts on validity and scope of reservations

The operator can reserve areas for the purpose of preparing exploration permit applications for those areas. The reservation gives its holder priority to seek an exploration permit for the relevant area. The aim is to prevent oversized reservation areas by: (i) decreasing the validity period of a reservation; (ii) setting area limitations; and (iii) introducing a reservation fee.

The basic validity of a reservation is 12 months. For special reasons, the reservation decision can, however, be awarded for a maximum of 24 months. The areas to which an exploration permit cannot be granted under the Mining Act, as well as national parks and natural parks identified in the Nature Conservation Act, shall be excluded from the reservation area. The new reservation fee of EUR1 per hectare is payable to the state.

Extending validity of exploration permits

Exploration permits are awarded for a maximum of four years, with the possibility of extending their validity up to a total maximum validity of 15 years. In the amended Mining Act, extending the validity of an exploration permit was amended to require landowner consent once the maturity of the exploration permit reached ten years. Landowners of at least half of the properties comprising the total surface area of the exploration permit area have to consent to the extending of validity. If the threshold cannot be satisfied, the government can, upon receiving an application from the operator, decide to support the renewal provided that the project satisfies the require-

ment of public interest (such decision replacing the landowner's consent).

This is a substantial change, the impacts of which are yet to be seen. It is possible that the change may increase the costs of exploration in the long term, since the landowners may require compensation for their consent. In principle, the consent requirement could even limit the maximum validity of an exploration permit to ten years (if landowner consent is not received but the project does not satisfy the requirement of public interest either). Thus, emphasis on continuous and efficient exploration is increased in the continuance.

Municipal-level land use plan a prerequisite for mining operations

Municipalities have been provided with the right to decide whether mining is possible within the municipality by the amendment that mining operations are subject to a legally binding municipal-level land use plan. More consideration must also be given to other sources of livelihood in the area. Accordingly, granting a mining permit requires a legally valid master plan or detailed plan where the location of the mining area and possible auxiliary area and their relation to other land use has been determined. The detailed plan or legally valid master plan is required to have gained legal force before the mining permit can be granted (unless the decision on the relevant plan is enforceable based on an enforcement order).

This change means that the municipality council will be the first instance to decide on the feasibility of a mining project when it considers whether a certain area within the municipality can be assigned for mining. Previously, municipalities have often been able to rely on the earlier mining permit decision as basis for their decision on the land use plan, showing that the Mining Authority as a mining specialist has considered the project feasible (the deposit is exploitable by size, ore content and technical characteristics).

Decisions made by municipality councils are political – ie, they are impacted by division of power between the political parties represented in the municipal council. It is also to be noted that the members of municipality councils are elected in municipal elections and may not have any knowledge or expertise on exploration and mining projects. Challenges may arise in decision-making in cases where expertise on exploration and mining is limited, also in the municipality's administration where the land use plan is prepared for decision-making. It is important that the decisions on approval of a land use plan are of high quality since it is likely that they will be appealed against. Revoking a decision and referring the matter back to the municipality for reprocessing would cause a long delay in the project schedule.

Mining collateral

The scope of mining collateral was widened in the reform of the Mining Act. In addition to the closure and after-care measures related to discontinuation of mining activity, which are to be covered for a period of at least 30 years, unless the holder of the mining licence proves otherwise sufficient, the mining collateral shall also cover (i) safety measures caused by unforeseeable events accumulated during a period of one year (such as guarding the mining area and measures related to energy supply, mainly in situations related to the operator's insolvency or bankruptcy) and (ii) an amount corresponding to the annual value of the hectare-based excavation fee (EUR50/ha) payable to the landowners. This amendment is going to result in an increase in the mining collateral amounts.

Strengthening national security

For the purpose of strengthening national security, exploration and mining permits can be rejected and an already-granted permit can be cancelled, if the activity is considered to endanger national defence, security of supply or the functioning of infrastructure essential to society or other corresponding interests of national security. Accordingly, applications concerning the assignment of a permit to a third party can also be rejected on grounds relating to national security.

With regards to mining permit applications, the Mining Authority will seek the opinion of relevant security authorities, such as the Ministry of Defence, the Ministry of the Interior, the Ministry of Employment and the Economy (especially with regard to security of supply), the Ministry for Foreign Affairs, the Ministry of Transport and Communications (especially with regard to critical infrastructure), the Finnish Security Intelligence Service and the National Emergency Supply Agency. Should these authorities raise concerns about national security, the matter will be referred to the Ministry of Employment and the Economy for a final assessment. The procedure applies also to exploration permit applications if the Mining Authority considers that the activities under an exploration permit potentially endanger national security.

It should be noted that national security has not been unequivocally defined by law. Thus, interpretation and impact of this concept on granting, validity and assignment of permits remains to be established in practice. However, it needs to be noted that a permit may be granted regardless of an obstacle provided for granting a permit in the Mining Act if it is possible to remove the obstacle by means of permit regulations or by reducing the size of the area. The primary alternative to secure national safety is considered to be issuing of appropriate permit regulations which may consider – eg, location of operations, such as distance to infrastructure critical to national defence.

Sustainability and Recycling as Goals of the Government

Goals set out in the Government Programme

Petteri Orpo's government has recorded in its Government Programme that Finland improves self-sufficiency, increases the degree of processing and reduces pollution by improving the recycling of materials for recovery. The government's target is to streamline environmental permit processes and remove regulatory barriers from the circular economy. As a result, the aim is to – eg, degrease the amount of waste and strengthen the domestic value chains and degree of processing of products.

The transition to a circular economy is also recognised as one of the key measures toward achieving the green transition and Finland's carbon neutrality target by 2035. In recent years, Finland has advanced the sustainable use of natural resources by promoting circular economy solutions through several different policies and legislative measures. The government made a decision-in-principle on the first strategic programme for the circular economy in the Spring of 2021, with the aim to transform Finland's economy into a carbon-neutral circular economy society by 2035. The realisation of this vision requires sustainable and efficient use of natural resources. One of the goals is to double the circular economy rate of materials by 2035.

It is recorded in the Government Programme that during the government's term of office, Finland's assets related to critical raw materials will be mapped and exploited by drawing up a new

mineral strategy that strengthens self-sufficiency and secures the supply of raw materials even in unexpected market disturbances.

EU Critical Raw Materials Act (CRMA)

The EU Critical Raw Materials Act (CRMA) proposal, published on 16 March 2023, is also intended to support sustainable sourcing of raw materials. With the CRMA, the EU aims to ensure the supply of critical raw materials to European industry and to significantly reduce the EU's dependence on individual non-EU raw material suppliers. One of the aims of the regulation is to promote the recycling of raw materials. One way is to encourage the recovery of critical raw materials from waste sites in the extractive industries.

The Commission's proposal sets concrete targets for strengthening the EU's own production of strategic raw materials by 2030. In its initiative, the Commission proposes the following objectives:

- 10% of the strategic raw materials used are produced in the EU;
- 40% of the strategic raw materials used are processed in the EU;
- 5% of the strategic raw materials used are from recycled sources; and
- up to 65% are dependent on a single country.

In order to achieve these objectives, the regulation proposes to regulate – ie, the position of the so-called Strategic Projects and the promotion of licensing for projects involving critical raw materials. Based on the proposal for a regulation, the status of a strategic project could be obtained, for example, a mining project or a circular economy project. Projects with the status of strategic project would benefit from certain facilitation measures related to licensing. Strategic Projects would be subject, for example, to maximum authorisation periods and the obligation to conduct authorisation procedures as quickly as possible in accordance with Union and national law.

In addition to licensing activities, the proposal for regulation includes an obligation for member states to draw up national exploration programmes and regulations aimed at improving the re-use of critical raw materials from extractive waste, as well as other measures to improve sustainability and the circular economy. The regulation is expected to come into force soon (possibly already in the Spring of 2024).

The EU's list of critical materials was announced in connection with the CRMA in the Spring of 2023. Critical raw materials refer to raw materials that are important to the national economy and are subject to a significant risk of intake. Strategic raw materials are the raw materials on the list of critical raw materials, which are also essential raw materials for the EU's defence, aerospace or space industries, the green energy transition or the digital transition. Strategic raw materials are also very difficult to replace with other raw material, their production is difficult to grow globally, and their predicted global need is growing very strongly.

The mineral potential in Finland includes many minerals, such as cobalt, copper, lithium, battery-quality nickel and graphite, which are on the EU's list of critical materials and, except for lithium, also on the list of strategic minerals. Further, there are several mines in Finland that produce such critical or strategic raw materials. Several new mining and exploration projects are also targeted at mineral deposits containing these raw materials. Mining production and mining projects focus especially on nickel, copper, cobalt, platinum group metals, lithium and phosphorus.

In addition, many other mineral deposits containing critical raw materials have been identified in Finland. Thus, the CRMA is expected to have a positive impact on the mining sector in Finland (eg, with respect to permitting) although in practice the actual benefit may turn out to be more limited than may appear based on the proposal.

Exploiting extractive waste

Mining and exploration in Finland are expected to be supported by investments in the green transition. The legislative and development work under the Government Programme and the CRMA also supports wider exploiting of extractive-side streams of mining operations.

In mining, a large amount of waste rock is created alongside production, which can be raw material for another operator. Minerals and valuable energy can also remain unused. The circular economy is a particularly great opportunity for the mining industry because it generates various side streams. According to Statistics Finland, mining and quarrying produce 75% of Finland's total waste load measured in tonnes.

Excavation activities create substantial amounts of topsoil, waste rock and tailings, which for the time being is still classified as waste. Exploiting of soil classified as waste, especially in construction, is expected to increase in the coming years due to the increasing scarcity of building materials.

The use of waste rock has been slowed down by, among other things, the fact that there has been a high availability of aggregates near construction projects. Transporting the stone for construction from afar is not profitable. Waste rock has, to some extent, already been used – eg, in the construction of wind turbines and roads, but the exploiting rate is still low. The opportunities for using tailings have instead been better – eg, tailings as a raw material for concrete, recovery of metals from waste streams, use of tailings as a carbon sink and separation of valuable minerals from tailings and separating of ilmenite from tailings for the paint industry. Other similar projects are being sought in a circular economy project in the extractive industries launched by the Ministry of Economic Affairs and Employment as part of implementation of the national strategic circular economy programme.

The Ministry of Economic Affairs and Employment commissioned a preliminary study on the possibilities of exploiting waste rock and tailings from mines, which was published in July 2021. Conclusion of the preliminary study was clear. Making the use of extractive waste more efficient is an important theme that operators in the field have the will and ability to grasp. The social order is strong because the mining industry is under excessive pressure to act sustainably and responsibly. On the other hand, more efficient use of extractive waste would also make it possible to curb the consumption of virgin natural resources, as called for in the national circular economy programme. At the same time, energy would be saved, and carbon dioxide emissions would be reduced once excavated and crushed rock would be exploited, not to mention natural values and biodiversity.

Mining tax was also considered as one feasible way to influence exploitation of waste rock in the preliminary study. The mining tax was found to affect the equation of how rich/poor ore is still worth exploiting as one of the cost factors. By keeping the mining tax at a competitive level, it was considered possible to improve the chances of exploiting waste rock. On the industrial side, however, it was stated in this regard that waste rock is, after all, an economic definition. The

cost level as a whole, including taxes, influences decision-making about mining and, thus, also formation and amount of waste rock. Increasing costs is not likely to increase the exploiting of the ore and reduce the amount of resulting waste rock.

However, according to the Government Programme, Finland is planning to revise the mining mineral tax which came into force on 1 January 2024 as of government mid-term policy review in middle of 2025 and introduce another tax category for mining mineral tax. The revenue increase has been estimated to be EUR15 million annually. Thus, it cannot be ruled out that the tax burden of mining will be further increased in coming years.

Increase in Guarantee Requirements for Mines Under the Environmental Protection Act

The Finnish Environmental Protection Act requires that a guarantee be ordered for waste management operations. The waste management guarantee covers the costs of the mine's waste management obligations, such as the closure of tailings ponds and sidings, and subsequent treatment and monitoring of leachate, as well as the rehabilitation of the affected area of the waste facilities. The levels of guarantees of waste management operations based on the Environmental Protection Act have increased significantly in environmental permits of mines in the recent years. The first increase resulted from a change to the earlier practice when the Supreme Administrative Court issued a decision on 15 February 2017 (KHO:2017:24), which ruled that the collaterals shall also include VAT for the costs that are to be covered by the collateral, stating that a guarantee is sufficient only if in all events the invoice of an external entrepreneur with VAT resulting from the carrying out of neglected activities can be paid with the amount of the guarantee.

When the Supreme Administrative Court thereafter also emphasised the meaning and importance of the precautionary principle in its later decisions (eg, KHO:2019:166, KHO:2022:38), the guarantees increased further when uncertainties related to the operations were taken into account in the guarantee amounts.

In February 2023, the Ministry of Environment commenced a project which is intended to:

- supplement the regulations concerning extractive waste and extend the scope of the guarantees required for mines under the Environmental Protection Act;
- reform the regulations concerning the plans guiding the environmental protection of mines; and
- examine how regulation could promote the environmentally safe circular economy of extractive waste,

resulting in a Government Proposal for developing environmental regulation of mines (estimated timetable 2025). Currently, the discussion on extractive waste and the claims presented in the appeals against environmental permits of mines relate – eg, to long-term impacts of extractive waste after closure of the mine. The aim of the project is to extend the scope of the guarantees required from mines under the Environmental Protection Act, and one can expect that a possible Government Proposal would be likely to result in further increase in the guarantees required from mines.

Taking into account that the amounts of guarantees can already, at the current level, be from tens of thousands to over a hundred million

euros, in addition to which mining guarantees are likely to increase as a result of the amendments made to the Mining Act, increasing guarantee requirements are beginning to create different kinds of challenges for companies; costs being a significant factor.

Setting up cash collaterals in excessive amounts would tie up substantial amounts of capital. This is not in any way cost effective and cash collaterals could also – eg, limit or prevent other financing or could be limited or prevented by existing financing. This means that guarantee requirements need to be covered by other arrangements and this causes costs – eg, in the form of different types of guarantee fees payable to the financiers eventually providing the required guarantees.

From the financiers' perspective the increasing guarantee requirements also create challenges as the ticket sizes in guarantee arrangements, and therefore risks for the financiers, increase correspondingly. This may require – eg, more financing parties to be involved in one arrangement to share the risk. This again may result in the arrangements being more complicated and – eg, the timeline to finalise negotiations being longer. At the same time, the relatively short deadlines set in the environmental permits for setting up the guarantees create pressure for the process. Generally, risks for all financiers of a company increase if the guarantee requirements increase as the overall amount of actual and potential financial liabilities goes up. Financiers' due diligence requirements become stricter and contract terms might include more limitations which will be visible in running the operations.

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