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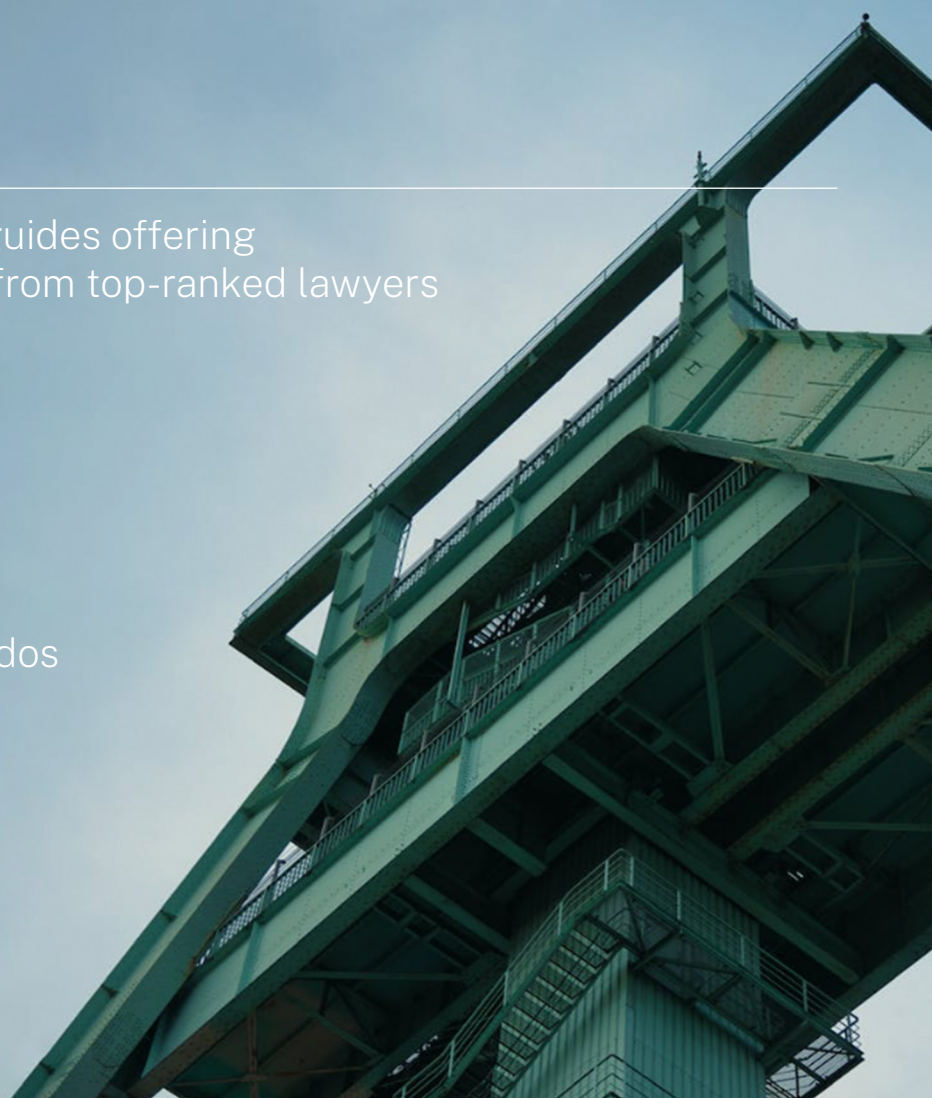

Contributing Editor
Carlos Vilhena
Pinheiro Neto Advogados

Chambers

Global Practice Guides

Mining

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2025

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Contributed by: Carlos Vilhena, **Pinheiro Neto Advogados**

Pinheiro Neto Advogados is a Brazilian, independent and full-service firm, specialising in multidisciplinary deals and translating the Brazilian legal environment for the benefit of local and foreign clients. Founded in 1942 and with clients in almost 60 countries, the firm has grown organically and developed a distinctive, tight-knit culture, with a low associate-to-partner ratio. Its unique, democratic governance structure promotes transparency and consensus-building among the partners. With a focus on innovation, the firm has kept its competitive edge throughout the years, and is widely hailed as an institution of the Brazilian legal market. In order to maintain its status as a valued strategic partner to its clients, the firm invests heavily in professional development, not only through strong on-the-job training, but also by means of the highly structured Pinheiro Neto Professional Development Programme championed by the firm.

Contributing Editor

Carlos Vilhena is a partner at Pinheiro Neto Advogados. He oversees the firm's mining and government relations practices. Carlos has an LLB from the Law School of the University of Brasília and an LLM from the Centre for Energy, Petroleum, Mineral Law and Policy at the University of Dundee. He is the Secretary of SEERIL at the International Bar Association and a past Secretary of the Foundation for Natural Resources and Energy Law. In his mining practice, he has advised exploration and mining companies and investors on a wide variety of mining-related issues. Carlos has been continually listed as a top mining lawyer.

Pinheiro Neto Advogados

SAFS Quadra 2
Bloco B
Ed. Via Office
3° andar – CEP: 70070-600
Brasília – DF
Brazil

Tel: +55 613 312 9400
Fax: +55 613 312 9444
Email: cvilhena@pn.com.br
Web: www.pinheironeto.com.br

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INTRODUCTION

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Challenges for the Mining Industry in the Face of New Demands

As the world attempts to understand new demands, challenges will emerge for the mining industry. Mining companies around the world are seeking new opportunities and trying to adapt. Newcomers are on the move. All are increasing standards and establishing and enhancing trust with stakeholders, including governments and communities.

Recent changes have fostered the implementation of new technologies to reduce costs, increase production efficiency, reprocess and extract minerals from tailings and stock piles, as mining companies have been forced to search for innovative, sustainable and more efficient production methods.

From a macroeconomic standpoint, economies and mining companies that have traditionally relied on conventional minerals such as iron ore and gold are observing an ever-increasing appetite of investors for green minerals projects. Traditional base metals players are keen for diversification towards green minerals, which may be perceived as a reaction to society and the market's call for the adaption of the mineral industry to ESG principles. Other stakeholders with new technologies, like reprocessing tailings and bio-mining are arriving.

New practices are perceptively increasing and are here to stay. The transition of the global energy matrix towards more renewable sources, the rising claims for low-carbon, sustainability goals and new technologies will also require improvements in standards for mining companies, as the mining industry plays a major role in the energy transition and will continue to do so in the years to come.

These trends illustrate very well that the mining industry currently faces several questions, in particular those arising from increased environment, social and community-related concerns, and the new technologies flourishing in the mineral production chains. The scenario is more challenging than ever for the mineral sector. Consequently, the job and role of the mining lawyer is likewise more demanding.

Legislative and Regulatory Changes

Many countries around the world introduce, from time to time, significant legislative or regulatory changes to their mineral, royalty and tax legislation.

From an economic viewpoint, commodity and mineral prices changes can affect the mineral sector in many ways. The availability of funds for exploration projects, investment decisions for the development of new operations, the expansion of existing ones, job creation, or new technologies for processing and extracting minerals can all be influenced by the fluctuation of commodity and mineral prices in different ways. Over the years, it is clear to see the influence that prices have had in different markets and how they can affect countries and companies.

Dealing with new technologies, climate concerns, decarbonisation, environmental requirements, community relations, human rights matters, health and safety, and regulatory, tax, financing, social issues and geopolitics, among many other subjects, make this high-risk, long-term industry a more daring prospect than ever before.

Therefore, mining lawyers need to keep on top of the evolutions and features of a fast-changing environment and global order, the better to

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assist their clients as they navigate through a constantly changing world.

Established Mining Law

A deep understanding of the more traditional mining law matters – such as the different legal systems, sources of law, ownership of mineral resources, role of the state, legal nature of mineral rights, granting of mineral rights and security of tenure, just to name a few – remains a fundamental requirement for lawyers who wish to provide their clients with premium, top-notch services.

Additionally, lawyers must be fully updated and in control of the impact of health and safety requirements, taxes, duties, royalties, transfer tax and capital gains around the globe, as these are key factors in successful mining investments and operations.

New technologies being implemented in mineral production chains, such as workflow automation, reprocessing of tailings, bio-mining, and blockchain platforms for trading and tracking commercial operations, will demand equivalent legal skills among mining lawyers, as new legal issues may arise from the regulation of such matters by governments and from the dynamics of the new reality. A fast-changing world order, with complex geopolitics, also plays a very important role. This will demand constant improvement by mining lawyers, who will need to conduct cross-disciplinary analysis and counselling to assess increasingly complex mining operations from all angles.

Mining Investments and Finance

Mining investment and finance legal matters play a dominant role in the work of a mining lawyer. It is crucial for the mineral law practitioner to be fully informed about the legal aspects of investment attraction, special rules on foreign investment approval, and restrictions on foreign investment in the exploration and mining sectors. Multilateral and bilateral treaties that favour and protect investments in exploration and mining, sanctions and restrictions to international trade are also of the utmost importance.

Knowledge of the main sources of finance for exploration, development and mining in different jurisdictions will certainly be a great advantage for a lawyer in this field, equipping these professionals to work in a variety of transnational deals.

The intricacies of domestic and international securities markets in the financing of exploration, development and mining in different parts of the world – as well as the legal features relating to security over mining tenements and related assets in the context of exploration, development and mining finance – are essential to a mining lawyer's performance.

In the past years, private investors have signalled great appetite for green minerals projects aimed at energy transition, which has heated the markets for financing and M&A. In the years to come, considering the ambitious goals set for decarbonisation and the utmost relevance of certain minerals in this scenario, the industry may expect further increases in the capital availability for this type of investment, without prejudice to other minerals that may come into fashion, and for new technologies to reprocess tailings and waste to exploit green minerals.

Environment, Health and Safety

Environmental, health and safety legal matters have been at the top of the list for mining lawyers for some time now. Mining companies are mostly very conscious of their environmental

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responsibilities. Most of the significant players have very high standards and are prepared to adopt all necessary measures to deal with the environmental impacts arising from their mining operations.

Mining industry players in different jurisdictions want clarity of the rules and consistency in the application of these regulations at all stages, including environmental permitting and health and safety throughout the course of the operation. In addition to this, stronger, better equipped and resourceful permitting authorities would add to the desired legal security in the mining industry.

These elements – clear and stable rules, consistent application of the law and trustworthy permitting authorities – would certainly be beneficial not only for the mining industry, but also the different mining jurisdictions in the world, particularly the less-developed ones.

Recent Issues

More recent issues – such as health and safety, climate change, decarbonisation, human rights concerns, supply-chain standards, sustainable development policies, environmental protection and community relations, prior and informed consultation of affected people, the ability of countries to exploit their mineral wealth, and new mining and reprocessing technologies – have become essential matters that need to be appraised by mining law practitioners.

The methods of relating to these features and taking a position is evolving very rapidly. For example, new ways of communicating, especially through social media and modern applications such as X and WhatsApp, have brought significant changes to the way information (true or false) is disseminated among society. These new tools have introduced tremendous differences in how communities, populations and groups of interest can mobilise, in favour or against a certain mining project or operation.

The mining industry, which historically has been poor at communicating, now faces an incredibly more challenging environment in which to get its message across.

In this context, the "G" pillar of the ESG initialism may have a major role to effectively showcase the industry's true values and improve society's view of mining activities, as there is plenty of room for improving matters relating to diversity and inclusion within mining authorities and companies.

Conclusion

The countries included in this guide have vast mineral potential, with swathes of territory still to be properly prospected and explored. Hopes around the globe are for more sensible, less interventionist and more business-friendly policies.

Populations, particularly those in less-developed countries, have high expectations.

People from around the world are showing that they eagerly seek greater efficiency, fewer government interventions, privatisations, significant reduction of bureaucracy and a strong fight against corruption and social disparities.

Society and investors' call for a low-carbon and sustainable economy is directly linked with mineral prospection and exploration, which will inevitably intersect with the improvement of standards by mining companies to cope with such demand.

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If the leading mining jurisdictions can deliver on these demands, there will be great interest from investors in the exploration and mining sectors, which will, in turn, lead to economic and social prosperity.

This guide aims to provide a wealth of experience, and the submissions have been prepared by some of the most reputable and experienced law firms in the field of mining law.

ANGOLA

Law and Practice

Contributed by:
João Afonso Fialho, Marizeth Vicente and Lukeny Pascoal
VdA

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VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading professional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in all Portuguese-speaking African countries, as well as Timor-Leste.

Authors

João Afonso Fialho joined VdA in 2015. He is a partner and head of practice for oil and gas and natural resources. In the last 25 years João has been involved in natural resources projects and transactions in various jurisdictions and has advised foreign investors in the negotiation of exploration and mining agreements for all types of minerals, joint venture agreements, legal due diligence, farm-in and farm-out agreements, royalties and streaming agreements, contracts with suppliers, termination and extension of concessions and relinquishment of areas. João has also advised various state entities and international mining companies in the drafting and discussion of legal statutes and ancillary regulations.

Marizeth Vicente joined VdA in 2024. She is an international adviser in the oil and gas and mining practice.

Lukeny Pascoal joined VdA in 2023 when he joined ASP Advogados (exclusive member of VdA Legal Partners for Angola since 2020) as a junior international adviser. He has worked on several transactions with a focus on the oil and gas and mining industries, advising leading clients in the sector on regulatory, contractual, corporate and commercial matters, foreign direct investment and shipping.

VdA

Rua Dom Luís I 28
1200-151
Lisboa
Portugal

Tel: +351 21 311 3400
Email: vieiradealmeida@vda.pt
Web: www.vda.pt/en

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Angola is one of the most mineral resource-rich countries in the world, with substantial deposits of diversified minerals, including diamonds, gold, iron ore, phosphates, copper, manganese and rare earths. Still, a very significant part of the country's mineral deposits remains unexplored, creating great opportunities for further investment.

The in-depth legislative reform promoted by the government in 2018–20 to attract investment in the industry to the benefit of investors, the state and the Angolan population has already shown signs of return by attracting major mining companies to reinvest in Angola.

Angola is now the sixth largest diamond producer in the world, with a production target of 10–15 million carats in 2023. The largest Angolan diamond found in the last 300 years, a pink diamond of 170 carats, was discovered in 2022 in an alluvial diamond project and named "Rosa do Lulo".

Although most investment has been directed to diamonds, investors have also been showing interest in other minerals, such as gold, copper and rare earth minerals.

The government is also determined to promote local beneficiation. The launch of the Saurimo Diamond Development Pole set the cornerstone for this venture. With an initial investment of around USD77 million, the pole covers an area of more than 300,000 metres in the eastern province of Lunda Sul and includes diamond cutting facilities as well as training centres and shopping facilities.

1.2 Legal System and Sources of Mining Law

Angola has a civil law legal system.

The Mining Code, approved by means of Law 31/11, of 23 September 2011, contains most of the rules governing the mining industry and mineral operations, from exploration to processing and marketing of all types of minerals.

In addition to the Mining Code, there are other legal statutes governing the mining sector, notably the following:

- Law No 8/24, of 3 July, which is the Law to Combat Illegal Mining Activity;
- Presidential Decree No 51/24, of 6 February, which approves the Regulation on the Exercise of Activities for the Exploration of Mineral Resources, Oil and Gas in Conservation Areas;
- Presidential Order No 39/24, of 26 January, which creates the National Observatory to Combat Illegal Immigration, Exploitation and Illicit Trafficking of Strategic Mineral Resources;
- Angolan National Bank Order No 2/23, of 9 February, which approves the foreign exchange regime applicable to the mining sector;
- Joint Executive Decree 536/22, of 25 October, which approves the fees and charges applicable to the Mining Sector;
- Presidential Decree 161/20 of 5 June (as amended by Presidential Decree 6/22, of 12 January), which establishes the National Agency for Mineral Resources;
- Presidential Decree 143/20, of 26 May, which approves the Governance Model for the Mining Sector;
- Presidential Decree 85/19 of 21 March (as amended by Rectification 18/19, of 28 June),

which approves the regulations for semi-industrial mining of diamonds;
- Presidential Decree 35/19 of 31 January (as amended by Rectification 11/19, of 8 May 2019), which approves the technical regulations for the marketing of rough diamonds;
- Presidential Decree 175/18 of 27 July, which approves the new diamonds marketing policy;
- Executive Decree 346/17 of 14 July, which sets forth the criteria for delimitation of concession areas for exploitation of construction materials;
- Joint Executive Decree 316/17 of 27 June, 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, which classifies rare metals and rare earth elements as strategic minerals;
- Presidential Decree 158/16 of 10 August, which sets forth administrative offences and relevant penalties; and
- Order 255/14 of 28 January, of the Ministry of Geology and Mines, on monitoring of posting of bonds and payments of surface fees and royalties under the Mining Code.

1.3 Ownership of Mineral Resources

Under the Angolan Constitution, natural resources are the property of the state. The rules for award and exercise of mineral rights are mainly governed under the Mining Code (approved by the Angolan National Assembly) which emphasises that all the mineral resources found in the soil, subsoil, territorial sea, continental shelf, exclusive economic zone and other areas of the territorial or maritime domain under the jurisdiction of the Republic of Angola are originally owned by the state.

Minerals and mining products mined and extracted in accordance with the rules of the Mining Code and ancillary legislation become the property of the holders of the relevant exploration and mining titles.

1.4 Role of the State in Mining Law and Regulations

The state is the original owner of mineral resources found in the Angolan territory. Yet, all mineral projects are developed by private entities or individuals under a mineral investment contract and/or licence.

The state has the right to participate in mineral projects through:

- a state-owned company with a participating interest of at least 10% in the company to be incorporated for the mining phase; and/or
- a participation in kind (minerals produced) in proportions to be defined throughout the production cycles, with the state participation increasing in line with the increase in the Internal Rate of Return (IRR).

1.5 Nature of Mineral Rights

Mineral rights are awarded by the state to private entities or individuals by means of a mineral investment contract and/or licence, depending on the industrial/semi-industrial/artisanal nature of the operations and the type of minerals to be explored. In most cases, a mineral investment contract must be entered into between the state and the investor to define the terms and conditions for award and exercise of mineral rights.

Mineral rights are autonomous and shall be treated as legally separate from other rights, including the right of ownership of the soil where they are exercised and of the assets existing thereat, and may only be pledged to secure credits con-

tracted by the relevant holder of mineral rights to finance the geological-mineral activities covered by the concession title.

1.6 Granting of Mineral Rights

Mineral rights can be awarded following a public tender procedure launched by the ministry responsible for the mining sector or voluntary application. The relevant awarding entity will be determined based on the type of mineral and the industrial, semi-industrial or artisanal nature of the mineral operations (Head of the Executive Branch or Minister of Mineral Resources, Petroleum and Gas).

Public tender is mandatory when, in light of studies conducted or approved by the body responsible for geology, the area is considered to be of great geological potential. It is also mandatory for the awarding of mineral rights for strategic minerals. Minerals are classified as "strategic" if warranted by their economic importance, use for strategic purposes, or specific technical mining aspects. The mineral's rarity, relevant impact on economic growth, high demand on the international market, significant job creation, importance for state-of-the-art technology, positive influence on the balance of payments or importance to the military industry are deemed as fundamental factors to be weighted by the executive branch when classifying a mineral as strategic. Diamonds, gold and radioactive minerals are expressly defined as strategic minerals in the Mining Code and rare metals and rare earth elements were also defined as strategic minerals in Presidential Decree 231/16 of 8 December 2016.

If no public tender is required, mineral rights shall be awarded on a first come, first served basis, provided the applicant has the technical and financial qualifications required to carry out the mineral activities applied for and commits to observe the environmental requirements established by law.

The award of mineral rights at an industrial scale is subject to the negotiation of a mineral investment contract to be negotiated between the National Agency for Mineral Resources and the investor on a case-by-case basis with detailed operational, economic, and fiscal terms and conditions (from exploration to mining and marketing). Semi-industrial and artisanal projects are awarded by means of simplified application procedures.

The award of mineral rights must be published in the Angolan Official Gazette.

1.7 Mining: Security of Tenure

Investor Rights

Pursuant to the Mining Code, holders of mineral rights have the following statutory rights (among others):

- to obtain the geological-mineral information available on the concession area, or to consult such information;
- to obtain the collaboration of the administrative authorities for the execution of field work and for the creation of rights of way, under the terms of the law;
- to use surface and underground waters in the vicinity of the concession area, which are not exploited or covered by any other specific mining title, without prejudice to the rights of third parties and in compliance at all times with the mineral legislation;
- to build and set up the infrastructures and facilities needed for execution of the geological-mineral activities;
- to use, under the conditions imposed by the applicable laws and regulations, the land

demarcated for the installation of mineral facilities, buildings and equipment;
- to alter, in accordance with the work plans and programmes approved and to the extent required for the carrying out of mineral operations, the natural lie of the areas covered by the concession;
- to carry out the geological-mineral activities necessary for execution of the approved work plans, without limitations other than those deriving from the legal rules, the concession contract or the order of the body responsible for the mining sector;
- to extract, transport and dress the mineral resources covered by the contract, under the law;
- to dispose of the mineral resources extracted and to market the same, under the terms of the law;
- to recover from the mining proceeds the investment expenses incurred during the reconnaissance, exploration, evaluation and appraisal stage; and
- to receive compensation for such losses as may result from any actions limiting the exercise of mineral rights, under the terms of the law or the concession contract.

Rights to Progress From Exploration to Mining

The Mining Code enshrines a single-contract regime pursuant to which mineral rights are awarded for all stages of the operations. However, to progress from exploration to mining stage, holders of mineral rights are required to prepare and submit a technical, economic and financial feasibility study for review and approval by the state.

Minerals Rights' Duration

Exploration, evaluation and reconnaissance rights may be awarded for an initial period of up to five years extendable for successive one-year periods up to a maximum seven years. If the seven-year period proves insufficient to prepare or complete the feasibility study, the holder of the mineral rights may apply for and be granted an exceptional one-year extension. Mining and marketing rights are awarded for a period of up to 35 years (including the exploration and appraisal stage) extendable by one or more ten-year periods.

Different rules apply to semi-industrial and artisanal mining and the exploration and mining of construction materials and mineral waters.

Suspension and Termination of Mineral Rights

Mineral rights can be suspended by order of the Ministry responsible for the mining sector in the event of serious risk to the life and health of the populations, to the safety of the mines, to healthy conditions in the workplace, to the environment, wildlife and flora, or as a penalty provided for in the Code or ancillary legislation.

Termination of mineral rights can occur upon agreement between the state and the investor, expiry of the relevant term, redemption or termination of the mineral investment contract or revocation of exploration/mining titles. In addition to the other termination events that may be established in the mineral investment contracts (where applicable), mineral investment contracts or exploration/mining titles may be terminated in the following instances:

- a termination or withdrawal is triggered under specific contractual clauses;
- the project becomes technically or economically unviable;

- a breach of legal obligations, contractual obligations or obligations arising from the concession title;
- the abandonment, suspension or reduction of the mineral operations, except as provided for in the Mining Code, the title or the contracts;
- the suspension of mineral operations owing to force majeure events, as defined in the contract or concession title;
- the concession holder is convicted of a crime of aggravated contempt because it failed to perform acts provided for in the Mining Code or ordered by the relevant authority;
- the reconnaissance, exploration, evaluation and appraisal or mining of mineral resources not included in the contract or concession title; and
- the performance of the contractual obligations is not possible.

Assignment of Rights

Assignment of rights is subject to government approval and shall only be conceded if the assignee satisfies the technical and financial qualification requirements established by the government for award of mineral rights.

Dispute Resolution

The Mining Code is silent on the proper venue to resolve disputes, leaving it up to the dispute resolution clauses of mineral investment contracts. Contracting parties tend to include arbitration clauses in their agreements; however, disputes arising from the termination of the concession contract or withdrawal of the concession title, overlapping areas, or compensations due to landowners or possessors by the holders of mineral rights must be resolved by national courts, and disputes on the significance or insignificance of minerals extracted during the reconnaissance, exploration, evaluation and appraisal stage for the purpose of assessment of the relevant tax should be settled by the Ministry responsible for the mining sector.

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

2.1 Environmental Protection and Licensing of Mining Projects

The main requirements for environmental protection can be found in the Mining Code and are usually detailed under the mineral investment contract, including provisions on environmental impact, preservation, recovery and rehabilitation. In addition to the Mining Code, holders of mineral rights must comply with the general environmental statutes, including:

- the General Environmental Law;
- the General Regulations for Environmental Impact Assessment and Environmental Licensing Procedure;
- the Decree on Environmental Audits;
- the plans for the use of water; and
- the waste management plan and control of hazardous substances.

National and regional sector strategy and programmes in the fields of environment and sustainable development, as well as the international instruments to which Angola has committed, for example, the Rio Convention on Biodiversity 1992, the Montreal Cartagena Protocol on Biosafety to the Convention on Biological Diversity 2003, the Agenda 21, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989.

Projects which, by their nature, scale or location, affect the environmental and social balance and

harmony must be subject to an environmental impact assessment (EIA).

Holders of mineral rights are especially required:

- to comply with the obligations deriving from the environmental impact study and the environmental management plan, on the terms established therein;
- to take the measures necessary to reduce the formation and propagation of dust, waste and radiation in mining areas and surrounding areas to prevent or eliminate the contamination of waters and soil, using appropriate means to that end;
- not to reduce or in any other way prejudice the normal water supply to populations;
- to carry out mineral operations so as to minimise damage to the soil;
- to reduce the impact of noise and vibrations to acceptable levels as determined by the relevant authorities, when using explosives in the vicinity of settlements.
- not to discharge in the sea, water currents and lagoons contaminant waste which is harmful to human health, wildlife and flora; and
- to inform the authorities of any occurrence that has caused or may cause environmental damage.

2.2 Impact of Environmentally Protected Areas on Mining

The government may exclude or restrict the carrying out of geological-mineral activities within certain areas to ensure the harmonious development of the national economy and protect the national security, wildlife, flora and the environment. To date, the government has not made use of such prerogative.

2.3 Impact of Community Relations on Mining Projects

The Mining Code expressly sets forth that mining policies must always consider the traditions of local communities and contribute to their sustainable economic and social development. Expressions of such principle of protection of local communities are found in several provisions of the Mining Code, including:

- holders of mineral rights having a duty to always take into account the traditions of the communities in the areas where mineral activities are carried out;
- creating consultation procedures allowing the local communities affected by mineral projects to take an active part in decisions relating to protection of their rights;
- having the right of relocation whenever the communities lose their houses as a result of mineral activities; and
- ensuring the employment and training of Angolan technicians and workers, with preference being given to those residing in the areas of the mineral concession.

There are also protective local content provisions in the Mining Code aimed at protecting local entrepreneurs and promoting local businesses, benefiting from a statutory preferential right in procurement procedures for the provision of goods and services to the mining industry.

2.4 Prior and Informed Consultation on Mining Projects

Local communities must be consulted during the preparation of the EIA and before any decision is taken that may affect their living conditions or rights. This consultation is mandatory for projects that can potentially destroy or damage assets or cultural or historical heritage belonging to the local community. Holders of mineral

rights must relocate, at their expense, any local community that is displaced as a result of mining operations, and all traditions and practices of local communities must be considered in the resettlement process.

Without prejudice to the above, in planning the mineral activities, the Executive shall provide for effective measures for sustainable economic development and protection of the lawful rights and interests of the local communities, as well as the development of national human resources.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no specially protected communities with respect to mining projects under Angolan law. The local content rules found in the Mining Code are aimed at protecting local communities at large and shall apply to all Angolan nationals, entities or populations residing in the concession area (as applicable).

2.6 Community Development Agreement for Mining Projects

Community development agreements for mining projects are not mandatory by law nor are they a common practice in Angola.

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

ESG guidelines and regulations are scattered in different provisions of the Mining Code, ancillary industry-specific legislation and general laws and regulations. ESG provisions can also be found in mineral investment contracts, which usually include guidelines and principles on environment protection/preservation, human resources and business ethics.

The ESG concerns are made clear by the requirements for holders of mineral rights to conduct mineral activities under strict environment regulations, comply with the applicable local content policies on recruitment and training Angolan nationals, procure local goods and services, ensure the involvement of local communities, abide by local laws and regulations, combat corruption and adopt the best business ethics practices.

2.8 Illegal Mining

In Angola, illegal mining is a significant issue that has a considerable impact on legal industrial mineral production. Unregulated and clandestine mining practices not only harm the environment but also destabilise the economy and undermine the efforts of companies that operate according to established regulations.

Disruption Caused by Illegal Mining

Economic and environmental impact

Illegal mining often involves uncontrolled extraction practices that lead to severe environmental degradation, including deforestation, water pollution, and habitat destruction. These activities seriously compromise the sustainability of natural resources and have long-lasting adverse effects.

Unfair competition

Illegal mining operations typically do not pay taxes or comply with safety and environmental regulations, allowing them to sell minerals at significantly lower prices. This creates unfair competition for legally established companies that adhere to all regulatory standards.

Safety risks

Illegal mining frequently involves hazardous working conditions and labour exploitation, including child labour, and may be associated

with organised criminal networks, putting worker safety and health at considerable risk.

Reaction of the Government and Mining Companies

Enforcement and legislation

The Angolan government has strengthened enforcement and the application of rigorous laws, such as Law No 8/24 of 3 July. This law establishes severe penalties for illegal mining activities, including:

- prison sentences – penalties range from two to eight years' imprisonment, depending on the severity of the crime;
- fines – these are established based on fractions of the value specified in Article 111, paragraph 2 of the Mining Code, for example, fines of one sixth, one third, or one tenth of the specified value, depending on the specific infraction; and
- increased penalties – in specific cases, penalties are increased by one third of the minimum limit for crimes involving public authorities, impacting state projects, using violence, child labour, association with criminal organisations, fraud, obstructing authorities, significant environmental damage, or activities in protected areas.

Partnerships and collaborative actions

Legally operating mining companies often collaborate with government authorities and regulatory bodies to combat illegal mining. These partnerships may include the use of monitoring technologies and reporting of suspicious activities.

Corporate social responsibility programmes

Many mining companies have invested in corporate social responsibility programmes to educate local communities about the negative impacts of illegal mining, offering sustainable economic alternatives and promoting good environmental practices.

Public awareness campaigns

Public awareness campaigns are conducted to highlight the dangers and adverse impacts of illegal mining on both the environment and local communities, emphasising the importance of legal and sustainable mining practices.

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

Examples of the positive impact of mineral activities in local communities are social projects implemented by the holders of mineral rights in the villages around the mines (eg, building of infrastructure and roads, and water and electricity supply structures, to the benefit of the local communities) and the increase in jobs available to local communities.

Examples of negative impacts are those linked with reportedly unsatisfactory working conditions, human rights violations or damage to the environment.

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

3.1 Climate Change Effects

Climate change is on the agenda of the Angolan government but has not yet (directly) impacted the mining industry.

3.2 Climate Change Legislation and Proposals Related to Mining

Angola has not yet passed specific climate change legislation related to mining. There is,

however, growing concern surrounding climate change which has led to the ratification of several international climate change conventions, namely the United Nations Climate Change Convention (UNFCCC) in 2000 and the Kyoto Protocol in 2007, reaffirming Angola's commitment to the implementation of measures and programmes to stabilise greenhouse gas (GHG) emissions. In May 2000, Angola ratified the Montreal Protocol to the Vienna Convention. Angola is also a signatory to the Paris Agreement, the United Nations Convention on Combating Drought and Desertification (UNCCD), the Convention on the Conservation of Wild Migratory Species (CMS), the Convention on Biological Diversity (CBD) and the Stockholm Convention on Persistent Organic Pollutants (POPs). Angola is also part of the Law of the Sea Convention. Most of the conventions continue to be implemented by Angola, through the Ministry of Culture, Tourism and Environment (MCTA), within the scope of the commitments assumed at international level to contribute to the protection of life on planet earth.

Although Angola does not yet have specific legislation on climate change concerning mining, there are environmental legislative provisions that may indirectly contribute to climate change mitigation. For example, Articles 12 and 19 of Law 8/24 (Law on Combating Illegal Mining Activities) include some environmental provisions, and Article 5 of Presidential Decree 51/24 (Regulations on the Exercise of Mineral, Oil and Gas Exploration Activities in Conservation Areas) imposes various obligations on operators. These obligations include the construction of infrastructure, responsible use of water resources, financial contributions to conservation programmes, biodiversity protection, and the conduct of environmental audits. Although these do not specifically mention climate change, some of the obligations, such as environmental mitigation, ecosystem protection, and fire prevention, may indirectly contribute to efforts against climate change.

The Angolan National Commission on Climate Change and Biodiversity (CNACB) was recently established with a specific mandate for climate change. The CNACB is composed of several entities, including the ministries of petroleum, transport, higher education, science and technology, health, and agriculture and fisheries, under the co-ordination of the ministerial department responsible for the environment, and was in charge of preparing Angola's participation in COP 28.

3.3 Sustainable Development Initiatives Related to Mining

The are no relevant sustainable development initiatives related to mining in Angola. There is, nevertheless, a clear constitutional and statutory principle of sustainable exploitation of mineral resources in strict compliance with the rules on safety, economic use of the soil, rights of the local communities and the protection of the environment, to the benefit of the national economy, local communities and future generations, which was publicly reinforced during the course of 2023.

3.4 Energy-Transition Minerals

As global priorities shift and new technologies such as electric vehicles (EVs), battery storage and green energy take preference, rare earth minerals found in countries such as Angola are expected to play a critical role. The Angolan government is focused on the strategic positioning of the country as one of the major mineral resource-producing countries and a key player in the global energy transition.

In 2016, the government classified rare metals and rare earth elements as "strategic minerals" along with diamonds, gold and radioactive minerals. However, apart from such classification, the government has not yet introduced new legislative initiatives to promote investment in energy-transition minerals.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The mining sector is subject to a special tax regime established in the Mining Code (applicable to all national and foreign investors), as follows.

Industrial Tax (Income Tax on Mineral Activities)

The tax rate currently in force is 25%.

For the purposes of determining taxable income, the following are among the factors considered as tax deductions in addition to those provided for in the general tax law:

- costs of exploration;
- evaluation and reconnaissance; and
- contributions to the Mining Development Fund.

Royalty (Tax on the Value of Mineral Resources)

The tax rates currently in force are as follows:

- strategic minerals (including industrial diamonds) and precious metals and stones – 5%;
- semi-precious stones – 4%;
- metallic minerals, semi-industrial and artisanal diamonds – 3%; and
- construction materials of mining origin and other minerals – 2%.

Surface Fee (Fee Levied on the Concession Area Awarded, Payable During the Exploration Phase)

The surface fee value varies according to the size of the concession area, the type of mineral explored and the exploration year in question and can range from USD2 to USD40 per square kilometre. These amounts are doubled in the event of an extension of the exploration period.

Holders of mineral rights are subject to other taxes or charges payable by law in respect of activities that are supplemental or incidental to the activities (eg, employment tax).

4.2 Tax Incentives for Mining Investors and Projects

Holders of mineral rights can apply for tax incentives in the form of (industrial tax) deductible costs, investment premiums (uplift), grace periods for the payment of income tax and any other type of tax incentive provided for in the law. The application for tax exemptions is discussed and negotiated during the contractual stage of the investment procedure with the Negotiations Committee (in this case, the Negotiations Committee must have a member from the Ministry of Finance).

Incentives may be granted for projects with impacts on the Angolan economy, namely acquisition of supplemental goods and services on the local market, carrying out of mineral activities in remote areas, contribution to the training and development of local human resources, carrying out research and development activities in cooperation with Angolan academic and scientific

institutions, local processing and dressing of minerals, or significant contributions to increase exports.

The government may also authorise special tax and customs exemptions for Angolan companies exclusively engaged in the processing, dressing and cutting of minerals extracted in the country.

Investors often seek tax stabilisation under their mineral investment contracts. However, tax stabilisation is seldom granted.

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

Direct and indirect transfers or sales of mineral rights/mining assets (including by means of M&A operations in and/or outside the country) may trigger the assessment of capital gains under the general rules of the Investment Income Tax Code.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Over the past six years, the Angolan government has made several political, economic and legal reforms to facilitate and attract investment in the country. Particularly in the mining sector, the government has undertaken several initiatives to enhance the sector's performance, competitiveness and transparency with the establishment of a new governance model, new policies and regulations for the marketing of rough diamonds and a new foreign exchange regime applicable to the sector.

The opportunity to negotiate special tax incentives and benefits, the details of the data available to the investors – as a result of the works of the National Geology Plan (PLANAGEO) for mineral-geological investigation – and the variety and quality of the Angolan portfolio of minerals with significant potential for economic return attract investors from all over the world.

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

Investment in the mining sector is subject to the special investment regime established in the Mining Code. There are no limitations on foreign investment, although additional formalities must be complied with by foreign investors in the import of investment capital and the export of dividends and profits. Such additional formalities have, nonetheless, been eased with the approval of the new foreign exchange regime applicable to the sector.

The exceptions to the above principle are diamond artisanal production, which may only be granted to Angolan citizens, and diamond semi-industrial mining, civil construction or mining rights of mineral-rich waters, which may only be granted to companies organised under Angolan law in which Angolan citizens hold at least two thirds of the capital.

5.3 International Treaties Related to Exploration and Mining

Angola has signed bilateral investments treaties or memorandums of understanding for commercial co-operation with a number of countries, including Brazil, Cape Verde, Congo, Cuba, France, Germany, Guinea Bissau, Italy, Japan, Mozambique, Namibia, Portugal, the Russian Federation, São Tomé e Príncipe, Spain, South Africa, Switzerland, Turkey, United Arab Emirates, and the United Kingdom (not all of these treaties are yet in force).

In addition to the above, bilateral co-operation treaties for the mining sector have been entered into with Cuba, the Democratic Republic of the Congo, Mozambique, Portugal, South Africa, Russia and the United States of America.

Additionally, in 2024, Angola approved for ratification the Protocol on Mining in the Southern African Development Community (SADC).

5.4 Sources of Finance for Exploration, Development and Mining

Holders of mineral rights (or relevant shareholders) generally fund their mining activities in Angola with private equity, shareholders' loans or direct loans from foreign banks. The implementation of alternative funding mechanisms (streaming and royalty agreements) is still significantly impaired by the existing foreign exchange and marketing regulations.

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

Angola's securities market is finally ramping up with significant operations successfully completed in 2023. Nevertheless, investors usually raise funds overseas through private equity or in international security markets to invest in mineral exploration and mining projects.

5.6 Security over Mining Tenements and Related Assets

Mineral rights may only be pledged to secure credits contracted by the holder of mineral rights to finance mineral activities covered by a mineral investment contract or exploration/mining title. For this reason, the pledgee must be provided with an authentic copy of the title and the mineral investment contract.

In pledging its mineral rights, the holder of mineral rights shall forfeit neither the possession nor the exercise of the mineral rights pledged, being likewise bound to comply with all legal and contractual obligations. The mineral rights pledged shall not be transferred by the relevant holder, nor encumbered again, without the prior express authorisation of the pledgee.

Enforcement of the pledge (transfer of the mineral rights in the event of default) is subject to government approval.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Angola is committed to implementing a diversification strategy aimed at reducing the country's dependence on oil, while developing gas and renewable energy, building on its current strength in diamond production and exploring the country's rare earth and other energy transition minerals' potential. As an example, a new foreign exchange regime applicable to the mining sector was enacted in 2023, inter alia allowing external investing entities – in which Angolan SPVs are included – to open and operate bank accounts abroad, including escrow accounts, without previous authorisation from the Angolan National Bank. The creation of a Diamond Burse is also expected to take place soon, determining significant changes to the current diamond marketing regime.

The political stability resulting from the re-election of the president in August 2022, the increasing demand for minerals in the international market for energy transition and De Beers, Anglo American, Rio Tinto and Pensana Rare Earth Metals' recent investments in the country are all

expected to continue to attract a variety of other companies, which may finally look to Angola as a reliable and transparent jurisdiction for investment.

Trends and Developments

Contributed by:
João Afonso Fialho, Marizeth Vicente and Lukeny Pascoal
VdA

VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading professional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in all Portuguese-speaking African countries, as well as Timor-Leste.

Authors

João Afonso Fialho joined VdA in 2015. He is a partner and head of practice for oil and gas and natural resources. In the last 25 years João has been involved in natural resources projects and transactions in various jurisdictions and has advised foreign investors in the negotiation of exploration and mining agreements for all types of minerals, joint venture agreements, legal due diligence, farm-in and farm-out agreements, royalties and streaming agreements, contracts with suppliers, termination and extension of concessions and relinquishment of areas. João has also advised various state entities and international mining companies in the drafting and discussion of legal statutes and ancillary regulations.

Marizeth Vicente joined VdA in 2024. She is an international adviser in the oil and gas and mining practice.

Lukeny Pascoal joined VdA in 2023 when he joined ASP Advogados (exclusive member of VdA Legal Partners for Angola since 2020) as a junior international adviser. He has worked on several transactions with a focus on the oil and gas and mining industries, advising leading clients in the sector on regulatory, contractual, corporate and commercial matters, foreign direct investment and shipping.

Contributed by: João Afonso Fialho, Marizeth Vicente and Lukeny Pascoal, **VdA**

VdA

Rua Dom Luís I 28
1200-151
Lisboa
Portugal

Tel: +351 21 311 3400
Email: vieiradealmeida@vda.pt
Web: vieiradealmeida@vda.pt

Preliminary Remarks

Angola has a strategic geographical location and is currently the second-largest African producer, and the fourth-largest global producer, of diamonds, despite the fact that most of the country's interior has not yet been explored. As regulatory reforms take effect, however, more mining companies are investing in Angola. Throughout 2022 and 2023, investments such as the De Beers, Anglo American, Rio Tinto, and Pensana Rare Earth Metals projects boosted the mining sector and its reputation as a reliable and transparent jurisdiction for investment, in which the country's recent admission to the international Extractive Industries Transparency Initiative (EITI) should also play a role.

Industry Trends

The Angolan mining industry is expected to continue to be dominated by diamond exploration and production in the coming years, which accounts for about 90% of total mining revenues, and is expected to encourage the creation of "level one" mines, according to the Angolan government. With the ongoing demand for strategic minerals, non-ferrous metals and rare earths expected to increase dramatically due to the global energy transition and the use of strategic minerals in lithium-ion batteries, this sector is expected to significantly increase its contribution to the country's gross domestic product (GDP) growth.

In October 2024, the country hosted the AIDC 2024 (Angola International Diamond Conference 2024), which analysed several important topics related to:

- geological mining research;
- diamond exploration in Angola;
- diamond cutting;
- technological innovation; and
- logistics in the industrial and semi-industrial sector.

The AMC 2025 (Angola Mining Conference 2025) is expected to happen in February 2025.

Developments – Investments and Governance

Investments

Pensana Rare Earth's Longonjo project is also worth noting. The Longonjo project is set to become the first large-scale NdPr (neodymium and praseodymium) rare earth mine in Africa, with a production target of 56,000 tonnes per

year. The Angolan government is confident that long-term investments in diversified minerals will attract a variety of other major and junior companies to invest in the country. In fact, it is expected that, with the Longonjo mine in full operation, the country will be able to fulfil 5% of the world's needs concerning rare earths, a market where demand currently exceeds the existing supply, with China remaining the world's biggest supplier.

Angola is also focused on developing the country's minerals-processing industry. The Saurimo Diamond Development Hub, inaugurated in August 2021 and focused on the convergence of the entire national diamond value chain, is an example and has been promoted by the Angolan government as being the country's final step in its quest to become a global diamond producer. Located on the road to the large Catoca diamond mine, the Saurimo Development Hub aims to significantly enhance the country's diamond production capacity, enabling the processing and polishing of resources in addition to rough diamond exports, while ensuring that all the necessary infrastructure for such purpose can be found in loco (such as banks, insurers, private practices, employee accommodation, restaurants, a factory school for polishers, and a technical and professional school run by ENDIAMA, Angola's state-owned diamond company, ready to provide training programmes to young people in a wide range of areas).

The Saurimo Diamond Development Hub is divided into three main areas: commercial, industrial and one reserved for the hybrid power plant. According to recent information disclosed by Angolan executive consultants, there are lots still open to investors who intend to install manufacturing units within this infrastructure, and Angola is keen on stimulating the creation of processing facilities, as the country is "...producing around nine million carats/year, most of which is exported raw". Therefore, it would be "a victory for the country" if Angola could have the capacity to hone 20% of its local extraction (considering that 20% of production may be sold to cutters pursuant to Angolan law).

ENDIAMA has provisionally released a list of 15 diamond projects being promoted, in a map of six provinces that includes, for the first time, Cuanza Sul, although the major diamond-producing regions will continue to be Lunda Sul and Lunda Norte, given their potential and already confirmed reserves. Cuanza Sul appears with the Quitúbia project, a primary deposit (kimberlite), available to investors, whether national (provided they have the financial capacity) or foreign. There are a total of 43,674 square kilometres to be concessioned, more than several countries the size of Switzerland. According to the diamond company, this map could be updated soon, taking into account the data collected as part of PLANAGEO (the National Geology Plan), which has given the national authorities a more realistic perception of Angola's mining potential, especially for diamonds. According to the map, four of the diamond projects are in the province of Bié, corresponding to a total of 15,481 square kilometres, equivalent to around 30% of the total area available for diamond prospecting. In this first phase, according to a source at ENDIAMA, only 1,000 square kilometres of the Cuango mining project are in the mining phase – in other words, they have already received investment.

The Angolan regulatory framework for investment in the mining sector is robust and investor-friendly, attracting major players like De Beers, Rio Tinto, and Anglo American. As mentioned, the Longonjo project by Pensana Rare Earth is set to be Africa's first large-scale NdPr rare earth

mine, expected to meet 5% of global rare earth needs. Angola is also developing its mineral processing industry, exemplified by the Saurimo Diamond Development Hub, which aims to boost diamond production and processing, offering comprehensive infrastructure. In November 2023, Angola inaugurated the Luele mine, the country's largest diamond project, expected to produce 628 million carats over 60 years. Additionally, plans for an Ornamental Stone Development Centre in Namibe province are under way.

Regarding ferrous metals, the implementation of the mining component of the Kassinga Mining-Steel Project in Huíla province, the Kassala Kitungo iron ore project in Cuanza Norte, and the inauguration of the first pig iron production plant by the Cuchi Steel Company in Cuando Cubango province, which has completed its first export, is ongoing.

As for copper and other non-ferrous metals, the groundbreaking ceremony for the construction of the Mavoio-Tetelo Copper Exploration Project in Uíge province and the signing of investment contracts granting mining rights for copper prospecting in Moxico and Cuando Cubango provinces should be highlighted. Under the Programme for the Promotion of Agro-Minerals in Angola, phosphate exploration and the production of granulated phosphate rock fertilisers are under way in Cabinda, while projects for limestone prospecting and exploration have also been licensed in the province.

The Lobito Corridor Railway Project, in Benguela province, is a strategic project that ultimately aims to connect the Atlantic Ocean to the Indian Ocean, up to the ports of Dar es Salaam, in Tanzania, and Cidade da Beira, in Mozambique. This project crosses several areas where mineral operations take place, and is therefore regarded as being of fundamental importance for the sector, and essential for exports and mineral supplies (internal and external) of goods and equipment to the mining industry. It was the main reason for outgoing US President Joe Biden's trip to Angola at the end of 2024.

Angola has established a partnership with the Africa Finance Corporation (AFC) in this transformative project, which will deepen Angola's role as a regional logistics hub and boost trade not only with Zambia but with the rest of the world.

The concession agreements for the financing, construction, ownership and operation of this mega railway project include the construction of an entirely new railway line, approximately 800km long, to connect the Benguela railway in Luacano, Angola, to the existing Zambia railway line in Chingola. The link between Angola and Zambia is considered one of the most important in southern Africa in terms of commerce, as it creates a trade corridor to facilitate the efficient movement of goods and promotes investments in agriculture, electricity, mining, healthcare and digital infrastructure. It represents the shortest route for exports and imports, connecting major mining regions, agricultural hubs and businesses in Zambia and the DRC to the port of Lobito, establishing it as a strategic route for exports from these two countries.

Governance

Angola's admission as an implementing country to the EITI, a voluntary international initiative that works to increase revenue transparency through the verification and disclosure of revenues paid to members of the government by extractive companies, is significant. According to the Angolan president, the government joined

the EITI to reduce corruption, support transparency and accountability reforms, improve the investment climate, and better mobilise domestic resources. The move aims to attract investors by demonstrating Angola's commitment to transparency and gaining foreign investor confidence. This initiative is part of broader efforts by the Angolan government to fight corruption and establish the country as a transparent, reliable and investor-friendly jurisdiction.

The launch of the new diamond bourse, initially scheduled to take place on an experimental basis, with the Ministry of Finance in charge of supervising the sector's tax regime, auditing, tax collection and tax revenues, has been postponed a number of times. The diamond bourse will be the first infrastructure to be established in the country for the open trade of diamonds and other valuable gemstones, which could add value to diamonds and gemstones produced within national territory. In a second phase, the authorities plan to implement the diamond bourse in permanent facilities at the Lunda Sul Diamond Development Hub, where construction work on the mega-project to host all services is under way.

The creation of the bourse and the increase in diamond production will reduce illegal production and enhance the bargaining power of Angolan gemstones, further developing the precious stone cutting industry, which is expected to reach 20% of total diamond production. To establish the bourse, Angola may co-operate with the Antwerp World Diamond Centre (AWDC) in the field of diamond trading.

Finally, it is worth noting that, although the country appears to remain committed to decarbonisation, there are currently no specific deadlines in this regard, because, according to the Angolan Executive, a reasonable balance must be achieved – on the one hand, climate change represents a global concern that must be addressed by all countries; on the other hand, however, Angola remains heavily dependent on the exploration and production of mineral resources (since 90% of the country's revenues come from oil, natural gas, and diamonds). The Angolan government thus intends to progressively improve its decarbonisation process, while maintaining the exploration and production of natural resources throughout their useful life. According to a senior official from Angola's Ministry of Environment, the country is committed to transitioning to a less petroleum-dependent economy while ensuring that this transition does not harm its communities.

Angola "is a country that is highly engaged in the decarbonization process and in a just transition, because the largest contributor to the GDP (Gross Domestic Product) comes from oil exploitation," stated the head of the Mitigation and Adaptation Directorate of Angola's Ministry of Environment at COP29 on 22 November 2024 in Baku, the capital of Azerbaijan.

Recognising that "the process of a just transition is very necessary," the official affirmed that the country "is committed to transitioning to an economy that does not rely so heavily on oil" and to implementing measures that have already resulted in 60% of electricity production coming from renewable, hydro and solar sources. She also argued that the transition should be done "at the pace of the countries and without harming their communities."

ARGENTINA

Law and Practice

Contributed by:
Sebastián P. Vedoya, Sergio Arbeleche and Dolores Cattaneo
Bruchou & Funes de Rioja

Contents

Bruchou & Funes de Rioja is a leading law firm in Argentina offering specialised, value-added legal services across more than 25 practice areas. Backed by an innovative, full-service platform, it provides sophisticated legal counsel to a wide range of industries and projects. The mining department is a leader in Argentina's legal mining sector, known for its expertise and decades of experience, and provides core legal mining advice across all project stages, from acquisition and exploration to production and closure. It has advised major global players including Barrick Gold Corporation, First Quantum Minerals, Lundin Mining, BHP and Glencore on some of Argentina's most significant and active mining projects, including Veladero mine and its expansion, the USD3.8 billion Taca Taca Project and the USD3 billion MARA Project, the Josemaría project, amongst others. Beyond client representation, the team actively helps to shape Argentina's mining regulations, contributing to frameworks like the 2024 Incentive Regime for Large Investments.

Authors

Sebastián P. Vedoya is a partner at Bruchou & Funes de Rioja and, along with Sergio Arbeleche, leads the mining department. With over 27 years of experience, Mr Vedoya advises local and foreign companies on all legal aspects of the mining industry. His expertise spans all stages of mining projects – exploration, construction, and operation – including permits. He has participated in mining project acquisitions, joint ventures, and assignments of mining rights, including due diligence, contract drafting, feasibility studies, and advising on Argentine-Chilean binational projects and mining royalties. He also contributes to regulatory drafting and defends client rights under promotional systems.

Sergio Arbeleche is a partner at Bruchou & Funes de Rioja and, along with Sebastián Vedoya, leads the mining department, bringing over 27 years of experience advising local and foreign companies on mining, environmental and hydrocarbon matters. His expertise spans contract law, administrative law, public international law and constitutional law. He provides strategic guidance on acquisitions, negotiations and the assignment of mining rights and properties, as well as due diligence, title assessment, contract drafting and permit proceedings. Sergio has contributed to the development of regulatory frameworks and advised on binational Argentina-Chile mining and infrastructure projects. He was retained by the UN in 2002 for mining promotional tools and has recently advised President Milei on investment incentives.

Dolores Cattaneo is a senior associate at Bruchou & Funes de Rioja, specialising in mining and environmental law. She advises corporations on environmental liability prevention, audits, due diligence, project development, administrative dossiers, public policy, and business transactions (M&A, project finance). Dolores has experience working with clients in renewable energy, petrochemicals, mining, industrial activities, ports, airports, maritime industries, agribusiness and construction. She is a member of the Argentine Institute of Mining Law. Dolores graduated from the University of Buenos Aires Law School in 2014, completed a Postgraduate Diploma in Corporate Law from the Universidad Católica Argentina in 2016, and has accomplished a Master's in Environmental Management at the Instituto Tecnológico de Buenos Aires.

Bruchou & Funes de Rioja

Ing. Enrique Butty 275
12th floor
C1001AFA
Buenos Aires
Argentina

Tel: +54 115 171 2300
Email: estudio@bruchoufunes.com
Web: bruchoufunes.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

With the huge, unexplored mining potential and the geological fact that it shares the Andean mountain chain with Chile (with two-thirds within Argentine territory and with topography that facilitates access and building of infrastructure), Argentina remains as one of the most interesting destinations regarding mining investments (especially within certain Argentine provinces with very clear pro-mining policies and culture). There are several exploration projects that are very close to achieving feasibility. There is also a large number of prospects that have shown good results in exploration.

The price of Argentinean mining assets is low in comparison to similar assets located in other parts of the world. To add to this, Argentina's democratic and federal constitutional system has continued in stability for more than 30 years, despite periods of political and economic crisis.

The mining legal regime is solid and stable, awarding strong rights to owners of mining concessions. Mining exploitation concessions have perpetual duration and mining activity is considered to be of public interest, meaning that its development has priority over other activities that may be developed in the same area, except for public services. There is a general prohibition by the state to conduct exploitation activities on its own.

There is also a promotional regime for the mining industry that grants a 30-year tax stability for new or for expansions of existing mines, among other benefits (pursuant to Mining Investment Law). All provinces have adhered to this regime. There is also a new promotional Regime under Law 27,742 referred to as RIGI (Incentive Regime for Large Investments), which aims to generate incentives for Large and Long-Term Investments (including mining, among other sectors), solving for projects that qualify under such regime many of the problems that investors where expecting Argentina to overcome in connection with reducing tax burden, limiting the sort of restrictions for outflows and inflows of funds that Central Bank may impose, granting stronger stability and swift access to international arbitration.

In general, there are no conflicts with indigenous communities in areas where mineral resources are located; however, it should be noted that obtaining a social licence requires more engagement than before and has gradually increasing standards that have to be met, which is further reflected in the legislation issued by some provinces in recent years. Also, a few provinces have in force regulations banning certain methodologies of mining (open pit, use of cyanide) or establishing zones within their territories where mining is restricted.

1.2 Legal System and Sources of Mining Law

Argentina is a federal country and a civil law jurisdiction.

In addition to general corporate, labour, regulatory and tax rules that are generally applicable to all industries in Argentina, the main legal rules regulating the mining industry arise from the following statutes:

- the federal constitution;
- the Mining Treaty between Argentina and Chile;
- the Federal Mining Code (FMC);
- Law 24,585 (specific environmental title for mining included in the FMC);

- the Minimum Environmental Protection Standards Legislation, enacted by Federal Congress and applicable in all Argentine territory;
- Law 24,196 (promotional legal regime to which all of the Provinces have adhered – the Mining Investments Law);
- provincial and municipal regulations; and
- Law 27,742 Title VII enacting RIGI (Incentive Regime for Large Investments).

Argentina is a federal country with a federal government, 23 provinces and an autonomous city. Each province has its respective constitution and government. The general rule under the national constitution is that provinces shall retain all powers not delegated upon the federal government.

The FMC regulates the rights, obligations and substantial procedures for the acquisition, exploration, exploitation and termination of mining rights and properties, and is applicable all through the country and is enforced by provincial or federal authorities, depending on the jurisdiction (or federal territory) where the deposits are located.

Each province retains the power to regulate and enact local procedures, such as passing, thus further regulating the FMC locally at the provincial level. Moreover, provinces may have their own Provincial Mining Procedural Code (Procedural Code), which further regulates the FMC in each provincial territory.

1.3 Ownership of Mineral Resources

According to the Argentine constitution, provinces are the owners of natural resources located in their respective territories.

Generally, mining rights and concessions are granted to private parties who hold title to such rights and mining concessions, and explore, exploit and develop them.

As an exception, state-owned companies may hold mining rights (in reserved areas) but are bound to grant them to third private parties for exploitation.

See **1.5 Nature of Mineral Rights**.

1.4 Role of the State in Mining Law and Regulations

With respect to deposits located in provincial territories, each province is in charge of enforcing the FMC, the respective Procedural Code and all environmental legislation. The enforcement of the FMC and environmental rules falls to the federal authorities only when deposits are located in a territory that is subject to federal jurisdiction. Federal authorities are also involved where there is an interprovincial environmental impact or effect involving more than one province for purposes of environmental permitting.

Most of the Argentine provinces have entrusted the enforcement of the FMC to different branches within their executive powers; only a few provinces have entrusted this enforcement to the judicial branch. Some provinces have decided to entrust the enforcement of environmental rules that apply to mining to the appointed Mining Authority, while others have entrusted it to the Provincial Environmental Authority (which is separate from the agency in charge of mining).

The federal government articulates the main national mining policies, and co-ordinates those policies with the provinces.

The Federal Mining Secretary is the competent enforcement authority of the Mining Investments Law, which includes a promotional investment regime for mining, to which all of the Argentine provinces have adhered.

The Federal Economy Minister is in charge of applying RIGI (Incentive Regime for Large Investments).

1.5 Nature of Mineral Rights

Minerals are divided into three different categories, based on their importance and value and how they appear in nature. For minerals qualifying under the first and second categories, the underground mining rights and properties constitute a separate and different right from the surface land property. Accordingly, the mining right- or concession-holder may not be the same person as the one owning the surface land.

Type of Minerals

Each category has different rules for the acquisition of mining rights.

- First-category minerals (precious metals and stones and valuable minerals, such as potassium, gold and silver) are granted to private concessionaires for exploration or exploitation under the "first in time, first in right principle", and can be exploited by private parties only under a legal concession granted by the competent authority.
- Second-category minerals (metals not included in the first category and other minerals) are subdivided into two different subcategories: the first one is granted through direct concession to third parties, but the surface-owner has a preference to acquire; the second subcategory is a general concession granted to the public in general and of common use.
- Third-category minerals (mainly minerals used for construction – quarries) in principle are not subject to concession but rather owned by the surface land-owner.

Mines

Mines of the first and second category of minerals are considered, by the FMC, to be real estate separate from the surface property above them. Minerals of both categories constitute underground property, subject to mining legal concession. They are granted to private third parties through a direct legal concession. Minerals are granted through public bid only as an exception (for example when the concession is owned by a provincial, state-owned company through a reserved area).

Third-category minerals constitute the same property as the surface land and in principle are not subject to concession, but rather are directly owned by the owner of the surface land.

Owners

The owner of a mining concession owns all the minerals included in the first and second categories.

State-owned companies holding mining rights must in principle grant them to private third parties for exploitation. In these cases, a bidding process is usually carried out in order to enter into an agreement between the private third party and the state-owned company. This agreement shall contain the terms and conditions for the private party to conduct specific activities (ie, exploration/exploitation activities), among other things.

1.6 Granting of Mineral Rights

Private persons can obtain the exclusive right to explore and exploit minerals via permits and

concessions from the respective provincial mining authorities, under the applicable rules of the FMC. Exceptionally, exploration or exploitation rights may be obtained through contracts executed with state-owned companies holding mining properties.

Types of Mineral Rights According to the Federal Mining Code

Exploration permit or cateo

Prior to conducting prospection and/or exploration activities, it is advisable that an exploration permit (*cateo*) be obtained. An environmental permit must be obtained in order to conduct the exploration works. Although discoveries as a result of exploration activities without an exploration permit can occur (provided any such exploration is conducted in an area free of registered mining rights), thus making the exploration permit not always a material requirement, doing so is not advisable and may lead to conflict with other registered holders of mining rights and surface landowners, resulting in significant fines and potential criminal accusations.

A *cateo* is an exclusive exploration permit granted by the Mining Authority for a certain period, covering a specific area. During its validity term, the *cateo* gives the concessionaire the exclusive right to conduct exploration activities in the defined exploration area, and exclusivity to declare discoveries in such area. An important aspect of being able to perform exploration activities allowed under a permit is the ability to maintain the exploration permit in good standing.

The size of a *cateo* is measured in units of 500 hectares (has), which is the minimum size of a *cateo* the maximum size is 20 units (10,000 has). No single person or entity (nor its agents) can hold more than 20*cateos* or more than 400 units (200,000 has) per province.

A *cateo* of one unit has a duration of 150 days. For each additional unit, the overall duration is increased by 50 additional days. *Cateos* exceeding four units in size must be periodically reduced in size. Once 300 days have elapsed, 50% of the area in excess of four units must be relinquished. After 700 days, 50% of the remaining area in excess of four units must be relinquished. The application for relinquishment must show the co-ordinates of the area being kept by the applicant.

The steps to be taken to obtain a *cateo* can mainly be summarised as follows:

- application and payment of canon (exploration fee);
- Graphic Register certification that the area is available;
- registration of the application;
- publication of the application and notice to the surface owner; and
- granting of the *cateo* to the applicant.

The *cateo* application filed first in time with the Mining Authority gives the applicant priority over third parties claiming permits for the same areas. Discoveries made in a *cate* by third parties is not allowed and would only benefit the holder of the *cateo*.

The *cateo* permit does not allow the conducting of exploitation activities, and for this purpose a registered discovery claim is required.

Exploitation Permit (Registered Discovery Claims and Mining Concessions)

In order to be able to conduct mining exploitation activities, a discovery claim needs to be

registered with the Mining Authority. Claim of a discovery for this discovery registration is the initial step for acquiring and owning a mining concession, which has multiple stages and requirements. Nevertheless, the mining concessionaire has legal title to conduct exploitation activities from the registration of the discovery claim (this is without prejudice to the additional environmental permits required to conduct such activities).

Irrespective of the legal title to conduct exploitation activities, these activities can only be legally deployed and conducted after obtaining the environmental approval for the exploitation stage.

Steps for obtaining a mining concession

The sequence of actions to be taken in order to obtain a mining concession may be summarised as follows:

- filing of a discovery claim (where the date and time of the claim are registered and a sequential number is assigned to the submission; there is no need for a pre-existing exploration permit to be in place);
- a Graphic Register certification that the area is available;
- registration of the discovery claim/granting of the mining concession;
- publication of the registration;
- performance of statutory works (Labour Legal), claim of *pertenencias* and survey of the land by the interested party; and
- granting of mining units (one or more *pertenencias* – see below) to the applicant (equivalent to a property title).

Written applications (discovery claims) must be filed with the Mining Authority in order to obtain the mining concessions, and give the applicant priority over third parties claiming mining rights in the same area, if the applications concerned do not overlap with other mining rights previously granted or applied for.

The discoverer must submit a sample of the mineral discovered, together with the discovery claim. The discoverer must also indicate by Gauss Kruger co-ordinates an area not larger than twice the maximum size of the mining concession, within which the discoverer will perform the exploration works to confirm the discovery. The area must be regular, except as affected by pre-existing claims or surface obstacles, and will remain unavailable to third parties until legal survey approval takes place.

Pertenencias

First and second-category mineral mines are granted in the form of a concession to private individuals or companies in units called *pertenencias* (one *pertenencia* is the minimum non-dividable exploitation area). Under the FMC, the mining concession vests the concessionaire with a property title over the mine (including the right to explore and exploit in the concession area).

After confirmation from the Graphic Register Department that the area described in the application is not subject to previously submitted applications or registered mining rights, the Authority registers the discovery claim.

The registration of the discovery claim is published, and opposition by third parties may be filed against it.

From the registration of the discovery claim, the mining concessionaire has 100 days in order to complete certain statutory works, under penalty of forfeiture of the registered mine.

Within 30 days of the lapsing of the 100-day term, the mining concessionaire needs to file with the Mining Authority a request for the granting of *pertenencias* and a request for the authority to conduct the survey of the area. Failure to meet this obligation in time results in the forfeiture of the mine.

The *pertenencia* is the unit of concession of a mine within whose limits the miner can carry out exploitation works. It consists of a solid body of rectangular or square base (unless the conditions of the land make such a form impossible) and indefinite depth. The size and number of *pertenencias* a discoverer can apply for at the time the measurement and demarcation are requested depends on the type of mineral deposit discovered (lode ore or disseminated ore) and whether the discoverer is a company or an individual.

After the survey request, the survey is conducted and the requested units are granted according to law. Following the survey and pertenencias petition, the Mining Authority must issue a decision thereon. Both the petition and the resolution are published in the provincial Official Gazette. After that, if no third parties file an opposition, the survey and demarcation of the *pertenencias* is carried out. Finally, the Mining Authority registers it in the Registry Book, and a copy is given to the interested party as title to that mining property.

Obligations for Maintaining Title of Mining Concessions

Mining concessions are, by law, granted in perpetuity (not subject to a validity term), under certain conditions and obligations. The violation of those conditions may lead to the forfeiture and revocation of the mining title, making the mine become vacant.

The following obligations are mandatory in order to maintain the validity of the exploitation title in good standing.

Fulfilment of certain legally required works at the mine – Statutory Works (minimum mine works) and Survey (mensura)

Statutory Works must be performed within 100 days of the day following the discovery registration. Lack of performance of Statutory Works may result in the termination of the mining claim registration by the Mining Authority.

A Survey (including claim of *pertenencias*) must be requested within 30 days of the lapsing of the term for performing Statutory Works. Non-compliance with that obligation may cause the Mining Authority arbitrarily to locate the *pertenencias* and, in this case, the rights of the discoverer are forfeited and the mine is registered as vacant.

Failure to evidence performance of Statutory Works or to file the claim of pertenencias and the Survey in due time may result in the forfeiture of the concession.

Canon payment to the province (exploitation fees payable per mine and calculated on the type and amount of pertenencias of each mine during its life)

The canon is a fee charged on the mining concession, payable from three years after the date on which the mine is granted/registered, on an annual basis. Law issued by National Congress fixes the annual canon per *pertenencia*. Generally, the annual canon is paid in advance in two equal instalments on June 30 and December 31 of every year.

The mining concession automatically lapses if the canon is not paid, at the latest, during the

two months following the June 30 deadline. The Mining Authority shall formally notify that circumstance to the applicant, and the latter is allowed to cure the lapsing of the concession by paying the canon, plus fines, within a 45-day term from the date on which the relevant resolution by the Mining Authority is notified to the applicant. If the applicant does not cure the situation in that 45-day term, the lapsing is then confirmed with no possible appeal, and the mine is registered as vacant, thus allowing any third party to apply for it.

Difference between "canon" and "legal royalties"

"Canon" and "legal royalties" are two different obligations. The canon is a fixed fee paid per *pertenencia* to the local mining authority for owning mining concessions, while legal royalties are the mandatory mining royalties that should be paid to the province in connection with effective production (in addition to any contractual royalties that may exist in each particular case).

Submission and fulfilment of a plan containing minimum investment requirements ("Investment Plan")

The FMC formally requires an Investment Plan to be submitted for each mining property within one year of the date on which the Survey is requested, regardless of whether that Survey is actually made. The FMC does not require a complete plan, just a simple estimation of the plan and its disbursements. This estimation, therefore, may only provide an approximate idea of the investments required.

The investments should be capital investments. Disbursements for wages and expenses for technical assistance conducive to the workings and exploitation of the mine can be included.

The concession-holder may, from time to time, introduce amendments to the investments estimated in the Investment Plan by rendering an account thereof to the Mining Authority, provided that the anticipated aggregate investment is not reduced through such amendments.

The Investment Plan cannot be less than 300 times the canon amount, and the estimated investments committed therein must be effectively made within five years of the date on which the Investment Plan is submitted.

In addition, in each of the first two years of the stipulated term, the amount of the investment per year should not be lower than 20% of the aggregate estimated amount at the time of submission of the Investment Plan. The foregoing tends to avoid concentrating the investments in the last year, following several years of inactivity. Upon an investment of 40% during the first two years, the balance may be completed during the remaining term of the period.

Failure to submit and perform the Investment Plan in a timely manner may result in the loss of the mine.

Avoid abandonment of the works and Mining Activity (the "Lack of Works")

When the mine has been inactive for more than four years, the Mining Authority may demand filing of an activation or reactivation project, adjustable to the production capacity of the concession, the characteristics of the area, the available means of transport, the demand for products and the existence of farming equipment. A mine is deemed to have been inactive when no exploration, preparation or production tasks have been regularly conducted in it during the above-mentioned term. The demand shall be met within six months, under penalty that

the concessionaire's right may lapse. Once the project is filed, the concessionaire shall comply with each of its stages in the terms respectively provided for, which may not exceed five years taken together, under penalty that the concessionaire's right may lapse, which penalty is applicable upon the first default.

1.7 Mining: Security of Tenure

Mining activity is considered by law to be of public utility and generally has priority over activities conducted on the surface land (with a few exceptions).

Mining exploitation concessions are granted in perpetuity, but may expire as a consequence of lack of fulfilment of certain work and investment obligations to be performed in order to keep title in good standing. Please see **1.6 Granting of Mineral Rights**.

Assignment of mining rights and properties acquired through direct concession under the FMC system are not subject to prior approvals by the government.

Oil and gas resources and third category minerals are not part of the mining concession. Ownership thereof is subject to specific regulations. Also, there are specific rules to deal with overlapping situations.

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

2.1 Environmental Protection and Licensing of Mining Projects

In addition to the main mining-related permits referred to, the development of mining projects requires an environmental permit and different sorts of sectorial permits for performance of prospection, exploration, construction and/or exploitation activities, which should be requested and are granted mainly at the provincial level (nature and scope vary on a case-by-case basis).

Environmental Rules Applicable to Mining Activity

The main environmental regulations applicable to the mining industry are included in the FMC. In addition, the following environmental regulations are also applicable to mining activity: (i) general environmental rules applicable to other industries; (ii) Federal Minimum Environmental Standards Legislation; (iii) supplementary regulations issued by the provinces.

The two most relevant parts of the Minimum Environmental Standards Legislation for the mining industry are the General Environmental Law 25,675 (the "General Environmental Law") and the National Minimum Environmental Protection Standard Law for the Protection of Glaciers and Periglacial Environment, Federal Law No 26,639 (the "Glacier Protection Law ").

Furthermore, some specific Federal Environmental regulations apply when there is an interjurisdictional activity. The competent authority in charge of applying such regulations is the Federal Environmental Authority.

Glacier Protections

The Glacier Protection Law protects certain glacial and periglacial geoforms that have a proven hydraulic function as water basin suppliers or water reserves. This mainly includes uncovered glaciers, covered glaciers and rock glaciers with hydraulic functions.

Direct intervention in the protected geoforms by new mining projects (those that started after

the enactment of the Glacier Protection Law) is forbidden. Projects and activities existing prior to the enactment of the Glacier Protection Law need to undergo a new environmental audit (re-evaluation) to confirm that they do not significantly affect those protected geoforms. A Glacier Inventory was completed and published in 2018.

Environmental Provincial Regulations Affecting Mining Development in Certain Provinces

Some provinces (considered to be anti-mining) have issued local environmental legislation forbidding certain mining methodologies (such as open-pit) and the use of certain hazardous substances for mining processes (such as mercury or cyanide). For that reason, it is very important to review the local environmental standards in each province before deciding on the acquisition and/or development of any mining activity.

Environmental Competent Authorities

National Congress sometimes enacts legislation related to aspects that are not vested upon the federal government nor delegated by provinces and are therefore not applicable in the province unless the province adheres thereto. Such legislation generally contains an express invitation for provincial governments to adhere thereto (adhesion is not mandatory for provinces). In those cases, the competent authority in charge of applying such regulations is the Provincial Authority, which can also enact its own supplementary rules. The National Hazardous Waste Law is an example of both, since it applies to interprovincial activities but also contains an invitation for provinces to adhere thereto.

An important source of environmental legislation, as explained further below, is the local or provincial environmental regulations, issued in exercise of non-delegated powers, or for supplementing the Minimum Environmental Standards Legislation, the FMC and/or other federal legislation applicable in the respective province (eg, federal legislation to which the province has adhered).

Furthermore, in some cases, and based on the Provincial Constitution, municipalities are empowered to issue certain types of environmental regulations or even participate in the provincial environmental impact assessment process.

Provincial authorities

Through interprovincial bodies or councils, provinces may agree on certain standardised environmental principles that are applicable in all provinces that adhere to these sorts of interprovincial environmental agreements.

An example of this is the COFEMIN Supplementary Regulation (Bariloche 1996), which consists of a regulation that further regulates the environmental chapter included in the FMC and was adopted as a supplementary regulation by different provinces. Such regulations contain a description of the content that a mining Environmental Impact Report (EIR) for the prospection, exploration and exploitation stages should include.

The treatment, decision and control of environmental matters in each provincial jurisdiction are the jurisdiction of local/provincial authorities, without any participation from national authorities. The only exceptions to this rule are interjurisdictional or cross-border issues, and regulations arising from treaties.

Accordingly, the rule is that provincial authorities are the competent authorities for enforcing envi-

ronmental regulations arising from the Federal Minimum Environmental Standards Legislation and the FMC, and of course from any other provincial environmental legislation.

Permits and Insurances

After obtaining the relevant permits, miners may freely exploit their mining concessions, without being subject to rules other than those pertaining to their safety, police and environmental protection. The protection of the environment and the preservation of the natural and cultural heritage in the mining activity field shall be subject to the provisions of the FMC and other applicable environmental regulations. Once the environmental permit is obtained through the pertinent approval of the submitted environmental impact report, the mining concessionaire needs to update that permit at least once every two years.

The General Environmental Law establishes that the environmental evaluation process should include a public participation mechanism prior to the issuance of permits for activities that could generate a negative impact. Moreover, the General Environmental Law also establishes that any person engaged in activities that may endanger the environment, the ecosystems and their elements, shall take out insurance with adequate coverage to ensure the funding of restoration activities intended to repair any damages caused; in addition, depending on the case and possibilities available, it may contribute to an environmental restoration fund allowing the implementation of remedial actions.

2.2 Impact of Environmentally Protected Areas on Mining

There are certain protected areas and reserves that forbid the performance of mining activities, according to their applicable legal framework and/or management plans and rules (eg, certain glaciers, national and provincial parks, etc). In these areas, mining is usually prohibited.

2.3 Impact of Community Relations on Mining Projects

Public participation is mandatory during the procedure to approve the environmental impact assessment of mining projects (according to the Federal Environmental Law No 25,675 and similar provincial legislation). Moreover, the environmental impact report must consider the project's social impacts and propose mitigation measures.

As regards indigenous people, a prior consultation must be carried out in certain cases (under International Labor Organization Convention No 169 and other regulations).

2.4 Prior and Informed Consultation on Mining Projects

The General Environmental Law establishes that the provinces shall institutionalise a consultation procedure or public hearing as a mandatory stage to authorise those activities that may have significant adverse effects on the environment. The instance of citizen participation should be carried out prior to the authorisation granted to a natural resource exploitation project (such as a mining project).

This instance of citizen participation is usually fulfilled in the context of the analysis by the government of an Environmental and Social Impact Assessment (ESIA) prior to the granting of any authorisation. Its omission, or its late compliance, could imply the nullity of the authorisation.

The ESIA provides an appropriate framework for the development of citizen participation, since its purpose is to evaluate the possible impact that a project could have on a specific commu-

nity. The public consultation is the instance at which the authorities and those who will carry out the project must inform the community of all the relevant aspects of the project.

Citizens' involvement shall be ensured mainly during the environmental impact assessment processes. Previous public consultation procedures are the responsibility of the competent authority, prior to the issuance of the resolution deciding on the approval of the ESIA. The outcome of the consultation procedure is not binding, but it has to be duly addressed by the permit.

2.5 Impact of Specially Protected Communities on Mining Projects

According to the Argentine constitution and Convention 169, indigenous communities have the right to be recognised by the Authorities (at federal and provincial level) as entities with legal status. This allows them to act as entities with collective rights, such as community ownership of lands they inhabit and property of the natural resources existing there.

When recognising the legal status of indigenous communities, they are registered in a special registry along with other relevant information such as the structure of their organisation, their authorities, their location and area of interest, and the appropriate consultation procedure that they require in order to give them proper participation in accordance with their own traditions. However, the obligation to grant legal status to an indigenous community when it is requested does not imply that indigenous communities have an obligation to make such a request. Convention 169 and many federal and provincial regulations determine that it is enough for individuals to consider themselves as indigenous for authorities to recognise their ethnic identity and the lands on which they live. National and some Provincial Authorities have issued regulations related to the implementation of Convention 169.

In Argentina, and depending on the province, the instance of citizen participation and the instance of indigenous communities' participation may be held separately or carried out simultaneously. It is worth mentioning that, in most cases, it is not necessary that the indigenous communities give their consent to a mining project, since this is restricted to some very exceptional cases specifically identified in Section 16 of Convention 169 (when relocation of the indigenous community is required).

Opposition by indigenous communities to the performance of any activity in a public consultation process is not binding on the authorities. In any case, the validity and legality of the approval act will depend on how an authority has responded to the observations and questions of the indigenous communities.

2.6 Community Development Agreement for Mining Projects

It is not usual to have community agreements for the development of mining projects in Argentina. As a general rule, it is not mandatory to enter into such agreements and these have been entered into with local communities and/or municipalities only in certain cases. It is likely that the negotiation and execution of these agreements will become common practice in the future. In the last few years, local authorities have been negotiating and executing with mining companies' agreements focused mainly on the contribution to public infrastructure.

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

Several Environmental, Social and Governance (ESG) guidelines applicable to mining activity have recently been introduced in Argentina. The Federal Government has lately issued (i) guidelines of good practices for mine closure, (ii) guidelines for mine closure with financial guarantees, (iii) guidelines for improvement programmes for mining suppliers, and (iv) guidelines for rational management of mining waste. Also, Argentine regulations include provisions focused on ESG matters, which include consideration of social impacts in the context of environmental impact evaluation of projects, rational use of natural resources, and requirements of minimum local hiring and local procurement, among others.

2.8 Illegal Mining

Illegal mining is not an issue in Argentina.

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

Mining projects sometimes face social opposition in Argentina, most often related to environmental concerns (mainly, regarding water). It is recommended that community relations be properly handled from the very beginning, to prevent the conflict from escalating. A key tactic is allowing public participation and the early release of public information in a clear and plain manner.

Frequently, when these matters are properly addressed, mining projects are developed as planned. However, there are some examples in Argentina in which social opposition was the main drawback on the development of a project (eg, Chilecito and Famatina, La Rioja and El Desquite, Chubut).

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

3.1 Climate Change Effects

Currently, there are no relevant nationwide climate change initiatives that meaningfully impact the mining industry in Argentina.

3.2 Climate Change Legislation and Proposals Related to Mining

No climate change legislation related specifically to mining has been passed nationwide, nor is any currently being discussed. However, it is relevant to mention that Argentina has approved several regulations regarding climate change – eg, the United Nations Framework Convention on Climate Change (Federal Law No 24,295), the Kyoto Protocol to the UNFCCC (Federal Law No 25,438), the Doha Amendment to the Kyoto Protocol (Federal Law No 27,137) and the Paris Agreement (Federal Law No 27,270). Moreover, the Climate Change Federal Cabinet was created in 2016 (Federal Decree No 891/2016).

On 20 November 2019, the Federal Congress passed Law 27,520 setting up the minimum standards for the adaptation to and mitigation of climate change.

During 2020, the Federal Congress was active in discussing bills related to protection of wetlands, which may eventually impact the mining industry.

On 24 September 2020, the Federal Congress passed Law 27.566 approving the “Regional Agreement on Access to Information, Public

Participation and Justice in Environmental Matters in Latin America and the Caribbean", known as the Escazú Agreement. It guarantees the right of all persons to have access to information in a timely and appropriate manner, to participate significantly in making the decisions that affect their lives and the environment, and to access justice when those rights have been infringed. The Escazú Agreement has started to be considered and applied by the courts.

3.3 Sustainable Development Initiatives Related to Mining

There are several sustainable development initiatives both at the federal and provincial level. They are mostly related to energy efficiency, renewable energy, use of clean technology, improvement of public infrastructure, reduction of the carbon footprint, and the use of good practices on agribusiness, among others. For instance, it could be highlighted that, due to the approval of the 2030 Agenda for Sustainable Development, the federal government has adopted eight goals and 100 standards, which, among other matters, refer to the need to mitigate climate change and its effects.

3.4 Energy-Transition Minerals

At the federal level, energy transition minerals are subject to the same concession regime arising from the FMC that applies to first and second category minerals which are granted to the private sector for development. Some provinces such as Jujuy have issued certain specific rules for provincial state-owned companies to have a mandatory interest in companies developing Lithium.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

In Argentina, taxes are levied at three different levels by the following authorities: the federal government, the provinces (or states) and the municipalities (or counties).

The main Argentine taxes applicable to individuals, companies, branches of non-resident companies and permanent establishments are as follows.

Federal Taxes

Income tax

The income tax law (ITL) applies to all income from Argentine and/or foreign sources obtained by Argentine residents (on a worldwide basis). Non-Argentine residents are taxed exclusively on their Argentine source income. Permanent establishments are considered as tax residents and taxed accordingly.

The Incentive Regime for Large Investments (RIGI) provides certain income tax (IT) incentives for mining projects qualifying under the regime's provisions, which encompass a reduced corporate IT rate, accelerated depreciation of significant assets, inflation adjustments for IT purposes and reduced tax rate for dividend distributions, among others.

Value-added tax

Value-added tax (VAT) is levied on the sales of tangible assets in Argentina, on the performance of works and services in general within Argentine territory, and on definitive imports of goods. Under certain circumstances, VAT is also payable on services rendered from abroad which are effectively used or exploited in Argentina, and on

leases of real estate (with some exemptions). In addition, digital services rendered from abroad to Argentine tax residents are taxed regardless of the tax status of the recipient of the services.

Regarding exports of goods and services, it is considered that they are subject to a 0% VAT rate as Argentine exporters are allowed to recover VAT paid to their suppliers for the concepts used to manufacture exported goods or to conduct exported services.

The general VAT rate is assessed at 21%, although a reduced rate of 10.5% or an increased rate of 27% could be applicable in certain cases.

RIGI provides certain VAT incentives for mining projects, including the issuance of input credit certificates for the VAT amounts invoiced to the SPVs that qualify under the promotional regime.

Personal assets tax

Personal assets tax is imposed on all existing assets held by Argentine resident individuals and undivided estates by December 31st of each year. Foreign individuals and undivided estates located abroad are subject to this tax exclusively on assets located in Argentina.

Argentine corporate entities governed by the General Corporate Law No 19,550 are required to pay personal assets tax corresponding to their shareholders that are Argentine-resident individuals and undivided estates or foreign resident individuals or corporations, for the tax corresponding to their shares as of December 31st each year. The general rate is 0.50% and is levied on the proportional net worth value of the shares held by December 31st. Pursuant to Law 27,743, those micro, small and medium-sized entities that qualify as "compliant taxpayers" are enabled to apply a reduced 0.375% personal assets tax rate for periods 2023, 2024 and 2025.

Pursuant to the Personal Assets Tax Law, the Argentine company is entitled to seek reimbursement of the paid tax from the applicable local individuals and/or foreign shareholders, even by withholding those amounts from any dividend distribution.

Tax on credits and debits in Argentine bank accounts

Tax on bank credits and debits is levied on any credit and debit in an Argentine bank account and upon other transactions which, due to their special nature and characteristics, are similar or could be used in substitution for a bank account. The general tax rate applicable is equal to 0.6% for each credit, and 0.6% for each debit. There are specific tax rates and tax exemptions applicable for certain cases.

Taxpayers may credit a portion of the tax paid against their IT liability and may deduct the remaining amount from their IT base to the extent certain conditions are met.

Excise tax

Excise tax (or internal tax) is levied on producers, manufacturers or importers of goods expressly designated by the law (eg, insurance, tobacco, spirits, soft drinks, certain automobiles, motors, wine, etc), and applies to only one stage of production. The applicable rates vary according to the goods concerned and, in general, are imposed on the sales price.

Import and export duties and taxes

The definitive importation of goods is generally subject to the payment of import duties and other taxes (unless any exception applies, such as the one stated in the Mining Investments Law

(MIL) for import duties). The import duty rate varies, depending on the type of good imported. Also, until 31 December 2024, definitive imports are levied with a 3% statistics fee, subject to certain caps (unless any exception applies, such as the one stated in the MIL for import duties). Financial costs associated with imports are VAT (10.5% or 21%) and payments in advance of some taxes (typically, VAT, IT and turnover tax on goods other than fixed assets). These costs are generally recovered against domestic sales or refunded against exports.

Export duties are assessed according to the tariff number of the goods being exported. The basis is FOB value. Export duties are applicable to some products.

RIGI includes a series of tax incentives that materially reduce the total tax burden for mining projects qualifying under such regime.

Provincial Taxes

Turnover tax

Turnover tax (*Impuesto sobre los Ingresos Brutos*), which is a tax on gross revenue imposed at the provincial/local level, is the most relevant tax within the general Argentine Provincial Tax system; it is also levied in the City of Buenos Aires. This tax is levied on all kinds of industrial or commercial activities carried out on a habitual basis and for consideration. The tax base comprises gross revenue (or the total amount received in cash, in kind or as a service) accrued from the taxpayer's commercial activity, and its tax rate varies, depending on the activity and the jurisdiction involved. Exemptions are available for many industrial activities, subject to certain conditions, as a result of a tax agreement entered into between the federal government and the provinces.

Stamp tax

Stamp tax is levied by Argentine provinces and the City of Buenos Aires on acts and documents evidencing transactions for consideration, such as contracts, acknowledgment of debts, incorporation of companies, promissory notes, corporate capital increases, transfer of real estate, and monetary operations, among others. The applicable rates vary according to the transaction and the jurisdiction involved. Some provinces have repealed this tax on financial, insurance and other kind of transactions related to agricultural, industrial, mining and construction activities to the extent certain conditions are met. Pursuant to Supreme Court case law, agreements celebrated through offer letters that comply with certain requirements do not trigger stamp tax.

Mining royalties

Mining royalties are mandatory payments that must be made to the province in connection with effective production (in addition to any contractual royalties that may exist in each particular case). The maximum royalty payable to a province that has adhered to the MIL should not exceed 3% of the "mine-head value" of the mineral extracted. Provinces may increase their royalties up to 5% of the mine-head value of the mineral extracted only after adhering to Article 22 of Law 24,196 (as amended by Law 27,743) and only for mining projects that had not started construction of the exploitation phase prior to 8 July 2024.

In some cases, the provinces negotiate and execute agreements with the mining companies for the purposes of setting up specific methods of calculation and/or anticipated payments of royalties.

Municipal Taxes

Duties and fees on municipal taxes are grouped into various categories, the configuration and amount of which depend on the jurisdiction involved.

Double-Tax Treaties

Argentina has treaties to avoid double taxation in force with the following countries: Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Denmark, Finland, France (which amendment protocol is pending ratification), Germany, Italy, Mexico, Netherlands, Norway, Qatar, Russia, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates, the United Kingdom and Uruguay (through an information exchange treaty that contains clauses for the avoidance of double taxation). Agreements entered into with Japan, Luxembourg and Austria are not yet in force as of the date of this document, pending compliance of certain requirements under the corresponding domestic laws.

Through the application of these treaties, a non-resident, among other benefits, may be able to considerably reduce IT withheld at source. In general terms, treaties to avoid double taxation follow the OECD and UN Model Convention guidelines (except the treaty with Bolivia, which follows the Andean Model, and the treaty with Uruguay which combines information exchange provisions with clauses for the avoidance of double taxation).

4.2 Tax Incentives for Mining Investors and Projects

The promotional legislation applicable to mining investment in Argentina includes the following benefits, arising from the MIL:

- mining projects are granted with tax and foreign-exchange regulations stability for a term of 30 years at national, provincial and municipal level;
- the amounts invested in prospecting, exploration and feasibility studies can be deducted from income tax purposes (double deduction), in addition to the deduction allowed under the ITL;
- the costs of any exploration project may be deducted against the profits resulting from another successful project;
- early return of VAT tax credits resulting from exploration works;
- accelerated amortisation of capital goods, with a method to allocate accelerated amortisation intended to prevent losses from becoming statute-barred;
- assets imported to be included in the mining production process are duty free (import certificate required); and
- cap on royalties payable to the provincial government (3% of the production value over pithead value).

It is also worth stating that some provinces have created mechanisms to have a more direct participation in the exploitation of certain minerals that have been considered to be strategic. Such is the case of lithium in Jujuy, which declared lithium to be a strategic resource. Provincial state-owned mining companies have been created to hold mining rights, with the purpose of developing them in association with private investors.

Under Title VII of Law 27,742, the RIGI regime was created (Incentive Regime for Large Investments), which includes mining and which provides for projects qualifying in the regime a relevant reduction of federal tax burden, a limitation on the type of FX regulations restrictions that the central bank may impose, a strong 30-year regulatory, tax and customs duties stability

regime, and immediate access to international arbitration in case of violation of the regime by the government.

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

Argentina law provides several types of legal entities by means of which business activities may be carried out in Argentina. The corporation (*Sociedad Anónima* or SA), the wholly owned corporation (*Sociedad Anónima Unipersonal* or SAU) and the limited liability company (*Sociedad de Responsabilidad Limitada* or SRL) are the most common types of business organisations used as investment vehicles. Act No 27,349 issued on 12 April 2017 created a new type of legal entity, the simplified corporation (*Sociedad por Acciones Simplificada* or SAS).

Gains derived from the transfer of SA, SAU and SAS shares, SRL quotas and other securities are subject to income tax, regardless of the type of person who obtains the income (unless an exemption applies).

Capital Gains

For tax periods starting on 1 January 2021 inclusive, capital gains obtained by Argentine corporate entities derived from the sale, exchange or other disposition of shares are subject to a progressive income tax rate (from 25% to 35%, depending on the accumulated taxable net income) according to the amendments introduced by Law No 27,630 to the ITL. In certain cases, the cost of acquisition of the shares may be updated using a specific inflation index.

Income obtained by Argentine resident individuals and undivided estates from the sale of shares is subject to income tax at a 15% rate on net income, unless the securities were traded on a stock market or have public-offering authorisation, in which case, under certain conditions, an income tax exemption applies. In certain cases, the cost of acquisition of the shares may be updated using a specific inflation index.

Capital gains obtained by Argentine resident individuals and by non-Argentine residents derived from the sale, exchange or other disposition of shares are exempt from income tax in the following cases:

- when the shares are placed through a public offering authorised by the Argentinian Securities Exchange Commission (*Comisión Nacional de Valores* or CNV); and/or
- when the shares are traded in stock markets authorised by the CNV, under segments that ensure priority of price-time and interference of offers; and/or
- when the sale, exchange or other disposition of shares is made through a tender-offer regime and/or exchange of shares authorised by the CNV.

If the exemption does not apply, the gain derived by non-Argentine residents from the disposition of shares is subject to income tax at either a 15% rate on actual net income or a 13.5% rate on the gross sales price to the extent the seller resides in, and channelled its funds through, a co-operative jurisdiction. Non-cooperative jurisdictions are those listed under Article 24 of the ITL's implementing decree.

These income tax rates may be reduced in certain scenarios, due to the application of a treaty to avoid double taxation.

The ITL also provides capital gains taxation on the indirect sale of Argentine assets to the extent certain conditions are met.

Exemptions

The exemption on the sale of Argentine shares applies only to the extent that the foreign beneficial owners reside in, and their funds come from, jurisdictions considered as co-operative for tax purposes. Non-cooperative jurisdictions are those listed under Article 24 of the ITL's implementing decree.

If the exemption does not apply because the seller resides in a non-cooperative jurisdiction or channelled its funds through a non-cooperative jurisdiction, the gain derived from the disposition of shares is subject to Argentine income tax at an effective 31.5% rate on gross income.

CFC Regulations

It should be noted that in Argentina there are Controlled Foreign Corporation (CFC) regulations by which foreign vehicles could be considered transparent for tax purposes. In this regard, the CFC legislation implemented under Act No 27,430 requires specific and detailed analysis to determine whether the Argentine resident investor should be taxed on an accrual basis, even where no dividend or profit distributions were made by the foreign-controlled vehicle.

Other Taxes

The sale of mining projects could also involve other transfer taxes, such as tax on debits and credits in Argentine bank accounts, turnover tax and stamp tax, as the case may be.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The main features for attracting investment for mining are a stable and long-lasting mining legal framework, the solid title investors can obtain over mineral deposits which have no time limit, and the promotional investment regime applicable to mining embedded both in the Mining Investment Law and under the recently enacted RIGI regime.

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

Argentine legislation welcomes foreign investments in productive and industrial activities, as well as in those areas requiring the rendering of services. The current legal framework is based upon the principle of non-discrimination among local and foreign investors, clearly evidenced by the fact that no legal authorisation is required to make a foreign investment in productive and industrial activities, foreign companies are not prevented from engaging in productive and industrial activities, and it is explicitly stipulated that foreign investors will not be subject to discrimination.

The legal framework specifically applicable to the development of mining activities in Argentina particularly favours investment, either foreign or local.

Due to the current global and local situation, important foreign exchange-control restrictions remain in place, particularly regarding outflows of funds from Argentina and proceeds from Argentine exports. However the RIGI regime provides interesting exemptions to the restrictive general rules. Moreover the current government is gradually loosening such FX restrictions.

5.3 International Treaties Related to Exploration and Mining

It is worth mentioning that Argentina has entered into Bilateral Investment Treaties (BITs) with several countries, including Australia, Austria, Canada, Chile, China, Croatia, Denmark, Fin-

land, France, Germany, Israel, Italy, Malaysia, Mexico, the Netherlands, New Zealand, Peru, Russia, Spain, Sweden, Switzerland, the United Kingdom and the USA.

Argentina also has an integration and facilitation mining treaty executed with Chile for binational mining projects that require facilitation on both sides of the Argentine-Chilean border.

5.4 Sources of Finance for Exploration, Development and Mining

The main sources of finance for exploration, development and mining are of foreign origin: primarily, financing and equity provided by foreign entities and investors. In the last few years, some local businesses have started to invest equity in small mining projects, but there are no other local sources of financing.

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

Domestic securities' markets have no role in the financing of exploration, development and mining in Argentina. There are no mining companies listed in local securities' markets. Foreign securities' markets have an important role in the development of mining activities in Argentina, since almost all of the mining investment is made by foreign investors, many of which are listed in foreign securities' markets.

5.6 Security over Mining Tenements and Related Assets

The most suitable securities available over mining tenements and related assets in the context of exploration, development and mining finance in Argentina are detailed as follows.

Mortgages

A mortgage is a right in rem constituted as security over immovable assets that continue in the control and possession of the debtor. Although mortgages are also created over other types of assets (eg, vessels and aeroplanes), they are typically created over immovable assets, including real estate, mining concessions and fixtures thereto. A mortgage provides an interest to the extent of the secured debt obligation over the real property and the fixtures thereto in respect of which the mortgage is granted. In insolvency proceedings, the mortgagee has a special preference in respect of the real property over which the mortgage is granted.

Pledges

Pledges may be divided into two categories: possessory pledges and registered pledges. Both possessory and registered pledges provide an interest to the extent of the secured debt obligation over the property in respect of which the pledge is granted. In insolvency proceedings, the pledgee has a special preference in the property over which the pledge is granted.

A possessory pledge requires that there be a displacement – actual or symbolic – of the assets over which the pledge is granted such that, when actual, the assets are removed from the possession of the debtor and placed in the control of the creditor or its agent. The displacement must take place as required by the rules regulating the transfer of ownership of a given asset. Tangible moveable property and intangible property can be pledged by means of possessory pledges. Since a displacement is required for a possessory pledge, a possessory pledge cannot be created over after-acquired property.

In contrast to a possessory pledge, a registered pledge does not require the pledged assets to

be in the secured party's possession. Moveable property, such as equipment, motor vehicles, raw materials, products and spare parts, can be subject to registered pledges. Moveable assets that are fixtures as a result of moral accession, including machinery, equipment, instruments, animals and vehicles employed within a mining concession for its development on a permanent basis, can also be subject to registered pledges. No intangible assets can be pledged by means of a registered pledge, except for trade marks.

Fideicomisos (Trusts)

Fiduciary assignments or trusts (*fideicomisos*) as security under Argentine law, are commonly used as a security arrangement in Argentina. Under a *fideicomiso* as security, all of the collateral is transferred, usually by means of a fiduciary assignment of the assets to be conveyed into the fideicomiso to a trustee (*fiduciario*) (the "Security Trustee"), which segregates the assets and holds them as fiduciary property for the designated beneficiaries. The designated beneficiaries would be the secured parties, to the extent of their interests, and the grantor, to the extent of any residual interest. Property acquired after the *fideicomiso* as security is created can be either directly acquired by the Security Trustee or incorporated from time to time into the trust by means of new assignments.

Fideicomisos may be created by private agreement under Argentine law. Should the trust assets be rights in personam (ie, contractual or legal rights), rules relating to the assignment of rights apply and the obligor must be served notice of the fiduciary assignment. In addition, any registrations or filings normally required to transfer a specific asset (eg, motor vehicles, real estate, shares and mining concessions) must be made to effect a transfer of the assets to the Security Trustee. A fiduciary assignment operates to convey the trust assets (subject to the debtor's reversionary interest) from the estate of the debtor to the trustee. As a result, no registration of the assignment is required (other than as referred to in the preceding paragraph) to perfect the trustee's interest against creditors of the debtor.

Fideicomisos as security may permit creditors to have possession of, and to continue to operate, the encumbered assets while the manner of ultimate realisation is decided without the need of judicial intervention, provided that the Security Trustee already holds the assets as fiduciary property for the benefit of the secured creditors.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Through the enactment of Law 27,742 which contains the RIGI regime (Incentive Regime for Large Investments) which includes the mining sector, Argentina has finally found the key to unlock the construction decision on many projects that were in the pipeline; particularly copper projects. The facilitation and incentives that RIGI offers has helped and will continue to help in the investment decision-making process. Projects qualifying under RIGI have a material reduction of the total tax burden with respect to the federal taxes outlined in **4.1 Mining and Exploration Duties, Royalties and Taxes** and **4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects** (please see the Argentina Trends & Developments chapter in this guide, which further explains the RIGI regime). It is foreseen that many of the large copper projects will make the submission to qualify under RIGI and make a favourable decision in connection with investing in the construction for the exploitation

stage of large copper projects. Given that Argentina is also located in the so-called lithium triangle, Argentina is expected to increase lithium exports by 50% every year.

The authors expect Argentina to go from USD3,8 million to USD15 million in the next six-to-seven years in terms of mining exports and mining investments reaching USD14MM in the next five years.

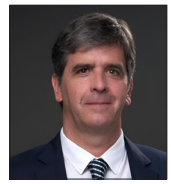
Trends and Developments

Contributed by:
Sergio D. Arbeleche and Sebastián P. Vedoya
Bruchou & Funes de Rioja

Bruchou & Funes de Rioja is a leading law firm in Argentina offering specialised, value-added legal services across more than 25 practice areas. Backed by an innovative, full-service platform, it provides sophisticated legal counsel to a wide range of industries and projects. The mining department is a leader in Argentina's legal mining sector, known for its expertise and decades of experience, and provides core legal mining advice across all project stages, from acquisition and exploration to production and closure. It has advised major global players including Barrick Gold Corporation, First Quantum Minerals, Lundin Mining, BHP and Glencore on some of Argentina's most significant and active mining projects, including Veladero mine and its expansion, the USD3.8 billion Taca Taca Project and the USD3 billion MARA Project, the Josemaría project, amongst others. Beyond client representation, the team actively helps to shape Argentina's mining regulations, contributing to frameworks like the 2024 Incentive Regime for Large Investments.

Authors

Sergio D. Arbeleche is a partner at Bruchou & Funes de Rioja and, along with Sebastián Vedoya, leads the mining department, bringing over 27 years of experience advising local and foreign companies on mining, environmental and hydrocarbon matters. His expertise spans contract law, administrative law, public international law and constitutional law. He provides strategic guidance on acquisitions, negotiations and the assignment of mining rights and properties, as well as due diligence, title assessment, contract drafting and permit proceedings. Sergio has contributed to the development of regulatory frameworks and advised on binational Argentina-Chile mining and infrastructure projects. He was retained by the UN in 2002 for mining promotional tools and has recently advised President Milei on investment incentives.



Sebastián P. Vedoya is a partner at Bruchou & Funes de Rioja and, along with Sergio Arbeleche, leads the mining department. With over 27 years of experience, Mr Vedoya advises local and foreign companies on all legal aspects of the mining industry. His expertise spans all stages of mining projects – exploration, construction, and operation – including permits. He has participated in mining project acquisitions, joint ventures, and assignments of mining rights, including due diligence, contract drafting, feasibility studies, and advising on Argentine-Chilean binational projects and mining royalties. He also contributes to regulatory drafting and defends client rights under promotional systems.

Bruchou & Funes de Rioja

Ing. Enrique Butty 275
12th floor
C1001AFA
Buenos Aires
Argentina

Tel: +54 115 171 2300
Email: estudio@bruchoufunes.com
Web: bruchoufunes.com

Introduction

In terms of issues that are currently of note in the market and are worth being considered for people or companies who wish to do business in Argentina, putting aside the material change that President Milei's pro-business administration is creating which we assume is publicly known, we are obliged to focus on the new Incentive Regime for Large-Scale Investments (RIGI) that was enacted on 8 July 2024, and included under Title VII of Federal Congress Law 27,742.

Incentive Regime for Large-Scale Investments (RIGI)

The RIGI is a promotional regime that has no precedent in Argentina, which has never had a promotional regime like this before. This is not only because of the numerous tax, customs, FX regulations, stability and foreign arbitration incentives, but also because the regime includes a series of mechanisms as a mindful counter-measure against Argentina's past conduct of not respecting the rights, terms and conditions offered by other promotional regimes.

In this regard RIGI, among other things:

- provides great liberty to the investor to design the investment to be proposed. Accordingly, the main obligations relate with fulfilling minimum investment amounts under the terms and conditions designed by the investor;
- grants the benefits right from the start. Once admitted, all rights are acquired retroactively to the date when the submission to qualify for RIGI was made and long before the investment obligations kick in.

In case of dropping out of RIGI due to breach by the investor of the conditions to be kept in the regime, there are no retroactive penalties with respect to incentives and benefits used prior to the definitive ruling of termination under RIGI. Only in the case of fraud would the penalties apply retroactively, but even in that case only up to the date of the breach.

RIGI reverts the burden of proof against the government. In other regimes in terms of tax discussions, investors had to pay under administrative order and then make a judicial claim. In this case, investors do not pay until there is judicial final ruling;

The RIGI is declared to be operative, and exercise of rights cannot be denied due to lack of regulation.

The RIGI regime in the Law is very detailed and descriptive, thus avoiding risk of being altered or distorted at the regulatory level.

A high hierarchy authority (Minister of Economy) is the competent authority in charge of applying, controlling and enforcing RIGI.

Incentives arising from RIGI can be summarised under four pillars:

- a reduction of the total tax burden at the federal level;
- a limitation on the sort of foreign exchange restrictions that the Central Bank may impose on inflows and outflows of funds;
- a solid stability which allows for 30 years not to pay new or higher taxes than the ones included in the RIGI and provides for FX protection included under RIGI for that same term;
- remedies set out penalties for public officers that breach the regime and there is immediate access to international arbitration after 60 days, without the need for prior litigation in Argentina.

Main Goals

RIGI's main goal is to attract large, long-term investments, and it is proposed to create a regime that offers incentives, ensures legal stability, reduces the federal tax burden, eliminates foreign exchange regulations and restrictions, guarantees stability, and allows access to international arbitration processes.

Potential Beneficiaries and Target Sectors

RIGI beneficiaries are not the projects themselves, but the "Single Project Vehicles" (SPVs) holding and in charge of a project. These SPVs are legal entities (corporations and/or single-member companies, limited liability companies, dedicated branches, and business associations (UTEs), holders of one or more stages of a project with a single purpose of investment and development in certain specific sectors (mining, energy, oil and gas, technology, infrastructure, tourism, forestry, and the iron and steel industry), that meet the requirements and adhere to the RIGI in relation to a "Large Investment".

There are three types of SPV beneficiaries.

- Regular RIGI – those investment projects that do not qualify as LTSEPs that have access to almost all of the incentives under RIGI.
- PEELP RIGI (SPV with Long-Term Strategic Export Projects (PEELP) – special type of beneficiary with some improvements in terms of incentives:
  - (a) projects that can position Argentina as a long-term supplier for global markets in which Argentina does not currently participate as a relevant player;
  - (b) minimum investment amount of USD2 million (that can be fulfilled with 20% of such amount within the first two years of being admitted to RIGI); and
  - (c) involving multiple stages (at least two consecutive stages) of capital disbursement of USD1 million each (temporal length of each stage to be defined by the applicant).
- The suppliers of an SPV which import goods can register with the RIGI exclusively in connection with the incentive of tax-free imports for goods and inputs destined for a RIGI SPV.

Deadline to Apply for RIGI

The deadline to apply for RIGI is two years as of the entry into force of the law, which term may be extended by the National Executive Power (NEP) for one additional year.

SPV Requirements

Single project vehicle

The beneficiary of the regime is a "Single Project Vehicle" (SPV) in charge of a Project that qualifies as large investment under RIGI. These SPVs are legal entities, corporations and/or single member companies, limited liability companies, dedicated branches, and business associations (UTs). Only in respect of PEELPs (not for regular RIGI) the regime allows for more than one SPV to hold and be part of the development of the Single Project.

Single project – indivisible ecconomic unit

The project must constitute what the RIGI regime defines as "Single Project": the assets and activities of the SPV constitute an indivisible economic unit (IEU).

An IEU exists when the following can be evidenced: (i) components of the project are interconnected and/or related, (ii) activities of the project are reasonably related, (iii) the SPV owns all the assets that comprise the Single Project and uses them exclusively for its development.

Minimum Investment Amount (MIA)

In the case of PEELPs, the Total Investment Amount of the Single Project in computable assets (TIA) must be equal to or greater than the Minimum Investment Amount (MIA), which in the case of PEELPs is USD2 million. For regular RIGI the MIA is generally USD200 million.

Computable assets include all assets except for financial assets, portfolio assets and inventory (trading goods).

Once admitted into RIGI, investments made by the future SPV applicant as of 8 July 2024 (even before qualifying under RIGI) can be considered and taken into consideration as fulfilment of the MIA.

The acquisition value of certain assets (such as real estate and/or mining concessions, among others), the acquisition of a Project by the applicant or the SPV, or of stakes in companies with computable assets (based on the value of such assets) can account for up to 15% of the MIA.

20% or 40% of the MIA within first two years from entering the RIGI

For PEELPS, 20% of the MIA (ie, USD400 million) must be fulfilled within the first two years counted from the date of being admitted into the RIGI as PEELP. For regular RIGI, 40% of the MIA (ie, USD 80M) must be fulfilled within the first two years, counted from the date of being admitted into the RIGI as regular RIGI.

Fulfilling the MIA

For regular RIGI, the MIA needs to be fulfilled prior to a deadline to be defined by the investor. For PEELPS, two consecutive stages of at least USD1 million each (length of stage to be defined by the investor SPV).

Long maturity project (30% rule)

Evidence needs to be submitted to show that the Single Project is a long maturity investment. Basically, the way to prove this is by showing that during the first three years counted as from the first disbursement, the ratio between the present value of the projected net cash flow (excluding the value of the investments) and

the net present value of the capital investments projected for those same three years does not exceed 30%.

Technical feasibility – permits

In terms of evidencing technical feasibility, the following must be described: Description of the permits and authorisations obtained by the SPV in charge of the project that are necessary for the development of the investment plan, as well as those pending acquisition, with proof of submission, status of the process, and its approximate date of acquisition. For the purpose of the submission, in terms of relevant permits not yet granted, it is always better to show that those have been applied as opposed to those cases where the submission or filing requesting the permit has not yet been filed. In the case of PEELPs (not regular RIGIs) the regulation sets a rule where the requirement to evidence technical feasibility by describing the permits granted and those still pending, is considered to be fulfilled when providing the information in connection with the first stage of the PEELP (again in the case of PEELPs, stages are designed by the applicant).

Financial and economic feasibility

A sworn statement about the economic and financial feasibility of the project must be submitted. An economic and financial report by an independent evaluator also needs to be submitted.

Test in connection with not affecting competition

This test is covered by a sworn statement based on an independent study executed by lawyer or expert in economy specialised in competition or anti-monopoly legislation evidencing that the local competition market would not be affected by the Single Project.

Test in connection with not distorting the FX market and Central Bank reserves

The application should include a sworn statement declaring that the Single Project does not distort the local FX market, all based on the information submitted in the application about foreign currency balance (both for the first three years of being admitted into RIGI and for the life of the Project), sources of financing (local or foreign), financing schedule, production and export estimates and schedule thereof, whether funds will be brought or not through the FX official market, and whether the SPV will use the FX benefit included in Section 198 of Law 27,742, which gradually releases the exporter from the obligation to bring into Argentina the export proceeds and trade them into local currency at the official exchange rates.

20% of budget designated to hiring of goods and works must be allocated to local suppliers – report about direct and indirect employment that the project will generate

20% of the budget designated to hiring goods and works must be allocated to local suppliers. This needs to be evidenced every two years. There is also an obligation to report direct and indirect employment and percentage of local employees with residence or domicile in Argentina.

Evaluation and Approval of the Application

Once the application is submitted, its evaluation by the Governing Authority is subject to a mandatory period of 45 calendar days from the date the submission is complete. Additional information may be requested.

The approval or rejection by the Governing Authority will not be discretionary.

Effects of Adherence to the RIGI

Once a submission is approved:

- rights are retroactive to the date of submission;
- obligations calculated as of the date following the notification of approval of the application require adherence, as does the investment plan;
- the acquisition of rights under the RIGI shall be considered vested rights, similar to ownership and, consequently, may not be infringed or modified by subsequent regulations (even if RIGI was abrogated in Congress), and shall remain in force as long as the SPV does not incur in any cause of termination of the RIGI;
- any transfer of shares, quotas or equity interests of the SPVs in adherence to the RIGI, as well as the intention to use them as collateral, does not require prior authorisation from the Competent Authority.

Control

The Competent Authority is the Ministry of Economy, with the assistance of a RIGI council and a RIGI co-ordination unit, and shall control:

- compliance with MIA deadline;
- compliance with 40% of MIA within the first two years; and
- due and exclusive use of the incentives by the SPV regarding the Adhered Project.

Causes of Termination

The following are causes of termination:

- termination of the Single Project at the end of its useful life;
- declaration of bankruptcy of the SPV;
- voluntary deregistration requested by the SPV, as of the date of approval by the Enforcement Authority; or
- termination as a penalty for infringement of the RIGI.

Main Benefits

Tax and customs incentives

- Income tax rate reduction: applicable tax rate of 25% (versus current rate of 35%).
- Accelerated depreciation: option of the depreciation regime for those assets involved in the investment.
- Thin capitalisation rules: no restrictions on deduction of interests.
- Accumulated tax loss carry forwards: tax loss carry forwards do not prescribe and after five years, if not absorbed, they may be transferred to third parties.
- Income tax on dividends and profits: tax rate shall be 7%. However, for dividends and profits after seven years, the tax rate shall be 3,5%.
- PEELPs: incentives and special rules in connection with income tax for payments to foreign beneficiaries.
- VAT: regarding VAT on imports and purchases, constructions, definitive imports of fixed assets, investments in infrastructure works and/or services, the SPVs may pay VAT (including perceptions) to their suppliers or to the Tax Authority by delivering Tax Credit Certificates (TCCs) up to the limit of the total net amount of such transactions. If suppliers who receive the TCCs and who request the refund or transfer of TCC balances to third parties, do not get it within a period of three months, they shall be allowed to transfer them to third parties without prior approval from the tax authority.
- Tax on debits and credits: 100% may be used as tax credit for income tax.
- Export/withholding duties: no export tax after three years.

- PEELPs: no export tax after two years of joining RIGI.
- Reorganisation of companies to establish an SPV: the setting up of branches, reorganisations, and the transfer of assets for the purpose of creating the SPV shall be treated as a tax-free reorganisation.
- Import duties: import of consumption goods such as capital goods, spares, parts, and consumables is exempt from import, statistics and verification of destination duties, and of any withholding, collection, advance regime or withholding of national or local taxes. These goods shall be used in the project throughout their useful life, or until the end of the stability period, or the termination of the Project, or until the Competent Authority grants a permit to release the goods, whichever occurs first, and shall only be transferable.
- Prohibition to impose import and export restrictions.
- Accounting records in US dollars: SPVs may choose to keep their accounting records and financial statements in US dollars.

Foreign exchange regime incentives

Exemption from repatriation and settlement obligations of export proceeds in the foreign exchange market

SPVs under RIGI shall be exempted from the obligation to repatriate and settle foreign exchange proceeds from their exports in the following percentages and under the following conditions:

- 20% after two years have passed since the start-up date of the SPV;
- 40% after three years have passed since the start-up date of the SPV; and
- 100% after four years have passed since the start-up date of the SPV;

These funds will be freely available and the SPVs shall not be subject to any repatriation or settlement obligations. In the case of PEELP this gradual liberation happens one year earlier.

Inapplicability of restrictions on the free availability of foreign currency

- Prior restrictions or authorisations to access the foreign exchange market for the payment of foreign financial indebtedness principal and/or the repatriation of investments shall not apply to the SPV. However, the Central Bank may impose the following conditions:
  (a) that the payment of financial indebtedness principal and the repatriation of investments have been originated by capital contributions or loans previously entered and settled in the foreign exchange market by the SPV; and
  (b) that such access does not exceed the amount of foreign currency received and settled in the foreign exchange market for foreign loans and/or capital contributions or other direct investments by the SPV.
- Restrictions or authorisations to access the foreign exchange market for the payment of profits, dividends or interest to non-residents shall not apply to the SPV to the extent that such profits, dividends and interest have been generated from capital contributions or other direct investments, or from loans or other financial indebtedness with foreign entities previously entered and settled in the foreign exchange market by the SPV. In this case, the limitation on access with respect to the amount entered and settled does not apply.
- In order to pay off commercial and/or financial debts with foreign entities, to repay principal and interests on loans, to distribute dividends and profits, and/or to repatriate direct investments from non-resident entities, exchange regulations may require VPUs to

use and exhaust liquid external assets held or accumulated abroad, as per RIGI incentives, before accessing the foreign exchange market for payment purposes.
- Prepayments are admitted.
- Lenders can subrogate in the SPV FX rights.

Tax, customs and regulatory stability

This stability is effective for a period of 30 years as from the adherence date.

All taxes effective as of the date of joining the RIGI, as modified by the benefits under RIGI, shall apply to the SPV, granting the SPV the right to refuse the payment of a different or higher tax, which, if applicable, also confers the right to automatically offset the tax against other taxes, in all cases during the tax year or thereafter.

New taxes or increases (including the derogation of exemptions in force at the adherence date) shall not apply to the SPV.

This does not prevent the SPV from eventually benefiting from the elimination or reduction of taxes of the general regime which may be more favourable than the RIGI.

The same stability applies to FX incentive regulations arising from RIGI.

International arbitration

Notwithstanding the provisions of investment protection treaties, RIGI establishes its own regime for the settlement of disputes, controversies and/or rights violations.

After a period of 60 days without resolution, the SPV (or its foreign partners or shareholders, in the case of the last two alternatives) may submit the dispute to arbitration at the discretion of the SPV, in accordance with:

- the PCA Arbitration Rules issued in 2012;
- the Rules of Arbitration of the International Chamber of Commerce;
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (dated 18 March 1965); or
- if applicable, the ICSID Arbitration Rules (Additional Facility).

The NEP may establish specific arbitration rules in relation to a conflict resolution process for each Project.

All RIGI incentives are included in the definition of protected investment.

The existence of an arbitration process will not affect the continuity of the enjoyment of the incentives by the applicant.

Interactions with Provinces and Municipalities

The provinces, the City of Buenos Aires, and municipalities are invited to join the RIGI. Adherence implies they will not increase their own provincial and municipal taxes in force as of 31 December 2023.

The provinces and municipalities not adhering may not perform acts or issue regulations that may alter the incentives under RIGI.

BOLIVIA

Law and Practice

Contributed by:
Ramiro Guevara, Jorge Inchauste and Rosario Echeverría
Dentons Guevara & Gutiérrez S.C.

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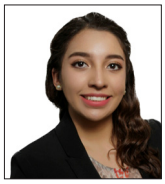
Authors

Ramiro Guevara is one of the founding partners of Dentons Guevara & Gutiérrez, and specialises in banking and finance, corporate law, project finance, M&A, international arbitration, oil and gas, and bankruptcy law. In a career spanning over three decades, Ramiro has participated in numerous significant deals and cross-border transactions in Bolivia. He is widely regarded as one of the most experienced lawyers in the country and features prominently in many national and international publications as one of the foremost attorneys in Bolivia. Ramiro is still very active within the firm, acting for local and foreign companies doing business in Bolivia.

Jorge Inchauste is head of the mining and natural resources practice at Dentons Guevara Gutiérrez. In the last two decades he has worked on multiple projects and the structuring of investment and financing matters, especially in the natural resource sector for national and international clients doing business in Bolivia. He has advised European, North American and Asian companies in different mining operations, including several M&A and project finance structures. He has also negotiated different types of contracts with the state-owned mining company.



Rosario Echeverría is an associate at Dentons Guevara Gutiérrez and focuses on mining and project development, specialising in liability risk management, incident response, due diligence procedures, investigations and enforcement actions, and day-to-day compliance matters. She has advised national and foreign clients on several natural resource projects in Bolivia, including the structuring and financing of lithium projects, and negotiations with the state-owned company in charge of all lithium matters in Bolivia. Rosario also provides strategic advice to various companies on their relationship with communities and indigenous people, and on making sustainable investment decisions under the ESG criteria.

Dentons Guevara & Gutiérrez S.C.

Calle 15 Calacoto
Torre Ketal Of 402
La Paz
Bolivia

Tel: +591 2277 0808
Fax: +591 2279 6462
Email: jorge.inchauste@dentons.com
Web: www.Dentons.bo

DENTONS GUEVARA & GUTIERREZ

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Bolivia is a country with a vast mining tradition going back to before the rise of the Inca empire. The "Cerro Rico" (located in the silver-rich Potosi district) is a symbol of Bolivian mining and has been producing silver for over 400 years. It continues to be a huge silver deposit, with an estimated total silver endowment (production + resources) of more than 117,000 tonnes (3.7 billion ounces), as well as significant amounts of tin (over 820,000 tonnes) and zinc.

Bolivia also has rich potential in unexplored areas:

- according to the Bolivian government, more than 60% of the national territory (1,098,581 km sq) is not mapped and/or explored;
- the highlands and the Andes areas have well-known potential for base metals;
- the Uyuni Salt Flats are among the world's largest lithium deposits and, along with other smaller deposits, are rich in non-metallic minerals; and
- the eastern area of the country has the Mutun iron core deposit, the Precambrian zone has potential for gold and the southeast of the country has potential for platinum-group metals (PGM), nickel and semi-precious stones.

1.2 Legal System and Sources of Mining Law

Based on a civil law system, the Bolivian mining sector is regulated by the following main statutes.

- The Bolivian Constitution, dated 7 February 2019: due to the importance of mineral resources, the Bolivian Constitution has a chapter dedicated to mining and metallurgy. This chapter recognises the elements the Bolivian State must control throughout the mining production chain, including the conduct of activities under a mining contract, mining rights or pre-existing rights.
- The Mining and Metallurgy Law (Law No 535 of 28 May 2014) regulates mining activities, establishing principles, guidelines and procedures to grant, maintain and extinguish mining rights. It also establishes the institutional structure and the attributions of public authorities within the mining production chain, among other provisions.
- Law No 845 of 24 October 2016 modified the Mining and Metallurgy Law, creating a new type of mining contract, called the "Mining Production Contract". It also returned to the Bolivian State the areas in which mining cooperatives had mining contracts with national or foreign companies.
- Law No 928 of 27 April 2017 incorporated *Yacimientos de Litio Boliviano* (YLB), which is the state-owned company in charge of all lithium matters and oversees activities throughout the entire lithium production chain in Bolivia.
- Law No 367 of 1 May 2013 modifies the Bolivian Criminal Code to include new criminal definitions related to mining activities. This law punishes illegal entry and trespassing in mining areas, illegal mining activities and the illegal sale and purchase of mineral resources.
- The Regulation for Granting and Termination of Mining Rights, approved by Ministerial Resolution No 023/2055 dated 30 January 2025, regulates the requirements and procedures for the subscription of mining contracts and prospecting and exploration licences for minerals and metals, as well as the termination of such contracts and licences.

- Environmental Regulations for Mining Activities, approved by Supreme Decree No 24782 of 31 July 1997, govern the environmental permits that must be obtained for the development of mining activities in Bolivia.

1.3 Ownership of Mineral Resources

According to Article 349.I of the Bolivian Constitution, ground and underground resources are fully owned by the Bolivian people; therefore, the Bolivian State is prohibited from transferring the ownership of these resources. However, the Bolivian State can authorise their exploration and exploitation.

The Mining and Metallurgy Law provides that any mining activity must be executed under the new legal framework of administrative mining contracts. The existing Special Temporary Authorisations (*Autorizaciones Transitorias Especiales* or ATE), formerly known as "mining concessions", must be converted into administrative mining contracts by the Jurisdictional Administrative Mining Authority. This type of contract does not require the participation of the Bolivian State through the state-owned Bolivian Mining Corporation (known as COMIBOL). However, all contracts related to the lithium resource production chain require the participation of state-owned company YLB.

1.4 Role of the State in Mining Law and Regulations

The role of the Bolivian State in mining includes its participation as grantor-regulator and owner-operator.

As Grantor-Regulator

The Mining and Metallurgy Law created a new supervisory entity, the *Autoridad Jurisdiccional Administrativa Minera* (AJAM), whose role is to grant mining rights and oversee and control every mining activity carried out in Bolivia, as well as the Mining Registry.

Another central responsibility of the AJAM is to draft and propose legislation to the executive power, in order to regulate the transition of ATEs into administrative mining contracts.

As Owner-Operator

The Bolivian State incorporated and fully owns COMIBOL, which has been granted exclusivity over very large areas of mineral-rich lands for mining. However, many such areas are not currently being exploited by COMIBOL. In addition, the Bolivian State has granted state-owned company YLB control of all Lithium-rich deposits.

If an area with potential is registered under the name of COMIBOL (or under the name of another state-owned mining company), then a mining association contract may be requested and entered with such state-owned entity. This contract is similar to a joint venture agreement, highlighting that the contract must be executed under Bolivian laws.

The following entities also have influence and supervision over the Bolivian mining industry.

- The Ministry of Mining and Metallurgy is responsible for the mining policy and designates the president of COMIBOL.
- The Bolivian Geological Mining Service (SERGEOMIN for its acronym in Spanish), a branch of the Ministry of Mining and Metallurgy, is responsible for the management of the mineral titles system. It also provides geological and technical information, and maintains a geological library and a publications distribution centre donated by the United States

Geological Survey. Tenement maps are also available from SERGEOMIN.

1.5 Nature of Mineral Rights

Mineral rights in Bolivia derive from contracts granted by the AJAM, as described below, and do not have the status of "property".

Article 92 of the Mining and Metallurgy Law provides that mining rights grant their holders the exclusive authority to prospect, explore, exploit, concentrate, melt, refine, industrialise and commercialise mineral resources. However, Article 93 provides that such rights do not grant ownership or possession rights over mining areas, and that holders of mining rights are not able to grant leases over the mining areas. Mining rights cannot be directly transferred, sold or mortgaged.

In addition, Article 94 of the Mining and Metallurgy Law provides that the Plurinational State of Bolivia acknowledges and respects previously acquired rights of individual or joint title holders and private and mixed companies, as well as other forms of private property rights in relation to their corresponding ATEs, subject to the transition or compliance with the regime of administrative mining contracts. As a result, ATEs continue to be valid and recognised by Bolivian authorities for the exploration and exploitation of mineral areas.

Articles 95 and 102 of the Mining and Metallurgy Law provide that title holders have ownership over their investment, the mining production, movable and immovable property built on the land, and the equipment and machinery installed inside and outside of the perimeter of the mining area. The Bolivian State guarantees conditions of mining competitiveness and stability in the legal environment for the development of the mining industry.

Articles 97 and 99 of the Mining and Metallurgy Law provide that title holders also have the right to receive profit or surpluses generated by their mining activity, subject to compliance with applicable tax laws, and that the State guarantees the rule of law over mining investments of title holders who are legally incorporated.

Finally, in the lithium sector, mining investors do not acquire mining rights directly: they must sign contracts with YLB in order to be part of the production chain.

1.6 Granting of Mineral Rights

The Bolivian granting authority, the AJAM, is a national institution with jurisdiction and offices in all departments of Bolivia.

The Mining and Metallurgy Law regulates mining contracts in Title IV, Chapter I, and provides that the administrative mining contract is the legal instrument whereby the State grants mining rights to execute mining activities.

Pursuant to Articles 134 to 136 of the Mining and Metallurgy Law, administrative mining contracts must be formalised in a public deed legalised before a public notary from the jurisdiction where the mining area is located, and must be signed by the AJAM, as representative of the executive branch.

Mining Association Contracts With COMIBOL

If an area with potential is registered under the name of COMIBOL, or under the name of any other state-owned mining company, then a mining association contract must be entered into. A mining association contract requires a board, which must have the same number of representatives for each party, but the chair of the board will always be elected from the members representing the state-owned company.

The Bolivian party is a free carry party that only contributes the mining areas to the contract; no other commitments, such as further investment, are required.

In addition to mining association contracts, local or foreign companies may execute mining production contracts if they wish to perform mining activities in mining areas under the administration of COMIBOL. In these contracts, COMIBOL's participation is a percentage of the gross sale value of the mineral/concentrate, which is negotiated with COMIBOL (the concept is similar to a royalty). Ownership is not mandated as a 45%/55% participation scheme of the mining association contracts. Mining production contracts require investment schedules and a work plan. The maximum term of a mining production contract is 15 years, with the opportunity to renew for another 15 years. For enforceability, mining production contracts are required to be filed at the Mining Registry; once executed, signatory parties are not able to transfer or assign their rights therein.

Association Contracts or Operation and Maintenance Contracts With YLB

YLB develops the basic chemical processes of evaporite resources with a 100% state participation for the production and commercialisation of:

- Lithium Chloride, Lithium Sulfate, Lithium Hydroxide and Lithium Carbonate; and
- Potassium Chloride, Potassium Nitrate, Potassium Sulfate, derived and intermediate salts and other products of the evaporite chain.

However, YLB is authorised by law to enter into association contracts (similar to a joint venture) and operation and maintenance contracts for the development of the lithium production chain. In the case of joint venture contracts, YLB retains ownership of the lithium deposits, and its participation in the association is greater than 50%.

1.7 Mining: Security of Tenure

Term Length and Renewals

Articles 142 and 159 of the Mining and Metallurgy Law provide for different term lengths and renewal requirements, depending on the title containing the mining rights. Administrative contracts (under which the mining operator may carry out prospecting, exploration, exploitation, commercialisation and industrialisation of mining) have a term length of 30 years from the time of their registration. Such administrative contracts may be renewed for an additional 30 years only if the mining operator demonstrates the need to continue the mining operation.

Prospecting or exploration licences, however, only have a term length of five years. Such licences may be renewed for an additional three years only if the mining operator demonstrates the need to continue the mining exploration.

Rights to Progress from Exploration to Mining

Under Article 156 of the Mining Law, the prospecting and exploration licence grants the mining operator the preferential right to enter into an administrative contract for the exploitation of the mining areas being explored or a part thereof. This right may be exercised individually by the licensee or jointly with a third party.

According to the Regulation for Granting and Termination of Mining Rights, approved by Ministerial Resolution No 23/15 dated 30 January 2015, the process from exploration to mining starts with the filing of an application for the execution of an administrative contract for exploitation before the AJAM. This authority examines the validity of the prospecting and exploration

licence and the fulfilment of the other requirements established by law for the execution of an administrative contract. If there are indigenous communities in the mining area, the AJAM must carry out a prior and informed consultation. Subsequently, the AJAM authorises the signing of the administrative contract and submits the contract to the legislative entity for approval and registration in the Mining Registry.

Maintenance Requirements

According to Article 144 of the Mining and Metallurgy Law, the titleholder must comply with two requirements in order to hold the rights granted by mining administrative contract:

- payment of the annual mining tax (*Patente Minera*), according to the scale detailed in Article 230 of the Mining and Metallurgy Law; and
- exploration and/or exploitation of the area granted as per the plan presented to the AJAM (activity in mining areas granted by the Bolivian State cannot be paused for more than six months).

Revocation

Pursuant to the Bolivian Mining Law, mining rights (current ATEs or future administrative contracts) may be revoked by the AJAM to the extent one of the following is evidenced:

- failure to pay the yearly mining tax right;
- suspension of mining activities (or failure to initiate mining activities) for one year;
- failure to deliver the activity reports on two consecutive occasions; or
- developing exploitation activities on exploration licences.

A resolution from the AJAM in relation to the revocation of the mining rights may be subject to administrative recourse and appeal before the Ministry of Mining, and may be subject to review by the Bolivian Supreme Court.

Operating Control, Marketing and Transferability

Under the Mining and Metallurgy Law, holders of mining rights must control and manage these rights themselves. Pursuant to Article 136 of the Mining and Metallurgy Law, the mining operators may not transfer or assign their rights and obligations arising from administrative contracts or prospecting and exploration licences.

However, the Mining and Metallurgy Law does not prohibit the transfer of shares of mining companies operating in Bolivia. In this case, there would be an indirect transfer of the administrative contract, obligations and liability of the entire mining project.

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

2.1 Environmental Protection and Licensing of Mining Projects

Mining activities are regulated by the Environmental Law (Law No 1333 of 1992), the Mining Code (Law No 535 of 2014) and more specifically by the Environmental Regulations for Mining Activities (Supreme Decree No 24782 of 1997).

The Environmental Law requires mining companies to have an environmental licence in order to perform their operations. At the same time, this environmental licence relates to several environmental studies that must be followed. The requirements differ depending on the kind of mining activity.

Prospecting and exploration activities are exempt from filing an Environmental Baseline Audit (an audit used to determine the situation of a territory prior to the execution of mining activities) and an Environmental Impact Assessment Study (a study used to analyse the environmental impact of a certain activity). An environmental licence may be granted by the departmental government (Bolivia has nine departments) after the applicant files a description of the extent and impact of the prospecting and exploration activities.

For the exploitation and/or processing of ore (milling), the environmental licence is granted by the Ministry of Environment and Water, subject to a report from the Ministry of Mining and Metallurgy. In that case, both the Environmental Baseline Study and the Environmental Impact Assessment Study are required. The Environmental Impact Assessment Study must include archaeological, socio-economic, water, air and soil studies, in addition to a chapter dedicated to the recovery of the site.

A Licence for Hazardous Substances is also required alongside the environmental licence.

If the operation requires the use of explosives, the Ministry of Defence issues a licence to purchase and use explosive materials. Purchasing, transporting and using controlled substances (such as gasoline, diesel, sulfuric acid and other chemical elements linked to narcotics production) are subject to control from the Ministry of Government through the Direction of Controlled Substances, which must grant a permit for their use.

Municipal permits are also required for the construction of a minerals/metals processing plant.

2.2 Impact of Environmentally Protected Areas on Mining

Article 220 of the Mining and Metallurgy Law allows mining activities (prospecting, exploration and mining) to be carried out in environmentally protected areas as long as these activities do not go against the protection objectives of these areas.

Local governments have the authority to issue an environmental licence for exploration if this activity will be performed in an environmentally protected area.

For mining operations, the Ministry for Environment and Water is responsible for issuing the environmental licence in co-ordination with the Ministry of Mining and Metallurgy. However, the granting of a new mining area in an environmentally protected area is highly unlikely.

Although it is not a common practice for the AJAM to grant new mining contracts over environmentally protected areas, state-owned mining areas (COMIBOL's areas) and areas traditionally known for mining activities that overlap protected areas can be mined under the exception in Article 220 of the Mining and Metallurgy Law.

2.3 Impact of Community Relations on Mining Projects

Article 207 of the Bolivian Mining Law requires that all communities must be consulted through appropriate procedures before any mining exploitation activity is performed. As a result, the mining company typically must reach an agreement with the local community prior to proceeding with the mining operations. Although the consultation procedure and an agreement with the community is not listed as a requirement for exploratory work, it is recommended, and in

certain regions it is required prior to obtaining the environmental permit.

In Bolivia, many rural communities (where virtually all mining projects are structured) are considered indigenous communities, so most regulations regarding the requirement to have an agreement with and authorisation from local communities fall within the regulations set forth below.

2.4 Prior and Informed Consultation on Mining Projects

Previous consultation, as a formal requirement, is based on the Bolivian Constitution, the Indigenous and Tribal Peoples Convention of 1989 ("ILO Convention 169"), dated 27 June 1989, and the United Nations Declaration on the Rights of Indigenous Peoples, dated 13 September 2007.

As a result, prior consultation as a right is guaranteed, must be respected, and must be performed by the state in good faith, including if the consultation is related to the exploitation of non-renewable natural resources in the territory of indigenous communities.

Following the same principles, Article 352 of the Bolivian Constitution is even more specific and establishes that the exploitation of natural resources will be subject to a procedure of public consultation before the affected community. Public consultation is understood as a free, informed and previous consultation process, conducted by the state, regarding the exploitation of natural resources in the territory of an indigenous community.

2.5 Impact of Specially Protected Communities on Mining Projects

In addition to their right to prior and informed consultation, indigenous communities that have formed an Autonomous Indigenous organisation recognised by the state (*Autonomía Indígena Originaria Campesina*) have the power to govern their territory according to their own norms, institutions and procedures.

These powers are exercised within the framework of the Bolivian Constitution and the Law of Autonomies and Decentralisation (Law No 031 of 2010), among other domestic rules. As a result, the Autonomous Indigenous organisations are entitled to request additional requirements from potential mining projects. Typically, they require the mining operator to enter into a Community Development Agreement (see **2.6 Community Development Agreement for Mining Projects**).

2.6 Community Development Agreement for Mining Projects

It is a requirement to have a Community Development Agreement with the local communities, prior to initiating any substantial work on a mining property. The AJAM will require evidence of the executed Community Development Agreement with the local communities. In addition, certain departmental/regional environmental authorities require the presentation of the agreements to the communities prior to issuing the requisite environmental licence.

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

Several environmental and social regulations and requirements are imposed on the mineral sector in Bolivia. An environmental licence, as approved by the regional environmental authority, a Community Development Agreement and authorisation from the communities are all required.

No specific governance regulations or guidelines have been introduced for the mining sector in Bolivia.

2.8 Illegal Mining

In recent years, illegal gold mining has affected indigenous territories and the Bolivian Amazon Nature Reserve. In order to stop the contamination of water resources in this area, the indigenous peoples of northern La Paz filed a constitutional action against the people who were illegally carrying out these activities. These indigenous peoples obtained a favourable ruling that analyses the importance of prior and informed consultation. This ruling also encourages the development of statutes for autonomous indigenous communities that have decided to protect their forest resources and reject any mining activity in their territories.

In addition, in recent years the AJAM has carried out controls to stop illegal mining activities in fiscal areas of state domain and in areas that are available to operators under administrative mining contracts or mining licences, or the obtaining of prospecting or exploration licences.

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

Bad Example

A bad example of how a poor strategy in community relations impacted negatively on an important mining project in Bolivia leading to the revocation of the foreign investor's mining rights is the international arbitration case brought by South American Silver Limited against the government of Bolivia (Arbitral Award PCA Case No 2013-15), after the Bolivian governmental authority (AJAM) revoked its mining rights. Regarding the importance of negotiation with indigenous communities to maintain mining rights, the Arbitral Tribunal of SAS v Bolivia stated the following:

"505. (…) What is clear for the Tribunal in connection with the Project, is that the Company undertook certain community relations activities which led to unrest in the communities directly affected by the Project and which were questioned by its own advisors, and that, as the conflict ensued, the Company adopted a strategy that contributed to increase the divisions among the Indigenous Communities, the radicalisation of the opposition groups and the practical impossibility of seeking the consensus that its advisors warned would be necessary in order to operate in the region. The documents provided by Witness X render an account of an aggressive strategy that helped worsen the conflict and that is very far from the search for consensus or agreement, and which intended to show majority support and to weaken the Project's objectors".

This led the Arbitral Tribunal to consider that:

"Bolivia sought a dialogue, proposed solutions, attempted to reach an agreement with the community members, and finally issued the Reversion Decree in response to the general violence, the social conflict – which based on the evidence was neither simply temporary nor minor – making it clear that the risk existed that the conflict would continue for as long as CMMK remained in the region. Having established the existence of the conflict, as well as its severity and consequences, the Tribunal is unable to conclude that the measure adopted by Bolivia was unnecessary or disproportionate and, much less, to speculate without any evidence on other measures that could have been implemented to resolve the conflict".

Good Example

In opposition, several successful mining projects in Bolivia have had excellent environmental and community relationship management, resulting in a continued lucrative mining operation. The most notable example may be the operation of the San Cristobal mine in Potosí, Bolivia by a subsidiary of the Sumitomo Corporation. The San Cristobal mine ranks as one of the largest deposits of zinc, lead and silver in the world, and its open-pit method of extraction makes it not only unique in Bolivia, but also the largest mining operation in Bolivia. The successful community relations with the communities of San Cristóbal, Culpina K, Vila Vila and Río Grande have permitted almost uninterrupted large-scale mining operations over the last 25 years.

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

3.1 Climate Change Effects

The initiatives adopted by the Bolivian State determine greater control by society regarding compliance with environmental protection standards in the development of mining activities. In accordance with the principles established by the Bolivian "Patriotic Agenda 2025", in its pillar on "Environmental Sovereignty with Integral Development", the Bolivian State is implementing policies to ensure the exploitation and industrialisation of minerals in a sustainable manner. The main policies include the right of any person, individual or collective to:

- participate in environmental management processes; and
- denounce violations of regulations that affect the environment.

3.2 Climate Change Legislation and Proposals Related to Mining

The Law of Mother Earth and Integral Development (Law No 300 of 15 October 2022) provides general principles for environmental protection. Pursuant to said law, the Bolivian State assumes responsibility for developing sustainable processes for mineral exploitation and industrialisation, but sustainable processes for mining activities have not yet been implemented.

3.3 Sustainable Development Initiatives Related to Mining

The Sectorial Plan for Integral Mining-Metallurgical Development 2016–2020, prepared by the Ministry of Mining and Metallurgy, recommends that mining operators incorporate clean technologies and good practices for solid, liquid and gaseous waste management, in accordance with national or international standards.

In addition, the Ministry of Mining issued guidelines in 2023 on the sustainable development of mining activities.

3.4 Energy-Transition Minerals

In recent years, Bolivia has been going through a crisis in the exploitation and commercialisation of traditional natural resources, such as hydrocarbons and gold. Therefore, the exploitation of lithium reserves is one of the main governmental objectives to maintain the natural resources industry.

In 2021, the Bolivian government launched an International Tender for partnership in the Direct Extraction of Lithium (DLE Project) from the brines of the Uyuni, Coipasa and Pastos Grandes salt flats, through the state-owned company in charge of all lithium matters in Bolivia (YLB). YLB chose eight companies to work with and has already signed three Framework

Agreements. Currently, only one of these companies (Uranium One Group) has entered into a joint venture agreement with YLB for the development of a direct lithium extraction plant in the Salar de Uyuni.

In 2024, YLB launched the Second International Public Tender to execute a project of Direct Lithium Extraction in the Bolivian salt flats. As a result of this tender, YLB is currently negotiating agreements to develop lithium projects with CATL BRUNP & CMOC (China), Protecno S.R.L. (Italy), Eramet S.A. (France) and Eau Lithium PTY Ltd. (Australia).

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

There are three sources of income for the Bolivian State from mining activities:

- taxes;
- mining royalty; and
- mining tax right (*Patente Minera*).

General Taxes

The following taxes are applicable on mining operations:

- Value Added Tax (IVA) equivalent to 13% of the sale or purchase value is recoverable through fiscal credit gained with the purchase of goods or services related to the operations of the company;
- Transaction Tax (IT) equivalent to 3% of every transaction;
- Company Income Tax (IUE) equivalent to 25% of the additional utilities generated by mining companies due to favourable conditions related to the price of minerals and metals; and
- Company Income Tax – Foreign Beneficiaries (IUE-BE) equivalent to 12.5% of the amount of money sent to other countries.

When goods are exported, the GAC (Consolidated Customs Tax) must also be paid. The GAC is composed of the IVA, IT and an additional percentage depending on the good that is imported. RITEX is a system for temporary importing of goods where the GAC payment is not required.

Mining Royalty

This payment does not fall into the specific category of tax, but it implies a burden on the mining producer and is assumed as part of the government's take from mining activities. The mining royalty is based on the gross sale value of minerals and varies between 3% and 7%, depending on the mineral and international market prices.

Mining Tax Right

A special mining tax is paid annually by mining titleholders to maintain their mining rights, at approximately USD6 per hectare.

4.2 Tax Incentives for Mining Investors and Projects

To boost the smelting and refinery of metals, Article 224 of the Mining and Metallurgy Law provides a 40% discount off the mining royalty if the product is traded locally or to international markets as a metal bar.

The Bolivian government has been discussing granting incentives to local and foreign companies engaged in mining exploration.

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

Mining rights cannot be directly transferred or sold; the transfer of a mining project must occur through the transfer of shares (either locally or abroad). The transfer of shares in a Bolivian company is exempt from Bolivian VAT or transfer taxes.

The sale of the shares in a Bolivian mining company may generate a capital gain that would be taxable as part of the corporate yearly income tax of the seller, to the extent the seller is subject to such a tax. Therefore, careful structuring of the transfer of a mining project must include consideration of potential tax consequences.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The main features attracting investment for mining projects in Bolivia include:

- extensive and proven mineral reserves in different areas of the country;
- a long mining tradition in several regions of the country;
- foreign companies may indirectly hold 100% interest in Bolivian mining companies; and
- a stable and simple tax system, with few and simple taxes, that has been largely unchanged over the last 40 years.

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

Bolivia's foreign investment regime is primarily contained in the Bolivian Constitution of 2009, the Investment Law of 4 April 2014 and the Bolivian Mining Code itself. In general, foreign persons and companies are allowed to own and operate mining operations with very few limitations.

Pursuant to the Bolivian Constitution, foreign persons and companies are not allowed to hold any property (including mining rights) within 50 km of Bolivia's international borders, directly or indirectly. In addition, pursuant to Article 151 of the Mining and Metallurgy Law, Mining Cooperatives (a special type of association supposedly owned and managed by the workers themselves) are expressly prohibited from entering into joint venture contracts with private companies, whether domestic or foreign.

5.3 International Treaties Related to Exploration and Mining

Over the past decade, Bolivia denounced and withdrew from all its Bilateral Investment Treaties and from the ICSID international investment dispute resolution mechanism. However, it has remained a full member of the Andean Community (with Colombia, Ecuador and Perú) and has become an associate member of the Mercosur multilateral trade and co-operation agreements (with Brazil, Argentina, Paraguay and Uruguay). Although such multilateral agreements do not refer investment disputes to international arbitration, they do set forth some protections and principles that protect and grant foreign investors at least the same rights as local investors in mining projects.

5.4 Sources of Finance for Exploration, Development and Mining

According to studies conducted by the Central Bank of Bolivia between 1990 and 2017, private investment is the main source of financing for metal production. This sector reached 77% of total lead production, 70% of zinc production and 68% in silver production.

According to the report made by the Ministry of Mining, the Bolivian State invested USD500 million in 2022 and 2023 for the construction of zinc treatment plants in Oruro and Potosí, and for the execution of different projects in COMIBOL, Empresa Minera Colquiri, Empresa Minera Huanuni, Empresa Siderúrgica del Mutún and Empresa Metalúrgica Vinto.

Another important sector is the mining co-operatives, which are financed with a special fund created by the state (*Fondo de Financiamiento para la Minería – FOFIM*) and reached 31% of total silver production.

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

The Bolivian securities market has not been used for the financing of mining projects, and no Bolivian mining companies are currently traded on it. However, there are tax benefits in using the Bolivian Stock Exchange as it will exempt any capital gains resulting from the sale of stock through the Bolivian stock exchange of any Bolivian listed companies.

Foreign security markets, however, have been used quite successfully in the past for the financing of exploration, development and mining projects in Bolivia. The expectation is that this will be a growing trend in the next couple of years, with many projects currently being developed so as to be able to be listed on foreign exchanges.

5.6 Security over Mining Tenements and Related Assets

As discussed in **1.5 Nature of Mineral Rights**, Article 93 of the Mining and Metallurgy Law provides that mining rights do not grant ownership or possession rights over mining areas, and that holders of mining rights are not able to grant leases or mortgages over the rights over the mining areas. This means the administrative mining contract with the Bolivian government and the exploration licence may not be security themselves.

However, Articles 95 and 102 of the Mining and Metallurgy Law provide that title holders have ownership over their investment, the mining production, movable and immovable property built on the land, and the equipment and machinery installed inside and outside of the perimeter of the mining area. As a result, mining operators may grant such property (ie, mining production, equipment and machinery) as collateral and security for any financing.

In addition, there is no limitation on pledging as security the entirety of the shares that the investor may hold in the mining companies, which have been granted and legally hold the mining rights (licences or administrative contracts).

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The intention of the current government is for the Bolivian mining sector to expand and grow. In recent years, the Bolivian State has been open to receiving foreign direct investment to carry out sustainable world-class mining exploration and exploitation projects.

On the one hand, the Ministry of Mining has recommended that COMIBOL (the Bolivian State mining corporation that holds mining rights over large areas of interest) and other state institutions partner with foreign investors who can inject the necessary investment, technology and know-how for the development of new large

mining projects. In this sense, in 2024 COMIBOL launched a tender for the exploitation of the existing ore and rare earth deposits in the Mallku Khota mining project.

On the other hand, YLB (the state-owned entity in charge of developing lithium production chain activities) is negotiating with several foreign companies for the construction of large lithium processing complexes because of the two international tenders launched between 2021 and 2024.

The Ministry of Mining has stated that there are four mining projects that will have an important impact on Bolivia's economy in the long term (2025):

- Salar de Uyuni, with 21 million tons of lithium and 373 million tons of potassium;
- Cerro Mutún, with 40 billion tons of iron and 10 million tons of manganese;
- Corocoro, with 99.99% copper production and the zinc refineries with 99.99% production; and
- besides the development of technological minerals in the San Luis mine with cobalt, Rincón del Tigre with nickel and Cerro Manomó with rare earths.

Therefore, there are many significant opportunities in Bolivia to develop new and interesting mining projects, both in Bolivia's traditional mining sectors such as silver, tin, lead, and zinc, and in new non-traditional mining sectors such as lithium, uranium and other rare earth minerals.

Trends and Developments

Contributed by:
Jorge Inchauste and Rosario Echeverría
Dentons Guevara & Gutiérrez S.C.

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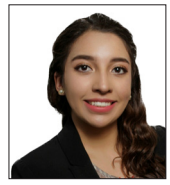
Authors

Jorge Inchauste is head of the mining and natural resources practice at Dentons Guevara Gutiérrez. In the last two decades he has worked on multiple projects and the structuring of investment and financing matters, especially in the natural resource sector for national and international clients doing business in Bolivia. He has advised European, North American and Asian companies in different mining operations, including several M&A and project finance structures. He has also negotiated different types of contracts with the state-owned mining company.



Rosario Echeverría is an associate at Dentons Guevara Gutiérrez and focuses on mining and project development, specialising in liability risk management, incident response, due diligence procedures, investigations and enforcement actions, and day-to-day compliance matters. She has advised national and foreign clients on several natural resource projects in Bolivia, including the structuring and financing of lithium projects, and negotiations with the state-owned company in charge of all lithium matters in Bolivia. Rosario also provides strategic advice to various companies on their relationship with communities and indigenous people, and on making sustainable investment decisions under the ESG criteria.

Dentons Guevara & Gutiérrez S.C.

Calle 15 Calacoto
Torre Ketal Of 402
La Paz
Bolivia

Tel: +591 2277 0808
Fax: +591 2279 6462
Email: jorge.inchauste@dentons.com
Web: www.Dentons.bo

The Challenges of Lithium Project Development in Bolivia

Bolivia has 23 million metric tons of verified lithium, making it one of the largest reserves in the world. However, at present, it is the only country in the lithium triangle (Argentina, Chile, Bolivia) in South America that has not been able to become a major player in this market. The Bolivian State has sought to exploit its lithium reserves for more than five decades, but the challenges faced by potential investors to implement lithium projects in Bolivia are apparently stronger than the will of the State.

Bolivia is undergoing a serious trade balance and economic crisis. Coupled with a sustained decline in revenue from the exploitation and commercialisation of hydrocarbons (primarily natural gas), this has led the government making the exploitation of lithium reserves a main governmental objective.

In this context, in 2021 the government of Bolivia launched an International Tender for collaboration in the Direct Extraction of Lithium from the brines of the salt flats in Uyuni, Coipasa and Pastos Grandes, through *Yacimientos de Litio Bolivianos* (YLB – the state-owned company in charge of everything related to lithium in Bolivia). YLB chose eight companies to work with and has already signed three framework agreements. Currently, only one of these companies (Uranium One Group) has successfully entered into a joint venture agreement with YLB for the development of a direct lithium extraction plant in the Salar de Uyuni. This agreement is pending approval from the Bolivian National Assembly.

In 2024, YLB launched the Second International Public Tender to execute a Direct Lithium Extraction project in the Bolivian Salt Flats. As a result of this tender, YLB is currently negotiating agreements to develop lithium projects with CATL BRUNP & CMOC (China), Protecno S.R.L. (Italy), Eramet S.A. (France) and Eau Lithium PTY Ltd.

Despite the speed with which YLB has conducted these tender processes, there is still reasonable doubt as to whether these negotiations will have a successful conclusion and whether Bolivia will finally be able to exploit its lithium reserves.

At this point, a question that has been present in the minds of Bolivians for decades rises again: what challenges are faced by investors seeking to develop lithium projects in Bolivia?

Of course, the answer to this question involves a series of economic, political and social factors, which could vary in each case in which negotiations between private investors and the Bolivian State have failed. However, from a legal point of view, it is possible to establish some issues that hinder investments in lithium projects, such as:

- overarching governmental participation through YLB and few options for private investment in lithium;
- approval by the Indigenous Communities and the Bolivian National Assembly for the exploitation of the resource and lithium agreements; and
- citizen participation and social control.

This article aims to provide a brief description and analysis of these challenges facing direct investment in the lithium sector in Bolivia.

Overarching governmental participation through YLB and few options for private investment

The approval of the Bolivian Constitution marked a fundamental milestone in the foreign direct investment (FDI) regime in Bolivia. This new legislative policy gives a leading role to the State in the regulation of investments and in the creation of economic policies, and declares that strategic natural resources, including lithium, are the property of the Bolivian people.

In this sense, the Bolivian State must assume control of the exploration, exploitation, industrialisation, transportation and commercialisation of strategic natural resources through public entities, which may enter into agreements with national or foreign private companies.

The Constitution provides the following general rules that could be considered as limits to FDI.

- The Bolivian Constitution establishes a "border security zone" of 50 km into Bolivian territory from the border. No foreign entity may acquire property in this territory, except in the case of state necessity and when approved by a qualified majority of the legislature. Failure to comply results in the property or possession passing to the State, without compensation.
- FDI must submit to the sovereignty and laws of the State. No foreign court case or jurisdiction will be recognised, and foreign investors may not invoke any exceptional situation for international arbitration, nor appeal to diplomatic claims.
- The State has full control over Bolivia's natural resources, including lithium. FDI may obtain temporary rights over natural resources, but these rights cannot transfer ownership of the resources.
- Any FDI must be supervised by the competent Ministry for a specific sector.

As a result of this new vision of the Bolivian State, Bolivia was the first country to withdraw from the World Bank's International Centre for Settlement of Investment Disputes (ICSID Convention), in October 2007. Similarly, the 22 Bilateral Investment Treaties (BITs) signed between 1985 and 2005 were denounced and subsequently abrogated.

Thus, on 4 April 2014, the Bolivian State enacted Law No 516, the Investment Promotion Law (Investment Law), to regulate:

- investment mechanisms;
- investment contributions;
- conditions for investment;
- the registration of foreign investments;
- the transfer of technology;
- the transfer of foreign currency abroad; and

• investment incentives, among other issues.

Despite the regulatory changes on FDI in Bolivia, net FDI accumulated USD 7.416 billion between 2006 and 2016, representing an average share of 2.9% of the Bolivian economy. In these 11 years, net FDI grew at an average rate of 1.7%, reaching an all-time high of USD1.749 billion in 2013.

However, FDI figures decreased significantly between 2019 and 2022. The Economic Commission for Latin America and the Caribbean (ECLAC) indicates that there was a disinvestment of USD217 million in 2019, with this figure reaching USD1.097 billion between 2020 and 2021. Despite this, Bolivia is currently attracting interest in private investment for the industrialisation of strategic natural resources, including lithium.

The development of lithium has been specifically regulated by Law 928 of 27 April 2017 (Law 928), which creates YLB to carry out all activities of the entire productive chain of lithium industrialisation. YLB is authorised to enter into agreements with foreign investors to achieve its objective.

According to the regulation issued by the Bolivian State, YLB will develop the basic chemical processes of its evaporite resources with (100%) participation of the Bolivian State for the production and commercialisation of:

- Lithium Chloride, Lithium Sulfate, Lithium Hydroxide and Lithium Carbonate; and
- Potassium Chloride, Potassium Nitrate, Potassium Sulfate, derived and intermediate salts and other products of the evaporite chain.

This means that any foreign investor will have no participation in the ownership of any of the resources or plants installed for this purpose. Foreign investors may only participate (with an ownership stake) in the subsequent processes of semi-industrialisation, industrialisation and waste processing through joint venture agreements maintaining the majority participation of the State.

Unfortunately, neither Law 928 nor its regulations provide a specific regulation for lithium extraction rights. Therefore, negotiations of the terms of lithium project agreements with YLB are often quite complex and subject, on many occasions, to YLB unilaterally defining the scope of these negotiations.

To solve this problem, in 2023 the Bolivian State proposed the enactment of a specific law on evaporite resources, which is currently being discussed by the Legislative Assembly and would regulate:

- the types of agreements that YLB can enter into;
- the state's shareholding in joint venture agreements;
- the creation of a supervisory authority for all activities in the lithium production chain; and
- the rates, taxes and royalties applicable to lithium, among other matters.

However, there has been no news about the approval of this law.

Approval by indigenous communities and the Bolivian Legislative Assembly

Other challenges that investors must face include:

- obtaining the consent of indigenous communities to be able to use the resources that exist in the territories they inhabit; and

- the approval of the lithium agreements by the Bolivian Legislative Assembly.

Prior consultation with indigenous communities

Among the main rights granted to indigenous communities by the Bolivian Constitution is the right to decide on the implementation of activities for the use and exploitation of natural resources in their territories.

Regardless of whether or not they have obtained governmental permits, investors who intend to carry out activities of use or exploitation of natural resources are obliged to carry out a prior consultation process with indigenous communities before carrying out such activities, through appropriate procedures or in accordance with the procedures established by each community (*Consulta Previa*).

Based on information compiled by the National Institute of Statistics (INE), there are currently:

- 29 indigenous communities near the Salar de Uyuni;
- three indigenous communities near the Salar de Lagunas Pastos Grandes; and
- 32 indigenous communities near the Salar de Coipasa.

Therefore, prior to the signing of any lithium agreement, it is mandatory that YLB and/or the investor conducts prior consultation with the indigenous communities living near the project site to be executed.

During the first and second international tender processes, YLB has reported the initiation of prior consultation processes to carry out the projects being negotiated. Even though YLB has signed several preliminary agreements with various international companies, it is not yet possible to determine the level of acceptance of these projects by the indigenous communities living near the Bolivian salt flats. Since YLB has entered into a joint venture agreement with Uranium One Group, it is hoped that the latter already obtained the consent of the indigenous communities in the relevant area for the development of a direct lithium extraction plant in the Salar de Uyuni, although this has not been publicly disclosed or commented on by YLB or Uranium One.

Legislative Approval

Pursuant to the Bolivian Constitution, agreements of public interest on natural resources and strategic areas, entered into by the executive body of the State, must be approved by the Legislative Assembly (Legislative Approval).

Legislative Approval is a necessary requirement for the execution and validity of agreements on natural resources and strategic areas such as lithium. Consequently, until Legislative Approval is obtained, the agreements entered into by YLB cannot be enforced.

It should be noted that, in mining and oil and gas matters, state entities have special regulations that govern the procedure applicable to the Legislative Approval. In mining matters, it is even possible to request a transitory authorisation to start the execution of mining projects while the Legislative Approval is being processed.

Unfortunately, in the case of lithium, YLB has not issued a regulation that regulates the Legislative Approval of the agreements that are currently being negotiated, nor have any such agreements been approved so far. Therefore, it is not possible to know the exact process or time it might take for Legislative Approval of lithium agreements.

It should be noted that, in the application of its powers of control over the executive body, the Legislative Assembly has made several inquiries regarding the contracting process being carried out by YLB. Specifically, the Assembly has requested YLB to:

- issue a report explaining the procedure and criteria for selecting the companies that will sign agreements;
- submit legal and technical reports recommending the signing of agreements;
- submit a report on the business and investment model; and
- submit environmental impact assessment studies.

Even though YLB has responded to the consultations made by the Legislative Assembly, some assembly members have expressed their concern about the contracting process being carried out by YLB and the way in which these projects will be executed. Therefore, the Legislative Approval of the lithium agreements could give rise to a broad discussion in the Legislative Assembly regarding the contracting process, the terms of the business and the way in which the projects will be executed.

Citizen participation and social control

The Bolivian Constitution and Law No 341 of 5 February 2023 – the Law of Participation and Social Control (Social Control Law) – provide that civil society organised in civic committees, unions, workers' associations and neighbourhood associations, among others, has the right to control the management of public entities and public, mixed and private companies that manage fiscal resources, natural resources and basic services ("Social Control").

In this sense, several social organisations related to lithium exploitation could be empowered to carry out Social Control over the public contracting processes called by YLB. Specifically, the Social Control Law provides that organisations can only prevent or suspend the execution of projects if they demonstrate that the project causes or may cause damage to the State, collective interests or rights.

Throughout Bolivia's history, some social sectors have prevented the negotiation or execution of lithium agreements, arguing that they did not satisfy the interests of the sectors they represented.

- On 30 January 1989, under the presidency of Mr Victor Paz Estensoro, the Bolivian State signed a letter of intent presented by North American company LITHCO for the negotiation of a contract for the exploration and exploitation of lithium in the Bolivian salar with an investment of USD40 million. However, during the negotiation stage, the Bolivian State radically changed its position, not only because of economic issues, but also because certain social sectors in Potosí opposed the signing of such a contract with a foreign company.
- On 15 November 1989, negotiations between the Bolivian State and LITHCO resumed under the presidency of Mr Jaime Paz Zamora. However, in 1990, the *Comité Cívico Potosinista* (COMCIPO) and other associations linked to it requested the modification of several terms of the contract under negotiation. Even though the Bolivian State approved the signing of the contract with LITHCO, COMCIPO carried out a series of marches and strikes that resulted in the cancellation of the direct invitation contracting process.

- In 2019, YLB entered into a joint venture agreement with ACI for the industrialisation and commercialisation of lithium. To formalise the agreement, the Legislative Assembly proposed the enactment of Supreme Decree No 3738. However, the Supreme Decree was never issued due to COMCIPO's pressure on the project. Throughout October 2019, COMCIPO initiated riots and strikes against the enactment of the Supreme Decree, which led to the overthrow of the Bolivian State in November 2019.
- On 25 January 023, the Potosi Civic Committee rejected the contract signed between YLB and Chinese company CATL BRUNP & CMOC (CBC) for the direct extraction of lithium (EDL) in the Uyuni and Coipasa salt flats.

Based on the background described above, social control by the social sectors is important for lithium projects to be executed.

Conclusions

While private investors face several challenges in implementing lithium projects in Bolivia, there is still hope that the country can achieve its goal of exploiting its reserves and position itself as a benchmark in the global lithium market.

The tenders launched by YLB between 2021 and 2024 demonstrate a drastic change in the dynamics of the lithium industry in Bolivia, showing that the Bolivian State opened the opportunity for foreign investors to participate in its industrialisation plan.

However, it is undeniable that the Bolivian State must also grant guarantees to investors. The investment rules for lithium have not been sufficiently developed so that investors can provide the outcome of their negotiations and the execution of projects.

Likewise, the economic policies of the Bolivian State (legislative and executive bodies) must be aligned. Beyond the interests of each political party, the Legislative Assembly should join efforts to prioritise the review and approval of lithium agreements so that these projects can be executed promptly, considering the crisis in the exploitation and commercialisation of other resources.

In addition, the Bolivian State must support foreign investors in complying with prior consultation with indigenous communities and social control of the projects.

For their part, investors must observe the complexities of Bolivian regulations when structuring their lithium projects and enlist an interdisciplinary team to assist them in complying with internal regulations, prior consultation and Social Control.

In sum, the key to overcoming these challenges is for the Bolivian State and investors to work together.

BRAZIL

Law and Practice

Contributed by:
Carlos Vilhena, Roberta Bilotti Demange and Marina Bertucci Ferreira
Pinheiro Neto Advogados

Contents

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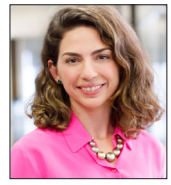
Authors

Carlos Vilhena is a partner at Pinheiro Neto Advogados. He oversees the firm's mining and government relations practices. Carlos has an LLB from the Law School of the University of Brasília and an LLM from the Centre for Energy, Petroleum, Mineral Law and Policy at the University of Dundee. He is the Secretary of SEERIL at the International Bar Association and a past Secretary of the Foundation for Natural Resources and Energy Law. In his mining practice, he has advised exploration and mining companies and investors on a wide variety of mining-related issues. Carlos has been continually listed as a top mining lawyer.



Roberta Bilotti Demange is a partner at Pinheiro Neto Advogados and has an LLB from the Law School of the University of São Paulo and an LLM from the Boston University. Roberta serves clients in different industries on transactional and advisory matters and concentrates her practice in mergers and acquisitions, corporate law and project development, with focus in mining, energy and other infrastructure sectors.

Marina Bertucci Ferreira is a senior associate at the mining and government relations practices of Pinheiro Neto Advogados. Marina provides legal advice to national and foreign clients in connection with the mining industry, including regulatory affairs, mergers and acquisitions, and financing. She also advises clients on the development of public policies and their impacts on the business environment. Marina has an LLB from the University Centre of Brasília, a Political Science degree from the University of Brasília, a postgraduate degree in Corporate Law at Getúlio Vargas Foundation, and an LLM in Global Business Law from Columbia University.

Pinheiro Neto Advogados

SAFS Quadra 2
Bloco B, Ed. Via Office
3º andar
CEP: 70070-600
Brasília – DF
Brazil

Tel: +55 613 312 9400
Fax: +55 613 312 9444
Email: cvilhena@pn.com.br
Web: www.pinheironeto.com.br

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1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining sector plays an important role in the Brazilian economy. In the third quarter of 2024, the mining sector accounted for USD11,18 billion in exports. The mineral sector revenue increased 5% in relation to the same period in 2023, and exports had a 0.6% increase, accounting for 12.60% of the total Brazilian exports in the third quarter of 2024. Iron ore was the most exported mineral substance (70.1%), followed by copper (9.3%) and gold (8.5%).

The National Mining Agency (ANM) continues to progress with regulatory efforts to improve transparency and governance standards in the Brazilian mining business environment, adding greater certainty to business.

ANM Initiatives

The administrative model introduced in 2018 with the creation of ANM is being consistently developed, with the aim of increasing transparency and legal certainty in the mining sector. ANM has repeatedly organised public consultations to discuss regulatory changes with the mining sector and allowed participation of interested parties in meetings of its board of directors. Since its creation, ANM has also put in place the regulatory framework for matters such as (i) reporting of resources and reserves according to international standards, (ii) tailings dams safety, (iii) liens on mineral rights, (iv) administrative sanctions, (v) aerial survey, (vi) reprocessing of waste and tailings, (vii) mine closure, and (viii) prevention of money laundering and terrorism financing related to transactions with precious metals and gemstones. The regulations enacted over the past few years indicate the development of the administrative model towards the best regulatory practices. ANM is currently preparing its 2025/2026 regulatory agenda, which is expected to cover matters such as updates to the resolution on liens over mineral rights, the issuance of public utility declarations for the purposes of implementing mineral servitudes, and the regulation of exploration permits (*guias de utilização*), among others.

Public Offer of Areas

The public offer applies to areas that had been previously subject to exploration or exploitation rights that for some reason expired or were terminated. As a consequence, some geological knowledge regarding such areas presumably exists. The public offer procedure does not extend to areas deemed as free, which will remain subject to the first-come, first-served system.

The regulations establish a two-stage process: first, bidders should formalise their interest in an area or block of areas; then, an auction is held among them (if more than one) for the highest offered value.

At the second stage of public tenders, neither the identity and number of bidders nor the bid offers are disclosed until the area is awarded. In practical terms, bidders do not know with whom they are competing (speculators, junior exploration companies, local mining companies, global major producers, to name a few) and, hence, how the market is pricing each area.

The entire process is online, through an electronic system put in place by the ANM exclusively for the purposes of the public offers.

The regulations regarding public offers were an important step forward towards the generation of new projects and investment opportunities in the mining industry. The tenders concluded

thus far have been extremely successful for both the regulator and the industry, generating seven times more applications than under the previous procedure, in equivalent timeframes.

Exploration and mining companies have welcomed the opportunity of securing title to explore or mine areas of interest that had been unavailable for years. Companies established in Brazil are lobbying with the ANM to add other areas of interest to coming tender rounds, while foreign prospective investors are reviewing the government's portfolio of 70,000-plus areas that are ready for tender, seeking opportunities to enter Brazil.

Federal Programmes

The new government, inaugurated in January 2023, has adopted measures focused on the promotion of clean energy, started with the creation of a department within the structure of the Ministry of Mines and Energy to oversee these matters and foster initiatives that help put Brazil in the centre of the energy transition globally. Measures taken by the previous administration aiming to promote greater institutional articulation between mining companies, environmental authorities and other stakeholders involved in the licensing of strategic mineral projects ("Pro-Minerals") were criticised but remain in force, although with much less traction.

The government of President Lula has also claimed to be considering changes to the legal framework for mining to compel companies to actively operate their production units. The government has identified supposedly inactive mines across the country and believes the proposed measures could inject resources into the national economy on a high scale. The mining sector, on the other hand, argues that the scenario presented by the government does not reflect reality, as ANM's data on title to mineral rights is often outdated, resulting in companies being listed as holders of areas that were returned to the federal government long ago.

1.2 Legal System and Sources of Mining Law

Brazil is a federative republic divided administratively into 26 states and the Federal District. Brazil's legal system is based on civil law tradition.

The Federal Constitution currently in force, enacted on 5 October 1988, has general provisions involving the economic activity in the country and addresses a few industrial sectors, including mining. The Constitution basically provides that:

- mining legislation can only be enacted at the federal level;
- property over minerals differs from the property of the land where minerals are located;
- minerals on the ground are a property of the federal government;
- exploration can be carried out by Brazilian individuals or legal entities incorporated in Brazil under the authorisation of the federal government;
- mining can be carried out by legal entities incorporated in Brazil under the concession of the federal government;
- exploration and mining are considered activities of national interest;
- the mining concession holder has ownership of the extracted minerals;
- landowners, local, state and federal governments are entitled to a royalty;
- mining is subject to environmental licensing; and
- holders of mining concessions are obligated to restore the areas degraded by mining activities.

The most relevant legal text on mining in Brazil is the Mining Code (Decree-law No 227/1967), which is supplemented by the regulations of the Mining Code (Decree No 9406/2018). The Mining Code and its regulations define and classify deposits and mines; set requirements and conditions for obtaining authorisations, concessions, licences and permits; and provide for the rights and duties of holders of exploration licences and mining concessions.

There are additional pieces of legislation and regulatory provisions governing specific matters related to the mining sector, such as the ANM, mining royalties and tailings dams.

1.3 Ownership of Mineral Resources

The Federal Constitution provides that the federal government owns the deposits and mineral resources (soil and subsoil), even where the land is regarded as private property. Any person who is intending to explore and/or extract minerals (mine) in Brazil must apply to the ANM for the corresponding authorisation or concession, even if the applicant owns the land where the exploration or mining will take place.

It is common to have mining companies performing exploration and sometimes on mining land belonging to third parties. Brazilian legislation does not require the company to acquire the property of those lands. If the titleholder is not the owner of the land related to its operations, it shall enter into land access/use agreements (or mining servitudes) with the respective landowner/occupier, in order to have access to, and use, the areas that are required for its operations.

The landowner/occupier is entitled to be paid a rent for the occupation of the area and a compensation for damages. If any minerals are extracted from private lands that are not owned by the titleholder, the landowner is entitled to a royalty equal to 50% of the statutory royalty (CFEM).

In the event that it is not possible to reach an agreement with the landowner/occupier, the Mining Code provides for a specific judicial court to allow access to the area, guaranteeing payment of compensation to the property owner/occupier.

1.4 Role of the State in Mining Law and Regulations

As a grantor-regulator, the federal government oversees the exercise of exploration and mining activities under a system of concessions, licences, permits and authorisations in which it has the authority to grant mining titles to private companies.

Mineral exploration and/or mining activities can only be conducted by Brazilian nationals or companies incorporated under Brazilian laws, with registered offices and management in the country. There is no requirement for mandatory joint venture or any sort of state participation.

1.5 Nature of Mineral Rights

The Federal Constitution provides that exploration and mining can be performed based on an authorisation or concession granted by the federal government. In that aspect, the mineral right has a constitutional basis, although the terms for granting and using an exploration licence or a mining concession will be provided by the law (ie, the Mining Code).

Mineral rights are not considered a property right, but rather a right granted by the state based on administrative law.

1.6 Granting of Mineral Rights

Mineral rights are unilateral administrative acts, granted by the federal government. The ANM is the federal agency entitled to manage, regulate and supervise mining activities in Brazil, along with the Ministry of Mines and Energy (MME). By definition, exploration rights are granted by the ANM and, in most of the cases, mining concessions are granted by the MME (but concessions for the exploitation of minerals employed in the construction industry without industrialisation are issued by the ANM).

States do not have the authority to grant mineral rights.

1.7 Mining: Security of Tenure

In general, there are two main types of mineral rights in Brazil: exploration licences and mining concessions. Exploration licences are granted on a first-come, first-served basis (also known as "priority"), which determines that, as long as the claimed area is not covered by any other mineral rights in force and all legal requirements have been met, the first individual to apply for a specific area will have the right to obtain the corresponding mineral right. Exploration licences are granted for a period of up to four years, with renewal allowed for an equal period at the discretion of the ANM.

If the exploration works are deemed successful with the identification of a resource, the titleholder shall submit to the ANM an exploration report. Upon the analysis and approval of the exploration report by the ANM, the titleholder shall have the exclusive right to apply for the mining concession within a one-year term counted as from the publication of the ANM approval.

The application for the mining concession shall include detailed geological and geophysical information of the related area, as well as a mine development plan and a closure plan. The mining concession shall also be granted once, in addition to the ANM reviewing and approving all technical materials, the titleholder presents the corresponding environmental installation licence of the project.

In short, Brazilian legislation provides enough certainty that the holder of the exploration rights, upon being successful in exploration, will have exclusive rights to apply for the corresponding mining concession. The ability to mine is provided for in legislation, but there are other circumstances that may affect the exercise of such rights. An application for a mining concession can be denied if it is deemed harmful to the public good or if it adversely affects other interests that, in the view of the federal government, should prevail over mining. In addition, if the environmental licence for the installation of the facilities is not obtained, the mining concession will not be granted.

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

2.1 Environmental Protection and Licensing of Mining Projects

The Federal Constitution establishes the people's right to an ecologically balanced environment. It recognises the environment as essential for a healthy quality of life and imposes on the government and society the duty to defend and preserve the environment for present and future generations.

As a general rule, the state environmental authority is in charge of licensing a mining project, as opposed to the federal environmental authority.

The latter will be in charge on an exceptional basis whenever mining activities will be undertaken in, or cause an impact on, areas deemed as federal, such as national environmental conservation units or indigenous lands, as well as in cases where mining activities will be executed in two or more states.

Environmental Licensing

Environmental licensing is required for projects and activities that use environmental resources and/or are potentially polluting, such as mining. In general, there are three licensing phases:

- first, the preliminary licence, which approves the project location and design;
- second, the installation licence, which authorises the installation of the facilities and premises; and
- third, the operation licence, which allows actual operation and mining activities.

Such licences may provide for specific conditions to be met by the company on a case-by-case basis, considering the particularities of the project and of the affected environment.

Environmental Authorities

Environmental authorities are usually well equipped and efficient in Brazil, but in some cases there is criticism that they hold too much discretion. Many of those authorities are constantly supervised by the Public Prosecutor's Office to ensure that proper protection of the environment is addressed. In addition, the tailings dam failure events in Mariana (2015) and Brumadinho (2019) have led the ANM and environmental authorities to focus on stricter rules for companies, mainly regarding environmental protection and safety in mining operations. In addition to that, in December 2023, a deactivated rock salt mine collapsed in Maceió and improved regulations and continuous investigations with respect to technical and safety measures are expected for the upcoming years.

2.2 Impact of Environmentally Protected Areas on Mining

In order to remove vegetation, companies must observe restrictions in connection with legal reserves and permanent preservation areas. Legislation provides for the mandatory constitution of the legal reserve, which consists in the setting aside of the area of a rural property for native forest. The legal reserve usually corresponds to 20% of the area of each rural property, but in the Amazon, such area can be increased to 35% of the property in areas of *cerrado* (vegetation similar to savannah) or 80% of the property in areas of forest.

Permanent preservation areas (APPs) are defined as such by applicable legislation and may be covered by native vegetation, such as:

- areas along rivers or watercourses;
- areas around lagoons, lakes, reservoirs or springs;
- areas on the top of hills, mounts, mountains or mountain ranges;
- areas along slopes or part of them, with declivities greater than 45 degrees;
- areas in coastal forests as dune setters or mangrove stabilisers;
- areas along *chapadas* and
- areas located at heights greater than 1,800 metres.

Mining activities may only be performed in APPs upon the acknowledgement that the operation would meet the public interest, and upon the fulfilment of the conditions imposed by regulations.

Moreover, when exploration and mining works are performed within environmental conservation units of sustainable use (environmental protection areas created by law or decree where economic activities may be coupled with conservation activities), Brazilian environmental legislation determines that special requirements may apply on a case-by-case basis. The conservation units usually have a buffer zone around them in which economic activities can be restricted.

2.3 Impact of Community Relations on Mining Projects

In the context of the environmental licensing process, public hearings to discuss the environmental impact assessment and its report may be held, so that communities can obtain further details of a project and voice their concerns. Although the industry generally acknowledges that mining companies should keep communities informed prior to, during and after the mining works regarding the developments that may affect them, there is no such requirement in Brazilian legislation. Usually, this information is provided by means of public hearings.

2.4 Prior and Informed Consultation on Mining Projects

Although Brazil is a party to Convention No 169 of the International Labour Organization (the Indigenous and Tribal Peoples Convention), the Convention has not yet been transferred into regulation in Brazil. Even so, mining companies that undertake activities in lands of indigenous or tribal peoples do carry out consultation.

Likewise, the Public Prosecutor's Office holds the view that compliance with Convention No 169 is mandatory regardless of the lack of regulations. In some cases, lawsuits have been filed to seek a court decision to force the mining company to perform proper consultation.

In those cases where the consultation has been carried out, it was performed by the investor and not by the Brazilian government.

2.5 Impact of Specially Protected Communities on Mining Projects

The Brazilian Constitution establishes that indigenous peoples hold the original right and have the exclusive use of the lands they have traditionally occupied. Exploration and mining activities inside indigenous areas are permitted by the Federal Constitution upon approval by the National Congress. However, due to the lack of specific regulation for this matter, the National Congress has yet to authorise any exploration or mining activities within indigenous areas.

In addition, the Quilombola peoples (descendants of former slaves who organised themselves in communities) are another example of a traditional community legally protected in Brazil. The Quilombolas are entitled to obtain title to the land that they occupy. Mining activities are permitted in Quilombola areas, but require specific review prior to the granting of mineral rights. Furthermore, in order to carry out their operations within those areas, mining companies must negotiate with the Quilombola representatives so that they can enter into agreements on the payment of compensation for the use of such land.

2.6 Community Development Agreement for Mining Projects

Brazilian laws do not provide for the requirement of the company entering into community development agreements. Nonetheless, companies usually enter into communities with local authorities to support some social initiatives, as part of their corporate social responsibility.

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

The ESG issue has gained an undeniable importance in the Brazilian corporate sector in recent years. There has been an increasingly clear and urgent call from society and the market for companies to adapt to ESG principles.

However, no major ESG guidelines or regulations have been introduced in Brazil specifically for the mineral sector. From a legislative and regulatory perspective, the tendency perceived since the recent major tailings dam accidents, which took place in 2015 and 2019, is an increase in inspection activities, and an enactment of laws and regulations that provide for stricter rules and more severe penalties in the case of ESG-related defaults.

Corporate governance (the "G" pillar) has become the main element for mining companies to bring their activities in line with several aspects related to the environment and society, implementing the "E" and "S" pillars.

Companies' increasing concern with image and reputation, associated with a greater corporate awareness of the systemic and financial consequences of non-compliance with the best practices in ESG, has carried a considerable weight in the development and implementation of social, environmental and corporate policies.

2.8 Illegal Mining

Illegal mining, particularly for gold, is an issue in certain areas of Brazil and poses significant challenges to mining companies and Brazilian authorities, as it not only leads to environmental damages and social conflicts, but also disrupts legal mineral production.

In early 2023, a humanitarian crisis in the Yanomami indigenous land drew attention to the impacts of illegal mining and led to several measures from Brazilian authorities, in the executive, legislative and judicial branches. Among these measures are the strengthening of inspections by the competent environmental authorities, the suspension of the presumption of legality for gold acquired in good faith, and the resolution issued by the ANM aimed at preventing money laundering and/or terrorist financing in transactions involving precious metals and gemstones, which establishes additional obligations for the purchase and sale of these minerals. There are also a number of bills in Congress aimed at regulating transactions with gold, so as to ensure traceability and sustainability.

Additionally, the Brazilian Mining Association has entered into an agreement with the Ministry of Justice and Public Safety to establish technical co-operation for the development of studies that will support the formulation of policies aimed at combating organised crime linked to illegal mining activities.

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

Generally, good examples are set when mining companies believe in aggregating the local communities as part of the project itself. This can be by creating jobs, developing local infrastructure with compliance and, in short, engaging communities to a certain extent in the project or operations.

However, companies that do not involve local communities in their projects from the outset usually face conflicts and popular rejection, which may result in the decrease of political will

and support for the project, creating larger difficulties for its development.

In addition, the recent tailings dam failure events in Mariana and Brumadinho, and the mine collapse in Maceió, also created a more complex scenario for mining companies to develop a relationship with communities and to hold their social licence.

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

3.1 Climate Change Effects

So far, there is no specific legislation or regulation referring to climate change matters in Brazil applicable specifically to mining activities. The issues related to climate change are indirectly addressed by means of the regular environmental protection laws in force in the jurisdiction.

3.2 Climate Change Legislation and Proposals Related to Mining

No climate change legislation has been passed in Brazil. Since inauguration in early 2023, the new government has been fostering discussions regarding climate change in general, and not only with regard to mining. The federal government has pushed a set of bills in Congress aimed at addressing climate change concerns, ahead of Brazil's participation in the 2023 UN Climate Change Conference. The bills regulate the carbon market, green hydrogen, offshore wind power and biofuels, but none of them specifically addresses mining. So far, only the offshore wind power bill is pending in Congress. All other new regulations were passed into law throughout 2024.

3.3 Sustainable Development Initiatives Related to Mining

One of the main principles of the Mineral Law in Brazil is the provision for environmentally sustainable mining. As a result, holders of mining concessions are obligated to restore the areas degraded by mining activities.

In practical terms, some companies have incorporated sustainable development initiatives not only in preparation for mine closure, but also as part of the operations. Some of those initiatives have the purpose of meeting one or more tasks of the sustainable development goals. It has also been reported that a few initiatives may involve partnerships with local authorities. However, there are no public policies by the federal government to encourage or foster such initiatives.

3.4 Energy-Transition Minerals

Launched in August 2024 by President Lula, the National Energy Transition Policy (PNTE) aims to promote sustainability and reduce greenhouse gas emissions by restructuring Brazil's energy matrix. It seeks to promote just and inclusive energy transition by addressing environmental goals while mitigating social and economic impacts, reducing energy poverty, and ensuring universal access to reliable energy.

PNTE is formed of two instruments, the National Energy Transition Plan (PLANTE) and the National Energy Transition Forum (FONTE). PLANTE outlines long-term strategies for emissions neutrality and sustainable growth, while FONTE facilitates dialogue between government, civil society, and the private sector, offering recommendations and promoting transparency in policy development.

The PNTE also emphasises international cooperation, technological innovation, energy

security, and reducing inequalities as the foundation for Brazil's evolving energy framework.

Additionally, the federal government lifted restrictions on the exports of lithium in 2022, which was a relevant development for lithium production in the country. As lithium is considered a mineral of interest to the nuclear industry, exports until 2022 were subject to a certain quota, which was a major obstacle to the development of lithium projects in Brazil.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Mining activities are taxed in the same way as businesses in general. The Brazilian tax system contains a variety of taxes at the federal, state and municipal levels.

In December 2023, the Brazilian National Congress successfully passed a comprehensive Tax Reform on Consumption, as detailed below, to take effect in 2026. The approved changes will co-exist with the existing tax legislation outlined in items **4.1 Mining and Exploration Duties, Royalties and Taxes** to **4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects** until the conclusion of the transition period in 2033. This tax reform does not alter any relevant rule in terms of income taxation in Brazil.

Corporate Income Tax

Brazilian corporate income tax (IRPJ) is levied at the federal level at the rate of 15% on taxable profits. A 10% surcharge is levied on the actual profits, presumed profits or profits determined by the tax authorities in excess of BRL240,000 per year. Taxable profits are ascertained by deducting the operating costs and expenses from the gross income originating from the company's core activity and incidental businesses. Some of these costs and expenses are not deductible because of their nature or the amount involved. There are also provisions for tax exemption once a company's taxable profit has been ascertained.

Brazilian legal entities are allowed to carry forward losses indefinitely, which is important for companies that undertake exploration, development and, later, mining activities. These losses can only offset 30% of taxable profits, which can result in deferral of the utilisation of the losses in the event that the legal entity sustains material losses and profits that are not substantial.

As a general rule, the income, capital gains and other earnings paid, credited, delivered, employed or remitted by a Brazilian source to a foreign-based individual or legal entity are subject to withholding tax at a general rate of 15%. The tax rates on capital gains of Brazilian individuals or non-residents (both individuals and companies) may vary from 15% to 22.5% depending on the amount of the capital gains. Rates may reach 25% for income paid to a person residing in a jurisdiction deemed to be a tax haven or privileged tax regime for Brazilian tax purposes.

Social Contribution

The social contribution on net profits (CSL) is calculated on the net profits before the allowance for income tax, adjusted by the additions, exclusions and offsets prescribed by tax law. The CSL rate is 9% and the figures paid are not deductible from the income tax base (actual profits). Other federal contributions – PIS (Programme of Social Integration) and COFINS (Contribution for the Financing of Social Security) – are levied at

the combined rate of 9.25% and are assessed over the gross billings of the company.

Tax on Transactions

The tax on financial transactions (IOF) is a tax on foreign exchange, securities, credit, gold and insurance transactions. The IOF/Exchange is currently imposed on a variety of foreign-exchange transactions. Currently, for most exchange transactions, the rate of IOF/Exchange is 0.38%.

Tax on Sales

The tax on sales of goods and services (ICMS) is a value-added tax levied by the state on the circulation of goods (thus covering the entire chain of trades from the manufacturer to the end consumer) and on the provision of intrastate and interstate transportation and communications services. Normally, the transaction value serves as the ICMS tax base. It is a non-cumulative tax and, as such, generates a tax credit to be offset by the product or service recipient against the tax payable on future transactions. Each Brazilian state is free to establish its own ICMS rates (generally between 17% and 18%).

Tax on Services

The tax on services (ISS) is assessed on the services provided by a company or independent contractor or professional, in accordance with a list of services attached to a federal supplementary law. ISS is levied by the local municipality at a rate of between 2% and 5% on the service value.

Mining Royalties

The mining statutory royalty is known as the Financial Compensation for the Exploitation of Mineral Resources (CFEM) and the proceeds of this royalty are shared between the local (75%), state (15%) and federal (10%) governments. The royalty rate varies from 1% to 3.5%, depending on the substance. The royalty is calculated based on the revenue arising from the sales of the ore, with the deduction of marketing taxes. In the event that the mining concession holder actually consumes the substance in its production chain, then the royalty will be calculated based on the market price of the substance or, if such a price cannot be determined, a reference value determined by the ANM.

Consumption Tax Reform

Overview

On 20 December 2023, the Brazilian National Congress approved the Tax Reform on Consumption (ie, Constitutional Amendment No 132 (EC 132/23)).

This tax reform brings to the Brazilian tax system a consumption tax system based on a dual Value-Added Tax (VAT) structure, which aligns Brazil with international taxation standards, particularly those adopted by member countries of the Organization for Economic Co-operation and Development (OECD).

The reform created the Contribution on Goods and Services (CBS), to be collected by the federal government, and the Tax on Goods and Services (IBS), to be jointly collected by states and municipalities; and an Excise Tax (IS) to be collected by the federal government on certain goods and services that are harmful to health or the environment; all of them replacing the current consumption taxes (ie, IPI, PIS, COFINS, ICMS and ISS).

The CBS and IBS are characterised by three key features: (i) broad tax base, encompassing transactions involving tangible and intangible goods (and any rights linked to them) or transactions involving services; (ii) a non-cumulative structure, allowing taxpayers to calculate credits

on virtually all expenses; and (iii) a limited number of tax rate bands.

Regarding item (iii), while each federative entity will be empowered to set its specific tax rate through legislation, this rate will be uniform for all transactions involving tangible or intangible goods, including rights, or services. However, certain goods and services may be eligible for lower or zero tax rates under IBS and CBS. Moreover, the Senate will hold the authority to establish reference rates for IBS and CBS at the federal, state, and municipal levels.

Transition period

The transition period will last eight years. During this period, CBS and IBS will be gradually implemented, while current consumption taxes and correspondent tax incentives will be gradually reduced, until the new system is fully implemented in 2033.

Starting in 2026, the CBS and IBS will be implemented with a trial rate of 0.9% for CBS and 0.1% for IBS. In 2027, the PIS/Cofins will be extinguished, and the CBS rate will be raised to a reference rate (to be determined later by the Ministry of Finance). Simultaneously, the IPI rate will be reduced to zero in 2027, with an exception for items manufactured in the Manaus Free Trade Zone.

From 2029 to 2032, a gradual phase-out of ICMS and ISS is anticipated, with rates decreasing to 90% in 2029, 80% in 2030, 70% in 2031, and 60% in 2032. In 2033, the new system will be fully implemented, leading to the complete extinction of old taxes and legislation. Moreover, from 2029 to 2078, there will be a gradual 50-year shift from origin-based (production location) to destination-based (consumption location) tax collection.

Mining and exploration

Specifically concerning the mining sector, the Tax Reform could potentially result in an increase of the tax burden on companies, as the approved proposal allows a maximum 1% excise tax to levy on activities that are deemed harmful to the health of the environment, which may include exploration and mining activities. However, the effectiveness of such excise tax is not immediate and will depend on further regulation by the federal government. The bill currently under consideration in Congress on the matter proposes the imposition of the excise tax on iron ore only. Other minerals would not be impacted. The initially proposed rate was 1%, but recent reports have reduced it to 0.25%. The final applicable rate will be determined upon the bill's enactment into law.

4.2 Tax Incentives for Mining Investors and Projects

There are no tax stabilisation agreements in Brazil.

Tax exemptions, breaks and incentives are granted or cancelled via agreements (*convênios*) entered into between the relevant Brazilian governmental authorities. More commonly, they are granted at the state level and with reference to the ICMS taxes. However, states that usually grant ICMS tax breaks and incentives to attract investment, but without the consent of other states, may generate a so-called tax war.

In addition, there are tax breaks available in connection with IRPJ assessed in projects located in the Amazon or the north-eastern regions of the country. These tax breaks may represent a deduction of 75% in IRPJ tax.

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

As a general rule, if the seller of a mining project has a capital gain arising from the transaction, the seller shall pay capital gains tax.

In the case of corporate structures outside Brazil, Brazilian tax rules provide that if a non-Brazilian entity has any capital gain arising from the disposal of a Brazilian asset, then such gain could be subject to withholding tax at a sliding scale rate between 15% and 22.5%, as described in **4.1 Mining and Exploration Duties, Royalties and Taxes**. (If the seller is based in a tax-haven jurisdiction, the applicable rate will actually be 25%.)

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Attracting investments for mining is crucial for the development of the Brazilian economy, since the mining sector contributes to the creation of direct and indirect jobs, the expansion of infrastructure and the increase of the Brazilian trade balance.

Since Brazil does not have any bilateral investment treaties in place, the federal government relies on general policies and legislation applicable to businesses in general (eg, exemption of export tax in the exportation of non-manufactured goods, and exemption of ICMS tax on exported goods before the full transition to the new rules of the tax reform).

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

Foreign capital in Brazil is governed by Law No 4131/1962 (the "Foreign Capital Law"). As a general rule, foreign capital can enter Brazil freely, without constraints over the total amount to be invested and without the need of prior approval by the government.

The registration of foreign capital with the Central Bank of Brazil is required when bringing funds into Brazil, remitting profits abroad, repatriating capital, and reinvesting proceeds. Investment is registered in the foreign currency in which it is made, or in Brazilian currency if the funds originate from a non-resident account properly kept in Brazil or from assets located in the country.

The main restriction with regard to foreign investment in the Brazilian mining sector is related to foreign ownership of mining companies that have rights in certain areas. The current interpretation of the federal government is that legislation does not allow mining companies that have 51% equity interest held directly or indirectly by non-Brazilians to hold mineral rights and perform exploration and/or mining activities within the country's border area (ie, the 150 km strip of land parallel to the country's dry borders).

5.3 International Treaties Related to Exploration and Mining

Brazil has not ratified any bilateral or multilateral investment treaties. Brazilian authorities, at some point, considered that those treaties might lead to international disputes and could limit the government's ability to change policies and regulations. In this context, Brazil chose to rely exclusively on domestic legislation to protect investment and private property in general (both Brazilian and foreign).

5.4 Sources of Finance for Exploration, Development and Mining

The main financing options for mining development in Brazil are the banking system, the

São Paulo stock exchange (although very few mining companies are listed on that exchange), the international capital markets and the international financing markets. The Canadian, United States, British and Australian markets are important sources of investment (both equity and debt).

In early 2024, the National Bank for Economic and Social Development (BNDES) announced the Strategic Minerals Investment Fund, designed to support junior and mid-sized mining companies. The fund could mobilise up to BRL1 billion, including up to BRL250 million from BNDES itself. It will be managed by a consortium comprising Ore Investments and a joint venture between JGP and BB Asset.

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

Internally, the São Paulo stock exchange has not been widely used as a source of financing by mining companies. Despite a few companies that are listed on the São Paulo stock exchange – such as Vale, CSN, Gerdau and Ferbasa – most capital market transactions involving mining assets are structured in other markets, by way of parent companies.

The 2020 Aura Minerals' successful listing on the São Paulo stock exchange evidenced that the economic conditions are favourable for mining companies other than majors that float their shares in the Brazilian market.

In October 2024, B3 signed a Memorandum of Understanding (MoU) with the Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSXV) to promote investments in mining projects in Brazil. The goal is to increase the number of listed companies in the Brazilian market, by developing an ecosystem that enables the dual listing of mineral exploration companies headquartered in Brazil.

5.6 Security over Mining Tenements and Related Assets

According to the Mining Code, the titleholders of mineral rights in all stages (including exploration licences and rights to apply for a mining concession) are allowed to create a security interest over such mineral rights.

In addition, as royalties and streaming transactions cannot be registered against title to the mineral rights, companies have to put in place creative alternatives to ensure that creditors have protections. Even so, the lack of proper regulatory provision for those transactions may add some uncertainty to financing parties and that may be reflected in less favourable financial conditions for the mining company.

A regulation for registration of security over mineral rights has been in effect since 2 March 2022, and deals with registration proceedings, creditor protection mechanisms and foreclosure. As the regulation refers to mining concessions only, changes to such regulation are expected for the upcoming years to conform it with the provisions of the Mining Code.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Brazil's mining industry is projected to mobilise approximately USD64.5 billion in investments between 2024 and 2028, marking a 28.8% increase compared to the previous forecast of USD50.04 billion through 2027. The expected increase highlights the sector's critical impor-

tance to the country's economic development and its efforts to meet global demand for essential minerals.

Although iron ore remains a cornerstone of Brazil's mining revenue, Brazil is actively diversifying its mineral portfolio, notably by developing a rare earth industry to reduce dependence on traditional commodities and challenge China's dominance in this market.

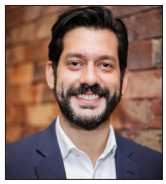
In summary, Brazil's mining sector is poised for significant growth over the next years, driven by substantial investments and strategic diversification efforts.

Trends and Developments

Contributed by:
Tiago de Mattos Silva and Bruno Costa
William Freire Advogados Associados

William Freire Advogados Associados (WFAA) has been active as a law firm for more than 30 years and is recognised both domestically and internationally for its work in all areas of law related to natural resources, and in particular for its expertise in the mining industry. With offices in São Paulo and Belo Horizonte, the firm also maintains a strategic unit in Brasilia, DF. The mining area, led by partner Tiago de Mattos and Bruno Costa, provides consulting services for every stage of a mining project in Brazil, as undertaken by both domestic and foreign companies. The team of ten professionals assists with acquisition, sale and partnership transactions involving investors and mining companies, from structuring deals through to legal audits and the drafting and managing of contracts. Additionally, it represents mining companies before regulatory bodies through every phase of the mining title processes. Clients include Vale, Anglo American, Sigma Lithium, Equinox, Mosaic and CMOC.

Authors



Tiago de Mattos Silva is a partner at William Freire Advogados Associados and head of its mining industry group. He specialises in mineral law; regulations and governance; mining transactions, contracts and corporate issues; and mineral disputes. He is also the President of the Brazilian Institute of Mineral Law (Instituto Brasileiro de Direito Minerário). Tiago graduated from the Federal University of Minas Gerais and has an LLM (distinction) in Mineral Law and Policy from the Centre for Energy, Petroleum, Mineral Law and Policy (CEPMLP) at the University of Dundee, UK. He has in-depth expertise in mining industry legal issues, both advisory and litigation and is a frequently an author/speaker for publications and events related to the mineral sector.

Bruno Costa is a partner of William Freire Advogados Associados, where he is part of its mining industry group. He is also a director of the Brazilian Institute of Mineral Law (Instituto Brasileiro de Direito Minerário). He has strong expertise in drafting, managing and reviewing administrative cases in mining regulatory matters, with activity across all regional management units of the Brazilian National Mining Agency and is skilled in preparing legal opinions, responding to regulatory inquiries, supporting the strategic management of mineral assets, conducting due diligence to identify regulatory risks, and providing legal advice in negotiations for the purchase, sale, and lease of mining rights.

Contributed by: Tiago de Mattos Silva and Bruno Costa, **William Freire Advogados Associados**

William Freire Advogados Associados

Av. Angélica, 2.491 Conj. 161
Higienópolis, 01227-200
São Paulo/SP
Brazil

Tel: +55 3199 2231 951
Email: tiago@williamfreire.com.br
Web: www.williamfreire.com.br

WILLIAM FREIRE
ADVOGADOS ASSOCIADOS

Overview of the Brazilian Mining Industry

The mining industry represents roughly 4% of Brazil's GPD. Mining was responsible for revenues on the order of BRL86 billion from taxes and royalties in 2023. In 2023, the balance of trade from mining – almost USD32 billion – was equal to 32% of Brazil's trade surplus.

Brazil features considerable geological diversity and is home to some world-class mining projects. The country is a major player and is ranked globally in terms of production of niobium, iron, manganese, graphite and bauxite.

In recent years Brazil has become the home of important projects associated with the critical and strategic minerals needed for the green energy transition, especially nickel, copper, rare earth minerals and lithium. Minas Gerais and Pará are the states with the highest production levels, and are therefore also the states with the highest mining industry tax takes and royalty payments. Bahia, Goiás and Mato Grosso are also rapidly evolving in terms of rare earth, gold, and nickel projects.

The Regulatory System for the Brazilian Mining Industry is Stable and Consistent

The regulatory system for mining in Brazil is consistent and relatively stable. The Mining Code, which originally dates to 1967, has undergone changes over the decades, though most structural issues associated with the acquisition, maintenance and loss of mining titles have been preserved.

The mining legislation has advanced through related laws, such as Law 13.575/2017, which created the Brazilian Mining Agency (ANM) and Law 12,334/2010, later amended in 2020, which addresses the National Dam Safety Policy (PNSB).

Legal and Regulatory Advances

In recent years, Brazil has seen some important regulatory changes, especially those that occurred after the creation of the ANM in 2018. The ANM replaced the National Department of Mineral Production (DNPM). The ANM constitutes a new format for public governance that is focused primarily on joint decision-making and permanent dialogue with stakeholders. The work culture inside the ANM is in the process of changing, although there are still many obsta-

cles to overcome before a full and effective culture of rule-making based on good regulatory governance is embraced.

There were few significant regulatory changes in the mining sector in 2024, it was instead a year of consolidation for regulations established in previous years. However, some areas, highlighted below, saw important developments.

The eighth round of auctions for mineral exploration areas

Continuing the process initiated in 2020, with the regulation of the new process for offering areas through public offers and electronic auctions, the ANM conducted the eighth round of auctions. It made over 3,000 individual mineral exploration areas available to the market. The round generated approximately BRL620 million in aggregate bid value, encompassing areas in various Brazilian states and a wide range of mineral substances.

Dam safety: continuation of regulatory improvement

Law 14.066/2020 updated the PNSB in order to prevent future disasters. The use of the upstream tailings dam model was prohibited by the new law. The new safety measures include fines of up to BRL1 billion in the case of disasters caused by dam collapses and the mandatory drafting of emergency action plans.

In 2022, the ANM published Directive 95/2022, which defined the regulatory measures applicable to mining dams pursuant to the PNSB. This is a complex and strict standard that involves many issues related to the construction, operation and closure of tailings dams, as well as the management of the related safety issues.

The standard introduced many modifications to the legislation in force, such as alteration to the criteria for classification as high-risk and the definition of the emergency level. Regarding obligations applicable to dams with a high associated damage potential, an engineer of record must be designated. This person is responsible for evaluating the structure and continually issuing reports that deal with the safety of the structure, considering the entire life cycle of the dam.

The consolidation of a new regulatory benchmark in the management of dam safety, initiated via alterations to the PNSB in 2020 and detailed in ANM Resolution 95/2022 has transformed Brazil into one of the jurisdictions with the strictest standards in the world relating to social and environmental safety and protection.

This regulation, which integrates global best practices and is internationally recognised for its technical rigour, underwent some modifications in 2024. These changes focused primarily on technical concepts, risk categories, periodic reporting, audit governance, and the process for submitting documents. The updates aimed to simplify certain procedures and adjust some technical requirements without substantially altering the core regulation.

Amendments to Regulatory Standard 22 (NR 22): occupational health and safety in mining

The Ministry of Labour and Employment (MTE) issued successive ordinances in 2024 that approved the revised text of Regulatory Standard 22 (NR 22), concerning occupational health and safety in mining. The new version introduced significant changes for the sector, particularly regarding tailings and waste disposal structures.

Specifically, the updated NR 22 prohibits:

- any installations in downstream areas of mining dams subject to flooding; and
- several kinds of installation within the safety perimeter of waste piles, including operational facilities.

These changes imposed stricter restrictions than those already established by existing regulatory standards, raising substantial concerns about the operational continuity of such structures.

In December 2024, the standard was amended again by Ordinance MTE 2,105/2024, which relaxed some requirements and extended adaptation deadlines for the new rules. However, uncertainties remain about which types of installations the Ministry will consider permissible downstream of dams and around waste piles. This will likely require further regulatory clarification and potentially lead to legal disputes.

Utilisation of waste and tailings: Resolution 189/2024

Resolution 189/2024 unexpectedly introduced new requirements for miners to reuse waste and tailings generated from their operations – a topic of critical importance in terms of sustainability and reducing the environmental impact of mining. The regulation imposed requirements that deviate from existing mining legislation, including that:

- the disposal sites for such materials must be covered by a mineral easement registered in the land registry;
- these disposal structures must be included in the project's economic feasibility plan; and
- these materials must be listed in the annual mining report.

The regulation was published in the wake of a controversial ANM decision regarding the legal nature of waste and tailings, as well as their ownership, particularly when deposited outside the boundaries of the original mining title area.

Given its inconsistency with mining legislation, both the new regulation and the ANM's decision are likely to be subject to legal disputes.

Strategic Minerals Investment Fund – BNDES and Vale

In October 2024, the Brazilian Development Bank (BNDES) and Vale S.A. announced the selection of the manager for the Strategic Minerals Investment Fund (*FIP Minerais Estratégicos*). This fund aims to mobilise up to BRL1 billion to invest in up to 20 junior and mid-sized companies engaged in mineral exploration, development, and the establishment of new strategic mineral mines in Brazil. The initiative prioritises minerals essential for the energy transition, such as lithium, nickel, and cobalt, which are crucial for technologies like batteries and renewable energy systems.

On January 31, 2025, the Brazilian Ministry of Mines and Energy proposed new regulations to govern infrastructure debentures with tax incentives, specifically targeting mineral projects linked to the energy transition. This regulatory framework aims to stimulate private investment in the development of critical minerals essential for clean energy technologies, such as lithium, nickel, and rare earth elements. By offering fiscal benefits to investors, the proposal seeks to enhance the financial attractiveness of these projects, fostering sustainable growth in the mining sector while aligning with Brazil's strategic objectives for decarbonization and energy security. The public consultation period for contributions and feedback will remain open until March

9, 2025, allowing stakeholders to actively participate in shaping the final regulatory framework.

Looking Ahead

Brazil is still a consistent target for investment and the mining industry is planning investments of USD50.5 billion between 2023 and 2027, especially for projects associated with the green energy transition.

Recent years have seen the creation of the so-called *Vale do Lítio* (Lithium Valley) in the state of Minas Gerais. This is a project aimed at developing municipalities in the northeastern and northern areas of the state. This development is to be based on the lithium production chain and is expected to create jobs and raise incomes in these two regions.

In addition, there has been an enormous influx of investment into the states of Minas Gerais, Goiás and Bahia for the development of world-class mining projects aimed at exploiting rare earth deposits, especially after the first mine outside Asia, located in the state of Goiás, began producing the four critical magnetic rare earth elements.

Noteworthy point: Regulatory Agenda | 2025/2026 biennium

In December 2024, the ANM published its Regulatory Agenda for the 2025/2026 biennium. The document outlines the priority and indicative items that will be the focus of regulation or normative improvements over the next two years. The agenda reflects ANM's commitment to addressing critical challenges in the mining sector, enhancing regulatory frameworks, and aligning with global best practices to ensure sustainable development and operational efficiency.

Among the listed topics, the following stand out:

- Regulation of waste and tailings piles (NRM 19).
- Mining-related conflicts (eg, blocked areas, urban zoning, protected areas
- *, quilombola* and traditional communities).
- Review of licensing processes for the small-scale mining permit (PLG).
- Simplification of mineral rights transfer and lease processes.
- Declaration of public utility (important for mining easements and expropriation).
- Update of licensing norms for nuclear minerals, aligned with Law 14,514/2022.
- Review and modernisation of Mine Closure Plan regulations (Resolution ANM 68/2021).
- Financial guarantees and insurance to cover risks related to mining activities.
- Review of Resolution ANM 122/2022 (which covers sanctions).

CAMEROON

Law and Practice

Contributed by:
Lynda Amadagana, Elise Ngo Nyobe, Cecile Bella and Kevin Djomgoue
Amadagana & Partners

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Amadagana & Partners

Amadagana & Partners (A&P) is a Cameroon-based full-service law firm, founded by Lynda Amadagana with a secondary office in Paris (France) and a presence in Kinshasa (Democratic Republic of Congo). In terms of mining expertise, the firm's lawyers have advised mining companies in legal and regulatory due diligence, as well as in the drafting and renegotiation of mining concessions, permits and investment and partnership agreements. In the mining sector, the firm has advised many sponsors including the developer on the main deal last year involving the installation of a major mining group in Cameroon for exploration activities and with the target of developing the first operating mine in the country. Despite the complexity due to the absence of key regulatory texts, the firm has provided innovative solutions and key insights into the sector to its clients. It has also contributed to setting up the Cameroonian mining association which gathers the main operators of the mining sector in Cameroon together.

Authors

Lynda Amadagana is a lawyer admitted at the Paris and Cameroonian Bars and is the managing partner of Amadagana & Partners. She advises on projects in the mining sector with a specific focus on the OHADA Zone. She is a specialist in mineral property, acquisition and leasing, labour, employment and mine safety law and environmental law. She advises mining companies in their negotiations with governmental entities for exploration and exploitation permits, land titles and other issues related to mining operations. She has in-depth knowledge of the specific requirements of governments and public bodies involved in the mining and metal industries.

Elise Ngo Nyobe is a lawyer at the Cameroonian Bar and a partner at Amadagana & Partners. She is involved in corporate transactions, project financing and projects in the mining sector. She also advises on transactions carried out in several OHADA member countries. More specifically, she participates in negotiations between mining companies and government entities to obtain mining permits, licences and other issues related to mining law. She provides strategic financial and commercial advice, risk analysis, designs and implements tenders, and analyses, prepares and negotiates contracts, licences, concessions and ancillary agreements.

Contributed by: Lynda Amadagana, Elise Ngo Nyobe, Cecile Bella and Kevin Djomgoue,
Amadagana & Partners

Cecile Bella is a lawyer and an associate at Amadagana & Partners. She is involved in the preparation and drafting of contracts, licences, concessions and ancillary agreements in the mining sector. She is also involved in the completion of legal and tax due diligence.

Kevin Djomgoue is a lawyer admitted at the Cameroonian and Nigerian Bars and is an associate at Amadagana & Partners. He is involved in the preparation and drafting of contracts, licences, concessions and ancillary agreements in the mining sector. He assists mining companies with regulatory compliance, conflicts of interest and sustainable development issues.

Amadagana & Partners

Rue 6103, Golf-Bastos
Yaoundé
Cameroon

Tel: +237 655 223 141
Email: contact@amadaganapartners.com
Web: www.amadaganapartners.com

Contributed by: Lynda Amadagana, Elise Ngo Nyobe, Cecile Bella and Kevin Djomgoue, Amadagana & Partners

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Cameroon is rich and diversified. Indeed, the Cameroonian territory abounds in a diversity of exploitable and marketable mineral substances such as iron, manganese, rock titanium, chromium, vanadium, copper, lead, zinc, cadmium, germanium, iridium, selenium, tellurium and molybdenum. It also has an abundance of tin, tungsten, nickel, cobalt, platinoids gold, silver, magnesium antimony, barium, boron, fluorine, sulphur, arsenic, bismuth, strontium, mercury, titanium, zirconium in sand, rare earths, coal and other fossil fuels, uranium and other retroactive elements, phosphate, bauxite, sodium and potassium salts, alum, sulphates other than alkaline earth sulphates. Additionally, it has minerals mined for industrial uses including marble, limestone and any industrial or ornamental rock, chalcedony and opal, ruby, sapphire, emerald, garnet, beryl, topaz and any other semi-precious stones and diamond.

The mining industry in Cameroon is still underexploited, despite the will of the government to make Cameroon one of the key mining countries in Africa through the production, transformation and commercialisation of its mining resources for the socio-economic development of the country. Indeed, a small percentage of the mineral substances in its territory are exploited through artisanal mining. However, no industrial mining project is in operation.

The mining industry in Cameroon is mainly operated by individuals for artisanal mining and junior companies for industrial mining. However, the State also participates through SONAMINES, which is the public company in charge of the State's interests in the share capital of mining companies.

The mining industry in Cameroon is attractive. The Mining Code, for example, establishes a system of fiscal and customs incentives for investors in both the exploration and exploitation phases of their mining projects.

The mining industry in Cameroon is constantly developing and evolving with different actors, notably the government, Parliament, mining companies, civil society and mining craftsmen taking part.

1.2 Legal System and Sources of Mining Law

The Cameroonian legal system is based on civil and common law. Mining legislation in Cameroon (mainly Law No 2023/014 of 19 December 2023 (the "Mining Code")) is inspired by several sources, namely:

- international standards of extractive governance;
- the Extractive Industries Transparency Initiative (EITI) Standard (the "EITI Standard");
- the Kimberley Process;
- general African Union mining policies;
- the Dodd–Frank Act; and
- the principles of sustainable development and good practice recommended in the mining sector by the World Bank in its Extractive Industries Good Practice Guidance.

The EITI Standard is an international standard that aims at transparency for oil, gas and mining resources in different countries.

The Kimberley Process is an international rough diamond certification scheme that brings governments, civil society and the diamond industry together to prevent the purchase of diamonds on the world market by rebel movements to finance their military activities.

General African Union mining policies are mainly reflected under the Africa Mining Regime Vision, which is a common public policy document adopted at the African Union Heads of State Summit in February 2009 in Addis Ababa, Ethiopia, that aims to ensure the fair and optimal exploitation of mineral resources for broad-based sustainable growth and socio-economic development.

The Dodd–Frank Act is a 2010 US law applicable to extractive companies listed on the US stock exchange.

1.3 Ownership of Mineral Resources

In line with the provisions of the Cameroonian Civil Code, ownership of the soil entails, in principle, ownership of the top and bottom.

However, mineral substances are an exception to this general principle as any mineral substance contained in the soil and subsoil of the territory of the Republic of Cameroon are the property of the State, which exercises sovereign rights therein in line with the provisions of the Mining Code. The State is the only authority entitled to grant mining permits.

1.4 Role of the State in Mining Law and Regulations

The State has several roles in mining in Cameroon:

- grantor-regulator through the Ministry of Mines, Industry and Technological Development; and
- owner-operator through the public company SONAMINES.

The Mining Code provides for a mandatory minimum 10% shareholding which is free of charge, in all operating mining companies, and the State can increase its stake to 25% shareholding (which is not free of charge).

1.5 Nature of Mineral Rights

The Cameroonian Constitution provides that the regulation of mining matters is regulated under the law. However, mining rights are derived from the Mining Code, the Mining Convention and the specifications of the exploration permit.

1.6 Granting of Mineral Rights

The granting authorities in Cameroon are as follows.

- The Minister of Mines who is in charge of the issuance of the following mining titles: reconnaissance, research, small-mine exploitation permits, mineral and thermo-mineral water exploitation permits and geothermal deposits. He also signs the Mining Convention on behalf of the State.
- The President of the Republic who is in charge of the issuance of an exploitation permit for an industrial mine, and an exploitation permit for an industrial quarry.
- The regional delegates of the Ministry of Mines, Industry and Technological Development who are in charge of the issuance of artisanal mining permits and semi-mechanised artisanal mining permits.

However, there are cases of overlapping jurisdiction, notably in the following cases.

- Authorisation for semi-mechanised artisanal exploitation of precious and semi-precious substances can only be granted in a research permit by the Minister of Mines, after prior approval by the President of the Republic.
- A research permit is granted by the Minister of Mines only after the prior approval of the President of the Republic.

1.7 Mining: Security of Tenure

Security of tenure in Cameroon's mining sector is principally governed by the Mining Code and its complementary regulations. Security of tenure is generally guaranteed in Cameroon in the following way.

Term Length and Renewals

Exploration permits

These are initially valid for three years, renewable up to three times with each renewal not exceeding two years under Article 33 of the Mining Code with a possibility of obtaining an extension under certain circumstances for a further non-renewable period of two years under Article 34 of the Mining Code.

Mining permits

These are granted for a specific duration (determined by negotiated outcome in the Mining Convention under Article 40(2) and could be renewed for a period negotiated and provided for in the mining agreement with the State under Article 40(4)(7).

Rights to progress from exploration to mining

Holders of exploration permits have the right to apply for a mining permit if they discover and can prove the existence of economically viable mineral deposits under Article 42(1) of the Mining Code.

The government has the right to revoke the mining permit if the permit holder fails to meet specific conditions.

Maintenance Requirements and Cancellation Procedures

Permit holders have to maintain a certain level of activity and investment to retain their rights. Failure to comply with these obligations can lead to suspension or cancellation of the permit. Cancellation procedures involve a formal process with opportunities for the permit holder to address the reasons for cancellation.

Operating Control, Marketing and Transferability

Permit holders have significant operational control over their mining activities, subject to environmental and safety regulations. They generally have the right to market and sell mineral products, either domestically or internationally. Mining permits are transferable, but subject to government approval under Article 79(4) of the Mining Code.

Additional Considerations

Land tenure

Mining activities often occur on land owned by the State or customary land holders. Separate agreements are necessary to secure land rights.

Fiscal regime

The Mining Code outlines a fiscal regime including royalties, production sharing agreements, and corporate taxes.

Environmental and Social Responsibilities

Permit holders are subject to environmental impact assessments and social responsibility obligations.

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

2.1 Environmental Protection and Licensing of Mining Projects

The procedure for carrying out an environmental and social impact study is performed by firms approved by the Ministry of the Environment, which, in turn, issues an environmental certifi-

cate of conformity at the end of the process. This procedure is formalistic and costly, as the fees required are substantial and the timeframe for the issuance of the environmental compliance certificate is very long.

2.2 Impact of Environmentally Protected Areas on Mining

There are protected areas in Cameroon. Indeed, the issuance of an exploitation permit is subject to the prior completion of hydrogeological, geophysical, bacteriological and physico-chemical studies that define the conditions of exploitation and study the vulnerability of the water table in order to determine the protection and security perimeter.

The protection zones may be established by the Minister of Mines together with the administrations concerned, within which, prospecting, research and mining of mineral substances or quarries are prohibited.

2.3 Impact of Community Relations on Mining Projects

The Mining Code addresses the issue of community relations in the context of mining projects by taking into account the impact of these projects on the economic, cultural, industrial and technological development of Cameroon and, more specifically, on the development of human resources and the development of local businesses, industries and youth employment.

The Mining Convention provides for specific local content, taking into account the needs of communities surrounding mining projects.

A special account for the development of local capacities has been set up under Cameroon's Mining Code. Its purpose is to finance Cameroon's economic, social, cultural, industrial and technological development through human resources development and the development of local businesses and industry.

Contributions to this account range from 0.5% to 1% of the mining company's total pre-tax turnover.

2.4 Prior and Informed Consultation on Mining Projects

Prior consultation is mandatory and is done by mining operators in co-operation with the State and regional and local authorities, and civil society.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no communities that enjoy special protection from mining projects in Cameroon. However, in order to preserve their traditions, the rights of indigenous peoples are taken into account when a mining project is set up on their territory. They are consulted and are entitled to compensation in the event of expropriation.

2.6 Community Development Agreement for Mining Projects

It is usual to have community development agreements in Cameroon referred to under the relevant mining agreement. Indeed, the local populations affected by the project must be consulted first for the allocation of the land necessary for the exploitation of mineral substances and secondly to identify the needs of the locality and finalise the local content in the agreement.

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

Mining regulations in Cameroon include numerous rules relating to governance and transparency stemming from the EITI Standard and the

Kimberley Process, as well as provisions relating to respect for the environment or at least sustainable development requirements.

2.8 Illegal Mining

Illegal mining is an issue in Cameroon particularly in the mineral-rich eastern and northern regions. According to the 2023 ENACT Organised Crime Index Report, high levels of corruption in Cameroon's State institutions provide a safe haven for illegal actors. A complex criminal network is involved in illegal mining in the country. The network ranges from State and local administrative officials and political elites as well as unlicensed miners and exporters, to local residents and community members. The illicit transnational supply chain for illegally mined products involves Chinese companies and is aided by porous borders, regional conflicts, widespread poverty and entrenched corruption. Illegally extracted mineral resources are trafficked to China, the UAE and Vietnam through Douala and neighbouring countries.

Illegal mining poses significant disruptions to legal industrial mining production in Cameroon. Some of these disruptions include extractable resource depletion, operational delays faced by legal mining companies, environmental damage, security risks, and reputational damage.

Mining companies and the government respond to illegal mining with a combination of enforcement, preventative measures and socio-economic strategies. Mining companies tend to enhance their security measures like installing surveillance systems and hiring private security companies. Some companies also invest in community engagement by funding education and healthcare projects. The government usually reacts with law enforcement, military deployment, regulatory oversight and public awareness campaigns, sealing access to illegal mining sites, and jailing illegal miners.

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

In the Ngoura district in the eastern region of Cameroon, local people were angry at both the mining operators, and the traditional authorities and denounced the excessive monopolisation of their land by the mining operators to the administrative authorities. They felt that the mining operators were taking advantage of their mining permits to appropriate thousands of hectares of land in the villages.

On the other hand, the majority of industrial projects are still at the structuring phase and so far consultations with local communities are going well, and they are represented by civil society, local elites, and civil and traditional authorities such as Group ERAMET, LAFARGE, SINOOSTEEL, and CAMALCO.

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

3.1 Climate Change Effects

The Mining Code provides that in order to ensure that mining and quarrying resources are exploited rationally and take the environmental impact into account, mining licence holders must:

- protect flora;
- reduce waste;
- manage waste in line with current legislation;
- reduce emissions of CO, CO_2, SO_2, NO, NO_2, HC and particulate matter from machinery as well as dust emissions;

- manage wastewater discharges, watercourse crossings and management of water bodies; and
- manage mine tailings and solid and liquid waste such as used oil, rags soiled by hydrocarbons, etc.

3.2 Climate Change Legislation and Proposals Related to Mining

There is no climate change legislation related to mining that has been adopted or is under discussion. However, this is a major concern for Cameroon, which is a signatory to COP21 and other major international Conventions on climate change, and it is committed to the sustainable management of natural resources and adaptation and mitigation policies.

3.3 Sustainable Development Initiatives Related to Mining

Several initiatives for the achievement of sustainable development objectives, notably measures related to the fight against climate change, exist in Cameroon. These include:

- reform of the normative and institutional forestry framework in order to align it with the requirements of sustainable management of forest resources in line with the resolutions adopted at the Rio de Janeiro summit in 1992;
- the promulgation of new laws relating to environmental management (eg, the Framework Law No 1996/12 of 5 August 1996);
- the creation of a Ministry of the Environment and Forestry;
- the establishment of a forestry policy document and realisation of a forestry zoning plan for southern Cameroon;
- the implementation of a National Environmental Management Programme (PNGE);
- the launch of the Forest and Environment Sector Programme (FESP); and
- the participation of Cameroon in the negotiations of the UN Framework Convention on Climate Change.

3.4 Energy-Transition Minerals

Discussions are underway in Cameroon on increasing demand for so-called energy-transition minerals such as cobalt, lithium, copper, and nickel (ie, more incentive measures for utilisation of electric vehicles).

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Mining exploration and exploitation in Cameroon is subject to the General Tax Code and to a specific regime granting tax and customs advantages to mining companies.

The General Tax Code requires mining companies to pay the taxes and duties applicable to all companies, particularly corporate tax. In addition, during the exploration phase, the mining company is required to pay specific taxes such as the fixed fee for the allocation of exploration permits. This fixed fee is based on the surface area of the requested exploration perimeter and the annual surface royalty is payable no later than January 31 of each year.

During the exploitation period, the holder of the mining title is subject to a state concession fee at the beginning of each financial year. The cost of the royalty depends on the surface area of the mining title. However, an ad valorem tax will be paid on each mined resource.

The mining legislation does not distinguish between the taxation of national and international investors.

4.2 Tax Incentives for Mining Investors and Projects

The Mining Code grants several advantages to mining companies depending on whether they are in the exploration or exploitation phase.

Tax incentives in the exploration phase include:

- exemptions from the business licence contribution;
- free registration of incorporation deeds, company extension deeds or capital increase deeds, and transfers of undeveloped real estate; and
- a VAT exemption on local purchases and on imports of materials and equipment directly related to mining operations appearing on a list drawn up jointly by the Ministry of Mines, Industry and Technological Development and the Ministry of Finance (subject to the presentation of a VAT exemption certificate issued by the tax authorities).

Tax incentives in the exploitation phase include:

- the payment of registration fees on the acts of creation of the company, extension and increase of capital over the course of a year;
- the application of accelerated depreciation at the rate of 1.25% of the normal rate for specific fixed assets, the list of which is fixed by a joint order of the Ministry of Mines, Industry and Technological Development and the Ministry of Finance;
- the extension of the duration of the loss carry-forward from four to five years; and
- the imposition of a zero rate of VAT on products destined for export when they are subject to this tax. However, products released for consumption on the local market are exempt from the duties and taxes levied on similar imported products.

Mining company deeds are exempt from registration and stamp duties until the first commercial production, with the exception of those relating to residential leases.

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

Transfers of capital gains on the transfer or sale of a mining project are subject to a 15% capital gains tax. This levy applies to all transfers, even outside Cameroon.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Investment in mining is attracted in the following ways:

- transparent regulation;
- administrative facilities;
- an attractive tax framework; and
- strengthening the infrastructure to support mining, exploration and development activities.

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

There are no special rules for the approval of foreign investments in Cameroon subject to declarations to the Central Bank and Ministry of Finance. However, there are restrictions for foreign investors in the mining sector in Cameroon.

Indeed, foreign legal entities and individuals operating in the mining sector cannot obtain a

mining title in Cameroon unless they have an incorporation in Cameroon. To this effect, they cannot carry out any of the mining activities carried out by an artisanal miner, an operator holding a reconnaissance permit, a research permit, a small mine permit or an industrial mine permit without a company registered in Cameroon.

5.3 International Treaties Related to Exploration and Mining

Cameroon is not a party to any treaty that specifically promotes and protects mining investments but is a party to treaties that promote and protect investments in general, including in the mining sector. These are:

- the bilateral agreement between the government of the Republic of Mauritius and the government of the Republic of Cameroon of 3 August 2001 on the reciprocal promotion and protection of investments: this agreement aims at creating favourable conditions for investments by investors from Cameroon and Mauritius in their respective territories;
- the agreement between Canada and the Republic of Cameroon of 2014 concerning the promotion and protection of investments: this agreement is intended to create favourable conditions for investments by investors from Cameroon and Canada in their respective territories;
- the agreement on trade, investment protection and technical co-operation between the Swiss Confederation and the Republic of Cameroon of 28 January 1963;
- the agreement between the government of the Republic of Cameroon and the government of the Republic of Mali of 18 May 2001 on the reciprocal promotion and protection of investments: this agreement aims at creating favourable conditions for investments by investors from Cameroon and Mali in their respective territories;
- the agreement between the government of the Republic of Cameroon and the government of the Republic of Guinea on the reciprocal promotion and protection of investments: the purpose of this agreement is to create favourable conditions for investments by investors from Cameroon and Guinea in their respective territories;
- the agreement between the government of the Republic of Cameroon and the government of the Islamic Republic of Mauritania on the reciprocal promotion and protection of investments: this agreement aims at creating favourable conditions for investments by investors from Cameroon and Mauritania in their respective territories;
- the agreement between the government of the Republic of Cameroon and the government of the Arab Republic of Egypt on the reciprocal promotion and protection of investments: this agreement aims at creating favourable conditions for investments by investors from Cameroon and Egypt in their respective territories;
- the agreement between the government of the Republic of Cameroon and the government of Romania on the reciprocal guarantee of investments: this agreement aims at creating favourable conditions for investments by investors from Cameroon and Romania in their respective territories;
- the agreement between the government of the Republic of Cameroon and the government of the Kingdom of Morocco of 24 January 2007 on the reciprocal encouragement and protection of investments: this agreement aims at protecting foreign investments in order to promote the economic prosperity of both countries;

- the agreement between the government of the Republic of Cameroon and the government of the Republic of Italy of 12 June 1999 on the reciprocal promotion and protection of investments;
- the agreement between the government of the Republic of Cameroon and the government of the Republic of Türkiye of 24 April 2012 on the reciprocal promotion and protection of investments;
- the agreement between the government of the Republic of Cameroon and the government of Great Britain and Northern Ireland of June 1982 on the reciprocal promotion and protection of investments;
- the agreement between the government of the Republic of Cameroon and the government of the Belgo–Luxembourg Economic Union of 27 March 1980 on the reciprocal promotion and protection of investments;
- the agreement between the government of the Republic of Cameroon and the government of the Federal Republic of Germany on the reciprocal promotion and protection of investments; and
- the agreement between the government of the Republic of Cameroon and the USA of 1 December 2003 on the reciprocal promotion and protection of investments.

5.4 Sources of Finance for Exploration, Development and Mining

Exploration activities in Cameroon are generally financed by the mining operators' equity at the exploration phase. These funds are generally derived either from the cash flow of the mining operator's parent company, from the cash flow of the mining operator, or from loans granted by the mining operators to local or foreign credit institutions.

Exploitation activities in Cameroon are generally financed by international lenders specialised in the mining sector.

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

The roles of the international and national securities markets are:

- to mobilise the savings needed to finance the exploration, exploitation and development of mining activities; and
- to attract potential investors to finance mining projects.

5.6 Security over Mining Tenements and Related Assets

In Cameroon, mining tenements are granted by the State. To secure financing for exploration and development, companies often use the following methods.

Pledging of Tenements

Tenements can be pledged to lenders as security. However, this may require specific approvals from the Mining Authority.

Fixed Charges Over Mining Equipment

Specific mining equipment can be subject to a fixed charge, giving the lender a priority interest in those assets.

Floating Charges Over Inventory and Accounts Receivable

A floating charge can be created over a company's inventory and accounts receivable, providing flexibility but lower priority than fixed charges.

Perfection of Security

To perfect the various security interests in mining tenements and related assets, there are registration/notification requirements with the securities registry (RCCM). Failing to perfect the various security interests could result in enforcement difficulties.

Furthermore, to secure the mining tenements, it is necessary to legally secure the land over which the tenements have been granted.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

In the coming years, the government intends to:

- implement the major first-generation mining projects that are being structured;
- develop the mining sector by strengthening the security of mining conventions, following a general audit that should propose a reorientation of the policy of awarding mining conventions to transnationals and the obligation to subscribe to contracts;
- actively support the best local companies that are themselves directly involved in the mining value chain, without subcontracting their conventions to foreign partners;
- provide systematic support to inter-professional organisations that oversee the artisanal sectors in the exploration, exploitation and marketing of gold, limestone and precious minerals (diamond, sapphire, corundum, etc) and in the mining industry;
- continue the inventory of the national geological potential through the production and updating of large-scale maps (scales greater than or equal to 1:200,000) to facilitate the exploration of deposits and the diversification of minerals and mining materials; and
- strengthen institutional capacity by fully upgrading the equipment of the national research laboratories in the sector.

Trends and Developments

Contributed by:
Lynda Amadagana, Elise Ngo Nyobe, Guy Mbenda and Kevin Djomgoue
Amadagana & Partners

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Authors

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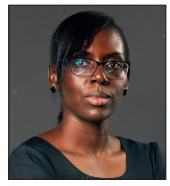

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Contributed by: Lynda Amadagana, Elise Ngo Nyobe, Guy Mbenda and Kevin Djomgoue,
Amadagana & Partners

Guy Mbenda is a tax advisor and senior associate at Amadagana & Partners. He is a member of the National Order of Tax Consultants of Cameroon. He advises on tax issues, corporate transactions, financial restructuring, due diligence of projects and concessions in the mining sector. He has conducted several due diligence reviews for companies seeking to acquire mining concessions, including environmental and regulatory permitting, land title issues, mining titles, royalty obligations and all matters relating to mining operations. He also participates in negotiations with governmental entities for mine acquisition agreements.

Kevin Djomgoue is a lawyer admitted at the Cameroonian and Nigerian Bars and is an associate at Amadagana & Partners. He is involved in the preparation and drafting of contracts, licences, concessions and ancillary agreements in the mining sector. He assists mining companies with regulatory compliance, conflicts of interest and sustainable development issues.

Amadagana & Partners

Rue 6103, Golf-Bastos
Yaoundé
Cameroon

Tel: +237 655 223 141
Email: contact@amadaganapartners.com
Web: www.amadaganapartners.com

Contributed by: Lynda Amadagana, Elise Ngo Nyobe, Guy Mbenda and Kevin Djomgoue,
Amadagana & Partners

Introduction

Cameroon possesses diverse mineral riches, offering significant potential for economic growth and development. However, the mining sector in Cameroon faces several challenges that require careful consideration by potential investors. This chapter will explore key trends and developments, highlighting crucial issues for businesses operating in the country.

Government Initiatives and Policy Reforms

The Cameroonian government recognises the importance of the mining sector and has undertaken several initiatives to attract investment and promote sustainable development.

Legal and regulatory framework

Efforts are ongoing to modernise the Mining Code to improve transparency, enhance environmental and social safeguards, and streamline administrative procedures. These efforts are made evident by the introduction of the new Mining Code in 2023 and the introduction of eight new decrees issued by the Prime Minister on 18 and 19 November 2024, which apply to mining activities in Cameroon. These are:

- Decree No 2024/05248/PM of 19 November 2024 setting out the terms and methods for establishing zones for the protection and exclusion of land and mineral substances from mining activities;
- Decree No 2024/05249/PM of 19 November 2024 specifying certain obligations attached to the exercise of mining rights and quarrying;
- Decree No 2024/05250/PM of 19 November 2024 laying down the terms and conditions for carrying out smelting, refining and manufacturing activities involving precious and semi-precious substances;
- Decree No 2024/05251/PM of 19 November 2024 laying down the terms and conditions for the possession, marketing, export and transit of mineral substances;
- Decree No 2024/05252/PM of 19 November 2024 laying down the conditions for the exploitation of spring water, mineral water, thermo-mineral water and geothermal deposits;
- Decree No 2024/05253/PM of 19 November 2024 laying down the methods of quarrying;
- Decree No 2024/05061/PM of 18 November 2024 setting out the procedures for issuing mining titles, permits and authorisations; and
- Decree No 2024/05062/PM of 18 November 2024 setting out the terms and conditions for mining operations.

These reforms aim to create a more attractive and predictable investment climate.

Investment promotion

The government of Cameroon actively promotes investment in the mining sector through various channels, including international mining conferences and targeted investment campaigns. This year the government of Cameroon organised the 4th International Mining and Exhibition Convention of Cameroon (CIMEC) between 22 and 24 May in Yaoundé. It was centred on the theme of "Transition from geological potential to production of mining deposits as a means of strengthening economic growth in the sub-region".

Infrastructure development

Improving infrastructure, such as roads and energy supply, is crucial for accessing mining sites and facilitating the transportation of minerals. The government is investing in infrastructure projects to enhance connectivity within mining regions.

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Key Mining Activities and Mineral Resources

Cameroon's mineral resources are diverse, encompassing:

- industrial minerals: significant deposits of bauxite, sand, and gravel are found in various regions;
- precious metals: gold exploration and mining activities are ongoing in several areas, with potential for further discoveries;
- base metals: deposits of iron ore, copper, and lead have been identified, although large-scale exploitation remains limited; and
- rare earths: recent exploration has revealed promising deposits of rare earth elements, a critical component in modern technologies.

Challenges and Risks

Despite the potential, the mining sector in Cameroon faces several challenges.

Security concerns

Security issues, including conflicts and insurgencies in certain regions can pose significant risks to mining operations.

Infrastructure deficiencies

Infrastructure in the country needs to be improved and set up according to Cameroon's mining production capacity, such as road networks and power supply. This will increase operational costs.

Environmental and social impacts

Mining activities can have significant environmental and social impacts, including deforestation, soil erosion, and displacement of local communities.

Illicit activities

Illicit activities, such as illegal mining and smuggling, can undermine the sector's development and erode investor confidence.

Community relations

Building and maintaining strong relationships with local communities is crucial for successful mining operations. Addressing concerns related to land rights, compensation, and environmental impacts is essential.

Investment Opportunities and Considerations

Despite the challenges, the mining sector in Cameroon presents several investment opportunities.

Exploration and development of new deposits

Significant potential exists for the exploration and development of new mineral deposits, particularly in areas with limited previous exploration activity.

Modernisation of existing mines

Modernising existing mining operations through the adoption of advanced technologies can improve efficiency and productivity.

Development of supporting industries

Investing in supporting industries, such as mineral processing and beneficiation, can create local value chains and boost economic growth.

Key Considerations for Investors

Due diligence

Conducting thorough due diligence is crucial, including assessing political and security risks, environmental and social impacts, and the legal and regulatory framework.

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Community engagement

Engaging with local communities early and meaningfully is essential to build trust and address potential concerns.

Environmental and social responsibility

Adopting best practices in environmental and social responsibility is crucial for long-term sustainability and maintaining a positive public image.

Compliance with regulations

Ensuring compliance with all relevant laws and regulations is critical to avoid legal and reputational risks.

Building strong relationships

Building strong relationships with government officials, local communities, and other stakeholders is essential for successful operations.

Conclusion

The mining sector in Cameroon has significant potential for economic growth and development. While challenges remain, the government's commitment to reform and the abundance of mineral resources offer attractive investment opportunities. By carefully considering the risks and adopting a responsible and sustainable approach, investors can contribute to the development of a thriving and beneficial mining sector in Cameroon.

CANADA

Law and Practice

Contributed by:
Darrell Podowski, Brian Dominique, Joel Matson and Christa Alvernaz
Cassels Brock & Blackwell LLP

Contents

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Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP is a Canadian law firm focused on serving the transaction, operational, advocacy and advisory needs of the country's most dynamic business sectors. It offers the largest and most experienced dedicated mining group of any major Canadian law firm, representing a veritable "who's who" of mining and natural resources clients. It is also the go-to firm for junior mining companies looking to grow into large entities or position themselves for acquisition. Each year, Cassels acts on more than 100 of the most significant mining M&A and corporate finance transactions around the world from its offices in Toronto, Vancouver and Calgary. In addition to the authors of this Practice Guide set out below, the firm would like to thank its members Davit Akman, Jeremy Barretto, Corinne Grigoriu, Tom Isaac, Arend Hoekstra, Eric Buist, Neil Burnside, Devon Cambell and Harjan Padda for their contributions to this chapter.

Authors

Darrell Podowski is a partner in the mining group at Cassels. He advises mining companies on joint venture transactions, going-public transactions, corporate finance, M&A transactions and general corporate commercial matters in Canada and internationally. Having spent seven years as an exploration geophysicist with Amoco Canada Petroleum Company and four years' as in-house corporate counsel to Teck Resources Limited, Darrell has a particularly strong understanding of the practical commercial needs of his clients. He is a member of the Association of Mineral Exploration BC and the Foundation of Natural Resources and Energy Law, and is the Co-Chair of the Mining Committee of the International Bar Association.

Brian Dominique is a partner in the mining group at Cassels. He practises business law and has broad experience in real estate, focusing on the mining and electricity sectors, infrastructure (including public/private partnerships) and related Indigenous law matters. Brian has negotiated a broad spectrum of complex commercial/operational contracts particular to the mining, electricity and infrastructure sectors, including contractual and corporate joint ventures, access/easement agreements, electricity development/transmission/supply, consulting, metals sales, offtake and ore processing/refining agreements, railway and port development and shipping agreements, project development/construction and EPC/EPCM agreements, and agreements with/on behalf of Indigenous groups.

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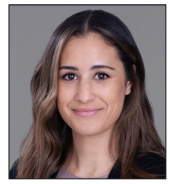
Cassels Brock & Blackwell LLP

Joel Matson is an associate in the business law group at Cassels. His primary focus is on corporate and securities law matters, including equity and debt financings, initial public offerings, continuous disclosure obligations, regulatory compliance and M&A.



Christa Alvernaz is an associate in the business law group at Cassels. Her primary focus is on corporate and securities law matters for both public and private companies, including financings, initial public offerings, continuous disclosure obligations, regulatory compliance, M&A and private equity transactions.

Cassels Brock & Blackwell LLP

Suite 3200
Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON
M5H 0B4
Canada

Tel: +1 416 869 5300
Fax: +1 416 360 8877
Email: info@cassels.com
Web: www.cassels.com

Contributed by: Darrell Podowski, Brian Dominique, Joel Matson and Christa Alvernaz,
Cassels Brock & Blackwell LLP

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Mining is one of Canada's main industries. The country is a significant exporter of minerals and metals, and a global leader in the production of critical minerals such as copper, nickel and cobalt. It is rich in resources and home to many mines producing a diverse array of other minerals and metals, including gold, coal, iron ore concentrates, potash, aluminium, platinum group metals, diamonds, silver, zinc, molybdenum and uranium. Advanced mineral projects for rare earth elements, including lithium and graphite, can also be found in Canada. Numerous junior mining companies that explore for minerals worldwide are domiciled in Canada.

Toronto, Ontario is Canada's business capital and has been referred to as the mining finance capital of the world, with approximately 40% of global publicly listed mining and mineral exploration companies listed on the Toronto Stock Exchange (TSX) or TSX Venture Exchange. Tax and securities laws offer significant incentives for investment in the mining industry in Canada, and Canadian stock exchanges facilitate the listing and financing of both junior and senior mining companies.

Canada also boasts a large concentration of specialised professionals in the technical, engineering, legal, accounting and management fields that help sustain its robust mining industry.

This practice guide will highlight these features, many of which are unique to the Canadian mining industry.

1.2 Legal System and Sources of Mining Law

Canada's legal system is a combination of common law and civil law. The common law applies in all provinces and territories of Canada, except for Quebec, which is the only province with a civil law code.

As Canada is a federal state, the governmental powers and responsibilities applicable to mining are constitutionally allocated between its federal Parliament and ten provincial legislatures, with certain federal powers shifting to its three northern territories through statutory devolution, as discussed below.

Provincial legislatures have the power to enact laws in relation to provincial public lands, mineral titles and the exploration and extraction of minerals within their provincial jurisdictions. These powers include oversight of the development and operation of mines, conservation of mineral resources, and environmental protection. Provinces may also enact laws relating to the export of minerals and metals between provinces or outside of Canada.

Despite their independent governance, substantive mining regimes are generally consistent across Canadian provinces. However, these rules and regulations tend to be highly complex and are rarely codified in a single provincial statute.

Canada's federal Parliament has the power to make laws affecting minerals and mining on federal lands, in addition to:

- minerals and metals exports and imports;
- nuclear energy and minerals used to generate nuclear energy;
- inter-provincial transport of dangerous goods;

- the use of explosives;
- navigable waters; and
- perhaps most importantly, the protection and conservation of the environment where it intersects federal jurisdiction, which includes Indigenous rights, fisheries and oceans, interprovincial infrastructure and shared natural resources, migratory birds and at-risk species and habitats.

Canada's three territories (Yukon, Northwest Territories and Nunavut) are within the federal government's jurisdiction and are governed by territorial governments created by federal statutes. A statutory devolution process of legislative authority from the federal government to these territorial governments is almost complete, and provides each territory with additional self-governing power. Nunavut is the final territory to complete this process. Administrative responsibility for natural resources and public lands will shift to the territorial government pursuant to the Nunavut Lands and Resources Devolution Agreement (2024). The transfer of these responsibilities is currently underway and scheduled for completion in 2027, at which point Nunavut will implement its own mining legislation.

1.3 Ownership of Mineral Resources

Property interests in surface and subsurface minerals are generally severed in Canada, largely as a function of early-settlement disposition procedures for land in what would ultimately become Canada. Generally, all lands were considered to be owned by the Crown until title was granted to settlers or municipalities via Crown (government) grant. A separate fee estate consisting of only surface rights, of both surface rights and mineral rights, or solely of mineral rights could be created by Crown grant of the fee simple estate, with or without reservation by the Crown of the mineral rights. Near the end of the 19th century, the Crown adopted a practice of reserving the minerals from fee simple grants, and modern federal and provincial legislation across Canada now provides that minerals are reserved from Crown land dispositions and that grants of mineral rights be of leasehold estate.

Section 109 of the Constitution Act, 1867 vests ownership of Crown minerals to the provincial Crown of the province where such minerals are situated. As a result, each province and territory's respective discrete system of mineral tenure and legislation is accompanied by distinct procedures whereby mineral interests may be granted by the Crown and acquired by private legal persons. The Crown remains the largest holder of minerals in Canada (but open to private tenure and development), both as fee simple owner of Crown lands and through mineral reservations from historic Crown grants.

Title to minerals located in Canada's three territories, the territorial sea, continental shelves and federal lands (national parks, harbours, First Nation reserves) vests in the federal Crown, and is governed as discussed in **1.2 Legal System and Sources of Mining Law**.

Crown title to all Crown lands is subject to limitations pursuant to Aboriginal treaty rights, claims for Aboriginal title or other Aboriginal rights, and the provisions of any applicable land claim settlement agreement – in each case as enshrined and protected by the Constitution of Canada.

1.4 Role of the State in Mining Law and Regulations

The federal and provincial governments serve as both grantors of right and regulators of mining activity within their respective jurisdictions. The federal government, ten provinces and three territories each have their own ministries, agen-

cies or other governmental bodies to oversee the mining sector. Often, multiple agencies will administer separate facets of the mining business.

Examples of this multi-agency approach can be observed in all provinces, and multiple federal agencies regulate the environmental aspects of mining activity, as discussed in **2. Impact of Environmental Protection and Community Relations on Mining Projects**.

1.5 Nature of Mineral Rights

Mineral rights have a constitutional basis wherein the rights and powers over mineral title and extraction have been apportioned between the federal and provincial governments.

Mineral rights in Canada are property rights and can be broken down into three distinct categories.

The Right of Entry on Crown or Private Lands Containing Crown Minerals

Holders of mining claims have the right to enter upon, use, occupy and let down such part(s) of the surface rights of the claim as necessary for prospecting and efficient exploration of, and the prospective development and operation of, the mines, minerals and mining rights therein. In all Canadian jurisdictions, compensation will be owed to existing surface rights owners for such use.

Priority Over Other Miners

Recording or registering a mining claim gives priority over other miners, so long as the claim remains in good standing. Where disputes arise between prospectors with respect to the recording, registration or priority of claims, inspections of the claims may be requested by a recorder or similar government official, and the recording of challenged claims may be appealed to a quasi-judicial officer or board.

The Right to a Lease and to Enter Into Production

A mining claim holder is entitled, and has the exclusive right, to apply for a mining lease over the area of the claim, following the prescribed periods of assessment work. Such a mining lease grants the right to enter into production from a mineral deposit and, upon production, to take title to the minerals and to process and dispose of them for valuable consideration.

1.6 Granting of Mineral Rights

The granting of mineral rights will depend on the location of the minerals. Most mineral rights are granted by statute by the provincial government of jurisdiction.

The provinces of British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario and Quebec, along with the three territories, have adopted some form of modified free-entry system, which allows individuals and corporations to obtain mineral rights by recording and/or registering (in the case of Ontario) mining claims on their own initiative on mineral lands deemed open for recording.

The free-entry system relates only to the limited acquisition of mining rights or temporary limited tenure by mining claim (referred to as a mineral claim in other jurisdictions). The acquired rights do not necessarily extend to actual permission for the industrial activities of exploration, development or mining, which remain subject to land use, environmental and other principles and laws and regulations. If a mining claim holder wishes to develop a mineral deposit on the land subject to the claim, they must usually apply for and obtain a Crown mining lease.

Alberta, Saskatchewan, Nova Scotia and Prince Edward Island have adopted the Crown discretion mining system, under which the provincial government, as owner of the mineral resources, has the discretion to decide whether and on what terms a person may prospect for minerals. Governmental approval of a prospector's activities generally takes the form of a licence or permit. If a permit holder wishes to develop a mineral deposit, it must usually apply for and obtain a Crown mining lease.

Once recorded, mining claims allow a mineral explorer to claim a demarcated portion of available Crown lands as their exclusive area, solely for exploration for a specified period. Many jurisdictions in Canada have moved away from the physical staking of mining claims (placement of visible markers on the ground to indicate the claimed area). Instead, mining claims are acquired by selecting blocks of claims using an online mapping system, known as "map selection" or "map staking".

Finally, applications to record a mining claim must be filed within a specified time with the applicable ministry or agency. The recording is designed to give public notice of the area held by the recorder/claimant.

The holder of a mining claim generally has the right to transfer or sell an interest in that claim freely without Crown consent (unlike leasehold tenures, where Crown consent is required to sell or transfer a Crown mining lease).

1.7 Mining: Security of Tenure

Security of rights under a mineral claim is generally maintained through satisfying prescribed work requirements or making payment in lieu thereof. The length of a mineral claim and terms for extension will vary across provinces. In British Columbia, a mineral claim is initially valid for one year, but may be maintained indefinitely on a year-to-year basis by satisfying statutory work requirements or paying a fee. If payment is made in lieu of work, the mineral claim may be extended by a minimum of six months and a maximum of one year from the current expiry date. Crown mining leases are granted for terms ranging from ten to 30 years. Before proceeding to develop a mine, the holder of a mining claim will generally be required to convert a mineral claim to a mineral lease.

Mineral title can be terminated by the Crown, usually due to failure by the holder to comply with the applicable legislation or the conditions of the mining interest itself (eg, if prescribed work has not been performed, if reports have not been filed within the prescribed time, or if a Crown mining lease is used for some purpose other than mining).

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

2.1 Environmental Protection and Licensing of Mining Projects

Environmental Regulation

The development of mining projects in Canada is subject to environmental regulation at the federal and provincial levels, and requires, among other things, the completion of environmental impact assessments prior to commencing operations. In certain cases, these assessments must be repeated at subsequent stages of development. The regulatory objective is to determine whether approval for a mining operation should be granted based on the project's likely environmental impacts. If a mining project receives approval from the relevant environmental authorities, sig-

nificant obligations will be imposed on the developer for rehabilitation and restoration activities on affected lands following the completion of the project or mine closure.

In Canada, the broad scope of environmental regulation is shared between the federal government and the provinces. While municipal powers are generally limited with respect to the environment, municipalities are getting more involved in environmental regulation, and municipal by-laws and permitting requirements are important aspects to consider prior to and while implementing a mining project.

The federal government has primary jurisdiction over environmental matters of international and inter-provincial concern, as well as over fisheries, navigable waters and matters on federal lands, which includes Indigenous reserve lands and national parks.

All provinces and territories (except Nunavut, pending completion of the devolution process) are primarily responsible for environmental matters within their boundaries, including but not limited to the extraction and processing of natural resources like forestry, mineral resources and fossil fuels, and renewable energy industries like hydroelectricity, wind energy and cogeneration.

Environmental Licensing

Generally, mining regulators in Canada use three principal mechanisms for protecting the environment:

- mandatory environmental assessment before mine construction;
- regulation of the discharge of pollution into the environment; and
- a permits system for activities that may impair the environment.

Environmental assessment

The environmental assessment process generally seeks to determine and predict the environmental impact of proposed mine development initiatives before they are carried out, and generates detailed terms and conditions for mine construction and operation.

Canada's Impact Assessment Act (IAA) requires the Impact Assessment Agency of Canada to conduct an impact assessment when a federal authority provides lands or issues certain permits or approval to a project. An impact assessment must also be conducted if a project otherwise affects matters under federal jurisdiction. The responsible government minister may also order an impact assessment at their discretion.

Impact assessments go beyond the environmental effects of proposed projects to include matters such as:

- changes to the environment or to health, social or economic conditions;
- measures mitigating adverse effects;
- the need for and alternatives to the project;
- Indigenous traditional knowledge;
- a project's contribution to sustainability;
- the effects on the federal government's ability to meet its environmental and climate change commitments;
- impacts on Indigenous rights, communities and cultures; and
- comments received from the public and from provincial or Indigenous governments.

The IAA does not apply to all projects in Canada, but it generally applies to most major mining operations.

In 2023, the Supreme Court of Canada ruled that sections of the IAA encroached upon provincial

jurisdiction, and were therefore unconstitutional. The IAA was amended in June 2024 to address such encroachment and improve regulatory certainty by focusing on mitigation of impact to Indigenous rights and adverse environmental effects within federal jurisdiction. Notably, the amended IAA definition of "adverse effects within federal jurisdiction" excludes greenhouse gas emissions, but includes pollution to boundary or international waters and other marine pollution.

The new IAA also adds flexibility for the federal and provincial governments to use co-operative assessment processes for clean growth projects, and to enhance environmental protections.

Regulation of the discharge of pollution

Much environmental regulation in Canada consists of prohibitions against the discharge of pollutants into the environment, except where authorised in advance. For example, the British Columbia Environmental Management Act forbids the introduction of waste into the environment so as to cause pollution (unless valid permits and approvals are obtained).

Other environmental regulations focus on the impact of projects on the broader environment, including wildlife and their habitats. For example, Quebec's Act Respecting Threatened or Vulnerable Species and Ontario's Endangered Species Act prohibit the destroying or harming of designated species, including altering the ecosystem or biological diversity of their habitat.

Environmental protection and permits

In mining, environmental standards are commonly prescribed in relation to air emissions, waste, water, noise and mine closure plans. Regulatory authorisation for discharges of effluents or emissions into the environment from a mine usually takes the form of permits tied to commitments to meet pre-established standards or guidelines tailored to the particular project.

Proponents are required to provide financial security against mine closure plans towards reclamation of the mine site as a condition of permit approval. This security safeguards communities from lasting environmental damage if a proponent becomes insolvent or prematurely abandons their project.

Each province has its own environmental permitting regime, often overlapping under multiple statutes and ministries. Permits are required for the discharge of waste, the building and storage of mine tailings and the use of water, among other activities. Mining operations may also require certain federal permits or approvals under various federal statutes, including:

- the Fisheries Act;
- the IAA;
- the Canadian Environmental Protection Act;
- the Canadian Navigable Waters Act;
- the Explosives Act;
- the Migratory Birds Convention Act; or
- the Nuclear Safety and Control Act.

While Indigenous communities and governments do not have statutory authority over the environment, mining projects frequently intersect with the statutory and constitutional rights of Indigenous people. As such, the participation of Indigenous groups in the regulatory review process is fairly standard, and affected groups are given an opportunity to make submissions to statutory decision-makers in such cases.

2.2 Impact of Environmentally Protected Areas on Mining

Cultivated lands, park lands, railway lands, public roadways, environmentally sensitive lands

(eg, game reserves and bird sanctuaries), heritage lands, airport lands, town sites and other such developed areas are typically not open for mining activity, nor are lands for which a claim, mining exploration licence, mining concession or mining lease has already been granted.

Government officials responsible for administering statutes governing the disposition of minerals on Crown lands have the discretionary power to designate lands as withdrawn or not open for mining activity.

2.3 Impact of Community Relations on Mining Projects

Community relations are a critical part of the approval and ongoing operation of mining projects in Canada and can be an essential requirement for governmental regulators in the consideration and approval of such projects. For Indigenous communities that may be affected by a mining project, proactive community relations – both before and after a project is developed – can be a key factor in the regulatory approval of a project, including satisfying any Crown duty to consult Indigenous people regarding their constitutional and treaty rights.

2.4 Prior and Informed Consultation on Mining Projects

Under Section 35 of the Constitution Act, 1982, the Crown has a duty to "uphold the Honour of the Crown" to consult and, where appropriate, to accommodate Indigenous peoples where a government action or decision (such as granting an authorisation) may potentially adversely impact their established or asserted Aboriginal or treaty rights. Accommodation can take the form of project conditions to minimise or avoid potential adverse effects on the rights of Indigenous peoples. Most natural resource-related projects, including mining projects, will trigger the duty to consult. British Columbia and Yukon court decisions indicate that consultation may be required as early as at the mineral claims registration stage.

While the consultation process is the Crown's responsibility (both federal and provincial, within their respective jurisdictions), the Crown can delegate some or all of the procedural aspects of consultation to project proponents. In such cases, proponents must work closely with the Crown to carry out their consultation obligations. The objective of the consultation process is to provide a fair and transparent forum for the issues and concerns of Indigenous peoples to be heard and considered in light of the proposed project's potential or actual impacts on their traditional lands, their rights and the environment. Where appropriate, the process should address such concerns through accommodation or other mitigation measures.

The obligations imposed by the Crown's duty to consult and accommodate vary according to the particular circumstances, and not every project requires the same degree of consultation or accommodation. A single Crown decision can affect many separate Indigenous groups with overlapping claims or interests. It is imperative that all relevant Indigenous groups are correctly identified and consulted, that proper consultation and accommodation records are kept, and that consultation with the affected Indigenous community is meaningful. Failure to follow these steps can result in:

- delays or challenges to grants of licences, permits and approvals;
- community protests;
- investor relations problems; and
- litigation seeking injunctions or the overturning of authorisations.

2.5 Impact of Specially Protected Communities on Mining Projects

Indigenous groups are the most notable specially protected community in Canada. Indigenous law in Canada is based on constitutionally protected inherent and treaty rights, referred to in Section 35 of the Constitution Act, 1982 as Aboriginal and treaty rights. The Canadian Constitution recognises and affirms the rights of Aboriginal peoples of Canada (eg, Inuit, Métis, First Nations), and both the federal and provincial governments are obliged to "act honourably" when dealing with Aboriginal peoples in light of this constitutional protection. Aboriginal rights legally flow from historic Indigenous occupation and traditional use of land, historic and modern treaties, negotiated claim settlements and court-affirmed rights.

Aboriginal Rights, Aboriginal Title, Treaty Rights and Traditional Land Use Rights

Aboriginal rights in Canada are based upon and include customs, activities and traditions that have been exercised historically by Aboriginal peoples, including the right to hunt, trap, fish and gather on the land in question, and the protection of related economic, sacred, cultural and archaeological lands, sites, and flora and fauna.

Aboriginal title is a form of Aboriginal right that includes the right to the land itself derived from exclusive and unsurrendered occupation and use of land from prior to contact, and encompasses the right to exclusive benefit from and use and occupation of the land for a variety of purposes (not just traditional or cultural uses). Aboriginal title holders have the right to determine how land is used and the right to benefit from those uses. This is the highest order of Aboriginal land rights.

Treaty rights are those rights that an Aboriginal group enjoys as a result of having entered into a treaty (a unique legal instrument) setting out such rights with the Crown. Large parts of Canada are subject to treaties, while other parts are not (notably, large portions of British Columbia). The applicable treaty will determine which specific rights have been granted and are held.

Aboriginal rights are based upon and include customs, activities and traditions that have been exercised historically by Aboriginal peoples, without surrender by treaty; they may or may not be sufficient to support Aboriginal title and may be subject to, but protected by, treaty terms. Nevertheless, Aboriginal rights are recognised and protected, and will trigger the Crown's duty to consult (and potentially accommodate) where they may be adversely affected by a Crown decision or action.

Justifiable Infringement of Aboriginal Rights

The Supreme Court of Canada has affirmed that certain Crown objectives can, in principle, justify the infringement of Aboriginal title or treaty or other Aboriginal rights, such as:

- the development of agriculture;
- forestry;
- mining;
- hydroelectric power;
- general economic development;
- the protection of the environment or endangered species;
- the building of infrastructure; and
- the settlement of foreign populations to support these objectives.

In order to justify an impairment or infringement of Aboriginal or treaty rights, the Crown must demonstrate a compelling and substantial governmental objective, and demonstrate that its

actions are consistent with the fiduciary duty it owes to the Indigenous groups, including appropriate consultation (or attempts to consult) as a precursor to justification of the infringement. Proof that infringement is consistent with the Crown's fiduciary duties to Indigenous peoples involves a three-part test:

- rational connection – the infringement must be necessary to achieve the Crown's objective;
- minimal impairment – the Crown must go no further than necessary to achieve its objective; and
- proportionality of impact – the benefits expected to flow from the objective must not be outweighed by the adverse effects on the Aboriginal interest.

The Supreme Court of Canada has held that provincial governments, when acting within their jurisdiction, may seek to justify an infringement of Aboriginal rights, including Aboriginal title.

The federal government and the Province of British Columbia have attempted to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) via statute. However, the Supreme Court of British Columbia recently held that British Columbia's UNDRIP statute did not implement UNDRIP into British Columbia law, nor create justiciable issues. Federal legislation approving the adoption of UNDRIP in 2021 required consultation and co-operation with Indigenous peoples to implement an action plan to achieve the objectives of UNDRIP.

Impact Benefits Agreements

It has become common, through consultation processes, for proponents of resource projects to enter into impact-benefit, participation or other mutual benefit agreements with Indigenous peoples. Such agreements are often necessary to ensure that projects proceed with greater certainty while the legitimate concerns of affected Indigenous groups are addressed.

Depending upon the nature and strength of the proven or asserted Aboriginal right, benefits negotiated in these agreements can include revenue or income participation, employment opportunities, education and training initiatives, or contracting and business opportunities for affected Indigenous communities, as well as capacity-building initiatives and plans to mitigate the environmental impacts of the project. Some modern treaties contain terms requiring the negotiation of such agreements as a matter of law.

2.6 Community Development Agreement for Mining Projects

It is common, and in many cases expected, that mining projects will enter into some form of agreement with communities in proximity to and affected by such project. In some cases, community benefit and similar agreements are mandated by law – particularly in northern Canada, relating to modern land claims agreements such as the Nunavut Land Claims Agreement.

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

ESG factors are used by investors to evaluate the sustainability of investments and corporate practices. There are currently no ESG-specific legislative regimes in Canada for the mining sector. However, there are emerging securities disclosure regimes, securities exchange commentary and industry guidance that relate to ESG factors, any of which may:

- carry the force of law;

- be as influential to proponents as direct legislation; and
- foreshadow the future of Canada's ESG regulatory framework.

Securities Disclosure Regimes

In Canada, the Canadian Securities Administrators (CSA) is primarily responsible for developing a harmonised approach to securities regulation across all provinces and territories. It works with provincial and territorial securities regulators to design policies and regulations to achieve that goal. A primary guidance tool of the CSA is the publication of national instruments. CSA-issued guidance is typically adopted by provincial and territorial regulators, ensuring some consistency to securities regulation across Canada. Despite the growing prominence of ESG in Canadian investment, the CSA has not yet developed comprehensive ESG guidance, although it has provided substantive guidance on certain environmental and governance matters that are typically viewed as being within the ESG rubric.

In 2021, the CSA published National Instrument 51-107, Climate-related Disclosure Requirements (NI 51-107) for public comment. The CSA has articulated that it will consider the impact of international developments prior to finalising NI 51-107, including certain United States Securities and Exchange Commission and IFRS International Sustainability Standards Board climate disclosure rules proposals, which were ultimately adopted in 2024.

Also in 2021, the Ontario Capital Markets Modernization Taskforce issued 74 recommendations to the Ontario government. Recommendation 41 outlines enhanced disclosure requirements for material ESG information, which would apply to all non-investment fund reporting issuers. These enhanced disclosure requirements would include the disclosure of:

- material governance, strategy and risk management information; and
- certain greenhouse gas (GHG) emissions on a comply-or-explain basis.

In 2022, the CSA published guidance via Staff Notices for investment funds on their ESG disclosure practices, particularly for ESG-related funds. The guidance seeks to address "greenwashing" concerns – where a fund's disclosure or marketing intentionally or inadvertently misleads investors about the fund's ESG attributes. The guidance is based on existing securities regulatory requirements and does not create or modify any legal requirements. Instead, the guidance provides the views of CSA staff on how existing regulatory requirements apply to ESG-related fund disclosure. The guidance also includes best practices to enhance ESG-related disclosure and sales communications to enable investors to make more informed investment decisions.

The CSA published updated ESG guidance for investment funds in 2024 to address matters not covered in its 2022 guidance. Disclosure expectations for funds that do not reference ESG factors but use ESG strategies were included. The updated guidance sets out disclosure expectations depending on the degree to which ESG factors are considered, and clarifies the types of investment funds that can market themselves as being ESG-focused.

The Canadian Sustainability Standards Board (CSSB) has drafted sustainability standards regarding sustainability-related financial information and climate-related disclosure requirements, which are expected to apply in 2025.

Once the standards are finalised, the CSA will release updated rules regarding climate-related disclosure.

Industry Standards

The Mining Association of Canada's Towards Sustainable Mining (TSM) standard helps mining companies evaluate and manage environmental and social responsibilities, and addresses certain ESG matters. The TSM evaluates, independently validates and publicly reports on eight aspects of social and environmental performance against 30 distinct performance indicators. Although becoming a member of the Mining Association of Canada is voluntary for project proponents, all members are required to undergo site-level assessments for evaluation under the TSM standard.

2.8 Illegal Mining

Canada has one of the most highly regulated mining industries in the world, so evidence of illegal mining is limited to non-existent. Overlapping federal and provincial regulatory schemes address all aspects of a mine's life cycle, from exploration to operation, transportation and export.

While Canada does not typically experience issues associated with artisanal and other small-scale mining activity, there have been instances of mining activity encroaching on restricted land. In 2020, there were illegal mining claims in protected caribou habitat in Manitoba's Nopiming Provincial Park. The claim was modified but no public explanation was given. In 2023, another illegal mining exploration claim was staked by Grid Metals Corporation on lands located in the protected backcountry area of Nopiming Provincial Park. This part of the park prohibits all mining development, and the claim violated the Provincial Parks Act. The provincial government stated that the claim would be rejected, with a potential penalty for the company.

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

Greenstone Gold Mines – Hardrock Project

Greenstone Gold Mines has entered into three long-term relationship agreements involving four First Nations and the Métis Nation of Ontario, which provide benefits to First Nations and Métis peoples regarding each community connected to Greenstone Gold's "Hardrock Project" in northern Ontario. While none of the agreements were legally required, Greenstone Gold proactively engaged in positive relationship-building with the affected Indigenous groups, which ultimately resulted in "win-win" agreements and strong working relationships going forward for the advancement of the project.

Generation Mining Limited – Marathon Palladium Project

Generation Mining Limited's "Marathon Project" in Ontario was approved after long-term relationship agreements were reached with several First Nations. While none of the agreements were legally required, Generation tailored its environmental commitments for the Marathon Project with input from the relevant First Nation and Métis communities. The Marathon Project was approved by the government of Canada despite findings during a Joint Review Panel's environmental assessment that the project was likely to cause an adverse cumulative effect on critical caribou habitat. The government of Canada's approval contains 269 legally binding conditions to protect the environment throughout the life of the project, many of which were advanced by Generation in consultation with the Indigenous groups most likely to be adversely affected by the project.

Taseko Mines – Prosperity Project

In 2010, Taseko Mines' "Prosperity Project" in British Columbia was denied regulatory approval after an adverse environmental assessment flagged issues with the draining of Teẑtan Biny (Fish Lake) and associated impacts to local First Nations communities, who strongly opposed the project. Taseko later proposed a "New Prosperity Project", which attempted to address regulator concerns and did not involve the draining of Fish Lake. Taseko attempted to reach agreements with local First Nations and to seek remedies through the courts, but the Tsilqhot'in Nation remained opposed to the project, and the Supreme Court of Canada refused to hear Taseko's 2020 regulatory appeal in connection with the project. Taseko continues to list the New Prosperity Project on its website, but no updates have been reported beyond 2023. Reports indicated that stakeholders would discontinue negotiations if a resolution was not reached by the end of 2024; however, as of January 2025, there have been no press releases issued by Taseko indicating that the status of this project has changed.

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

3.1 Climate Change Effects

National and provincial (regional) governments in Canada and abroad have introduced climate change legislation that affects the mining industry, in addition to international treaties. Climate change standards are generally becoming more stringent and are expected to increase compliance costs.

Climate change itself may also impose risks on mining industry operations due to increases in extreme weather events, rising sea levels, the melting of Arctic permafrost and other natural phenomena. Major Canadian mining companies consider these potentially significant effects on their operations.

3.2 Climate Change Legislation and Proposals Related to Mining

Canada has a two-tiered approach to climate change regulation: federal and provincial. As detailed below, federal regulations prevail in cases where provincial regimes do not meet the minimum standards.

Federal Regulation

The Greenhouse Gas Pollution Pricing Act implements the federal carbon pollution pricing (fee) scheme aimed at reducing GHG emissions, and in 2021 the Supreme Court of Canada upheld the constitutionality of this legislation. The federal scheme has two key parts:

- a fuel charge administered by the Canada Revenue Agency and imposed on 21 types of fuel and combustible waste – the fuel charge in 2024 was CAD80 per tonne of carbon dioxide equivalent, and will increase by CAD15 per tonne annually until it reaches CAD170 per tonne in 2030; and
- an output-based pricing system, whereby facilities pay a carbon price for emissions exceeding a maximum threshold.

Federal climate change legislation affecting the mining industry also includes the Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds, which came into force in January 2023, and the overlapping environmental protection regimes discussed in **2. Impact of Environmental Protection and Community Relations on Mining Projects**.

Provincial and Territorial Regulation

Each province and territory has its own supplementary climate change regime and is free to choose whether to implement a carbon pollution price or a cap-and-trade system, provided such system meets the minimum federal pricing and emissions reduction targets. Where a provincial system does not meet these minimums, the federal pricing system will apply as a backstop to ensure national compliance with the regulatory regime.

Currently, the federal fuel charge system applies in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut and Yukon. The federal output-based pricing system applies in Yukon, Manitoba, Nunavut and Prince Edward Island.

3.3 Sustainable Development Initiatives Related to Mining

Many sustainable development and corporate social responsibility initiatives affect the mining industry in Canada, including:

- the International Council on Mining and Metals – a collection of mining and metals organisations working to improve sustainability and requiring its members to meet certain principles of sustainable development;
- the Extractive Industries Transparency Initiative – a partnership of governments, international organisations, companies, non-governmental organisations, investors, and business and industrial organisations aiming to improve transparency in transactions between governments and companies in the extractive industries;
- the World Gold Council's Conflict-Free Gold Standard – a common approach by which gold producers can assess and provide assurance that gold has been extracted in a manner that avoids benefiting armed conflict or human rights abusers;
- the Consolidated Mining Standard Initiative – a proposed initiative to combine four mining standards, including the Mining Association of Canada, into one global standard that promotes continual improvement of ESG practices across metal and mineral value chains, which entered its public consultation phase in 2024; and
- the Towards Sustainable Mining standard, discussed in **2.7 Environmental, Social and Governance (ESG) Guidelines and Regulations**.

3.4 Energy-Transition Minerals

The federal government released "The Canadian Critical Minerals Strategy" on 9 December 2022, containing a list of 31 critical minerals that are deemed to be:

- essential to Canada's economic security and its supply if threatened;
- required for Canada's transition to a low-carbon economy; or
- a sustainable source of highly strategic critical minerals for Canada's partners and allies.

The Canadian Critical Minerals Strategy addresses the following five core objectives:

- supporting economic growth, competitiveness and job creation;
- promoting climate action and environmental protection;
- advancing reconciliation with Indigenous peoples;
- fostering diverse and inclusive workforces and communities; and
- enhancing global security and partnerships with allies.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Corporations that carry on exploration and mining activities in Canada are subject to the general income tax rules that apply to all corporations operating in the country. Income tax is imposed at the federal level under the Income Tax Act (Canada), and at the provincial and territorial level each province and territory has its own income tax statute. The current Canadian federal corporate tax rate is 15%, and provincial/territorial tax rates range from 8% to 16%.

A non-resident corporation carrying on business in Canada is subject to Canadian income tax at the same tax rate as is applicable to Canadian resident corporations, in addition to a 25% "branch tax" on profits that are not reinvested in Canada. The branch tax is intended to approximate withholding tax on dividends; where the dividend withholding tax rate is reduced under an applicable tax treaty, the branch tax is generally correspondingly reduced. In addition, a non-resident is subject to income tax in Canada on the disposition of "taxable Canadian property", which includes any interest in real or resource properties situated in Canada, and certain shares and partnership or trust interests that derive their value from such properties.

Canada levies a 25% withholding tax on certain payments to non-residents, including dividends, certain interest payments, rents and royalties. The rate of Canadian withholding tax may be reduced if the non-resident recipient is eligible to claim the benefits of one of Canada's tax treaties.

Each province and territory also levies separate mining taxes or royalties on mining activities; the rates and basis of calculation vary depending upon the jurisdiction and the type of mineral. In many provinces and territories, the mining tax is computed by reference to mining profits, whereas certain provinces impose royalties that vary according to the specific mineral.

4.2 Tax Incentives for Mining Investors and Projects

As in other sectors, a corporation engaged in exploration and mining activities is entitled to deduct expenses incurred for the purpose of earning income. A corporation may also deduct certain capital expenditures, including tax depreciation on tangible capital assets (capital cost allowance, or CCA). Canadian tax regimes applicable to exploration and mining recognise the capital-intensive nature of the mining industry. To ensure the international competitiveness of Canada's resource industry, these regimes provide incentives designed to encourage investment, including the following.

- Mining taxes and royalties paid to a province or territory for income from a mineral resource are fully deductible when computing income for income tax purposes.
- The depreciation of tangible assets for income tax purposes is allowed under the CCA system, under which the capital cost of a depreciable asset is included in a particular asset class, for which a maximum annual depreciation rate is prescribed.
- Certain other resource or mining expenses may also be deducted on a current or declining-balance basis. These expenses are added to cumulative resource pools classified as Canadian exploration expenses (CEE) and Canadian development expenses (CDE).

(a) CEE include expenses that are incurred by the taxpayer for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada. Generally, CEE may be deducted at a rate of 100%, up to the taxpayer's income for the year. Any unclaimed CEE may be carried forward indefinitely.

(b) CDE include expenses that are not CEE and are incurred for the purpose of bringing a new mine in Canada into production (ie, pre-production mine development expenses). CDE may be deducted at a rate of 30% on a declining-balance basis. Unclaimed CDE may be carried forward indefinitely. An enhanced deduction is also available for certain CDE incurred after 20 November 2018 and before 2028 (Accelerated CDE). Accelerated CDE incurred from 2024 through 2027 qualify for an additional deduction of 7.5%.

- Certain corporations carrying out exploration and mining activities in Canada (other than for oil, gas and coal activities) can issue flow-through shares, pursuant to which the tax deductions attributable to certain expenditures incurred (such as CDE and CEE) are renounced by the corporation to the flow-through shareholders, such that the shareholders (and not the corporation) may deduct the renounced expenditures in computing their income. An additional 15% federal Mineral Exploration Tax Credit (METC) is available with respect to certain flow-through mining expenditures (generally referred to as "grassroots exploration" expenses). Many provinces offer parallel credits as high as 30% in some circumstances.
- The Critical Mineral Exploration Tax Credit (CMETC) is a 30% federal tax credit for eligible flow-through mining expenditures renounced under eligible flow-through share agreements entered into between 7 April 2022 and 31 March 2027. Among other requirements, eligible expenditures must be exploration expenses that primarily target deposits containing mostly (more than 50%) certain critical minerals. Eligible expenditures are not permitted to benefit from both the CMETC and the METC.
- A refundable 30% investment tax credit, the "Clean Technology Manufacturing Investment Tax Credit", was introduced for 2024, and made available for corporations that acquired certain new clean technology manufacturing property used primarily to produce specified critical minerals.
- Contributions made to a qualifying environmental trust used to fund future reclamation are deductible in the year in which they are made (as opposed to reclamation expenses, which are generally recognised for income tax purposes at the time the reclamation is carried out).
- Provincial governments also provide tax incentives for exploration and mining activities that are carried out in the province. These incentives are structured as income tax credits or relief with respect to provincial mining taxes.

Canada does not offer tax stabilisation agreements to non-resident investors in the mining industry.

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

A mining project may be disposed of by way of a sale of the mining assets or of the relevant entity in which the mining project is held. The disposition of capital property in Canada generally results in a capital gain (or loss). For dispositions occurring after 24 June

2024, two thirds of any capital gain is included in income. The disposition of mining assets may result in income (in the case of resource property), recapture (in the case of depreciable property) and capital gains on capital property.

Non-residents are subject to tax in Canada on the disposition of "taxable Canadian property", which includes:

- real property and resource property situated in Canada;
- property used by the taxpayer in certain businesses carried on in Canada; and
- certain shares and partnership or trust interests that derive their value from real property or resource properties situated in Canada.

Most provinces impose land transfer taxes on transfers of real property. The rates of land transfer tax vary by province, and transfers of resource properties are often exempt from this tax.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Canada consistently ranks highly in world mining surveys for investment attractiveness. The Fraser Institute Annual Survey of Mining Companies 2023 ranked Canada the third most attractive region in the world for investment.

Canada attracts considerable investment in the mining industry due to its favourable combination of:

- rich geology, with a track record of mineral discoveries in numerous commodities;
- a stable legal and political system;
- a high concentration of specialised professionals that service the mining industry;
- mining-specific and pro-investment tax incentives; and
- securities regulators and stock exchanges that are friendly to the mining industry.

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

In general, investment in a Canadian mining enterprise may require pre-closing approval under the Investment Canada Act (ICA), under which the federal government reviews foreign acquisitions of control of Canadian businesses above certain monetary thresholds. The review threshold ultimately depends on the transacting parties and whether a trade agreement exists between the non-Canadian party's country and Canada (eg, the United States, European Union member states, the United Kingdom and Mexico). As of December 2024, the monetary thresholds are as follows:

- CAD1.989 billion in enterprise value for trade agreement investors that are not state-owned enterprises and non-trade agreement investors that are not state-owned enterprises where the Canadian business is, immediately prior to the investment, controlled by a trade agreement investor;
- CAD1.326 billion in enterprise value for World Trade Organization (WTO) investors that are not state-owned enterprises and non-WTO investors that are not state-owned enterprises where the Canadian business is, immediately prior to the investment, controlled by a WTO investor;
- CAD528 million in asset value for WTO state-owned enterprises (SOE) and non-WTO investors that are state-owned enterprises where the Canadian business is, immediately

prior to the investment, controlled by a WTO investor; and
- CAD5 million and CAD50 million in asset value for a non-WTO investor for direct and indirect investments, respectively.

The ICA currently requires post-closing notification of all other foreign acquisitions of control (within the meaning of the ICA) of Canadian businesses and of certain new foreign investment. However, there is no provincial or territorial mining legislation that restricts the ownership or development of mineral rights based on citizenship.

Where an investment is subject to a pre-closing review under the ICA, the foreign investor must demonstrate that the investment is of "net benefit" to Canada. Typically, this requires investors to provide binding undertakings to the federal government regarding their intended operation of the Canadian business.

In addition, the ICA allows the federal government to review any level of investment in or related to a Canadian business by foreign companies where it believes the investment may be "injurious to national security".

Foreign mining companies are generally free to hold mineral rights directly or through Canadian subsidiaries. However, the federal government does limit non-resident ownership of uranium mines to 49% at the first stage of production. Exemptions may be granted in cases where it can be demonstrated that the project remains under Canadian control, or where Canadian partners cannot be found. There are no restrictions on uranium exploration by foreign persons or companies.

Recent Developments

In October 2022, the Canadian government issued its Policy Regarding Foreign Investments from State-Owned Enterprises in Critical Minerals under the ICA (Critical Minerals Policy), under which investments by SOEs and foreign-influenced private investors in Canada's critical minerals sectors (eg, cobalt, copper, lithium, graphite and rare earth elements) at any stage of the critical minerals value chain are subject to special rules, including that the direct or indirect participation of such foreign SOE or foreign-influenced private investor will support a finding that there are reasonable grounds to believe the investment could be injurious to Canada's national security. In June 2024, the Canadian government updated its Critical Minerals List to add three more minerals: high-purity iron, phosphorous and silicon metal, for a total of 34 critical minerals.

SOEs include:

- enterprises that are directly or indirectly owned or controlled by a foreign government; and
- enterprises that are "influenced directly or indirectly" by a foreign government.

Foreign-influenced investors are private investors closely tied to, subject to influence from or who could be compelled to comply with extra-judicial direction from foreign governments, particularly non-likeminded governments such as China (Hong Kong), Russia and Iran.

In 2022, pursuant to the Critical Minerals Policy, the federal government ordered the divestiture by certain Chinese entities of their investments in Canadian companies with critical mineral projects. Notably, divestiture was not ordered for an operational lithium property in Manitoba, which

has been owned by Sinomine Resource Group Co. Ltd., a Chinese public company, since 2019. In March 2023, the government clarified its position to not force existing, legacy Chinese investors to divest shares in three major Canadian mining companies, suggesting it would not "start looking backwards at investments".

In July 2023, it was announced that China-based Carbon ONE New Energy Group would purchase a 19.4% stake in the TSX-listed graphite miner SRG Graphite Inc. (SRG) for CAD16.9 million, and SRG announced that the transaction was subject to a national security review. In November 2023, however, SRG stated that it would redomicile to the United Arab Emirates and rebrand as Falcon Energy Materials, and therefore the deal would no longer require governmental clearance pursuant to the ICA. In response, the ICA Minister appeared to disclose his intention to prohibit the deal, which was finally abandoned in March 2024.

On 11 January 2024, TSX-listed Solaris Resources Inc. (Solaris) announced that it had entered into a subscription agreement (Proposed Zijin Transaction) for an approximately CAD130 million private placement of common shares of Solaris (Solaris Shares) by an affiliate of China-based Zijin Mining Group Co., Ltd. (Zijin). Upon closing of the private placement, Zijin would have owned approximately 15% of the Solaris Shares and would have been entitled to nominate a member to the board of directors of Solaris for so long as it owned, controlled or directed at least 5% of the Solaris Shares. Closing was conditional on "receipt of regulatory approval under the ICA", among other things. A national security review of the Proposed Zijin Transaction was initiated following a voluntary notification under the ICA. Four months later, with no decision rendered for the national security review, on 21 May 2024, Solaris announced the Proposed Zijin Transaction was voluntarily terminated.

In May 2024, Pan American Silver Corp. (PAAS) announced an agreement to sell 100% of its interest in Peru's La Arena gold mine for USD300 million to Jinteng (Singapore) Mining (Jinteng), a subsidiary of Zijin. In response to a voluntary notification, in June 2024 the ICA Minister advised that he "may" order a formal national security review under the ICA. Jinteng filed a judicial review application in the Federal Court of Canada, arguing that the ICA Minister lacked jurisdiction. The ICA Minister agreed to a settlement, whereby the proposed transaction was approved subject to a joint undertaking from PAAS and Zijin to enter into an offtake agreement securing 60% of the future copper concentrate supply from the La Arena II project upon commencement of commercial production.

Amendments to the ICA are expected to become effective in April 2025. In part, the amendments will create a mandatory, suspensory pre-closing notification regime for prescribed investments in certain sensitive sectors, including critical minerals. The amendments will also broaden government discretion to order pre-closing net benefit to Canada reviews for proposed acquisitions of control of Canadian businesses, unless the investor is from a trade agreement country.

The developments discussed in this section portend significant scrutiny on proposed acquisitions and investments in Canadian mining companies by Chinese, Russian, North Korean and Iranian investors and other state-owned or influenced entities, including non-Chinese companies with material Chinese shareholders.

In November 2024, the federal government released its annual report covering foreign

investment reviews under the ICA from April 2023 through March 2024. The report confirmed that foreign investment continues to trend toward pre-COVID-19 levels. The report noted a decrease in the number of extended national security reviews, down from the peak number of reviews seen in the 2022–2023 fiscal year.

5.3 International Treaties Related to Exploration and Mining

Canada is a party to several multilateral free trade agreements and investment agreements, which give foreign investors, including Canadian mining companies, the right to file a claim for damages against the government of the host country for expropriation or unfair or discriminatory treatment of their investments and investors. The Canadian government's Foreign Investment Promotion and Protection Agreement Model confirms that Canada intends to continue providing international dispute resolution protections to foreign investors.

To date, Canadian investors in the mining, oil and gas industries have been relatively more aggressive in asserting arbitration rights to safeguard their offshore interests, with the majority of their complaints targeting Latin America. July 2023 marked the end of the sunset clause in the North American Free Trade Agreement (NAFTA), and the mechanism for arbitration proceedings with the United States and Mexico under NAFTA is no longer available (other than for legacy claims submitted prior to that time); instead, investors must submit claims under the United States-Mexico-Canada Agreement.

The Canadian mining sector is subject to Canadian economic sanctions legislation as well as foreign anti-corruption legislation, including the Extractive Sector Transparency Measures Act, which requires Canadian mining companies to implement mandatory reporting standards and report annually on payments to all levels of government, domestically and internationally.

5.4 Sources of Finance for Exploration, Development and Mining

In Canada, the traditional sources of financing for exploration-stage projects have been capital raises through equity markets (eg, private placements or public offerings) and option/joint venture transactions – eg, a junior company that owns a project grants an option to a more senior company for it to earn a controlling interest in the project in exchange for exploration expenditures (or cash payments) on an agreed schedule. In option/joint venture transactions, the junior company is not required to fund the initial stages of the project and is "carried" until the senior company earns its majority interest, following which both parties contribute to the project in proportion to their interests, with a joint venture then being formed between the companies.

As a project evolves into the development phase, debt financing becomes more accessible, such as bond or convertible debt offerings, and debt facilities from a bank. Once a production decision is made based on a feasibility study, project financing is the most common source of financing for the construction of a mine, with the assets of the project being offered as security. Such project financing may be supplemented by offtake agreements, where the producer will sell all or a percentage of the future production from a specific facility to an end user.

Other less traditional finance methods, such as royalties and metal streaming, have recently become more common in the financing of all stages of a project, including exploration and development, well before the construction of a mine begins. Stream financings are where a

company agrees to sell a certain percentage of one or more of the metals/minerals produced from a mining operation to a streaming company, at a fixed price that may be lower than the prevailing market rate, in exchange for an upfront payment. This enables a company to wholly or partially monetise a specific metal/mineral prior to physically extracting it.

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

Domestic and international securities markets play an especially crucial role in the financing of mining projects in Canada. As discussed in **5.4 Sources of Finance for Exploration, Development and Mining**, junior companies rely on raising capital through Canadian equity markets (and, in some cases, in other markets, such as those in the United States, Australia and London), especially at the early stages of a project. The amount of investment a junior company can attract depends on commodity prices, world economic health, the state of global mining cycles and competition from other industries for this risk capital.

5.6 Security over Mining Tenements and Related Assets

The types of security available over mining-related assets in Canada differ depending on the stage of development and the location of the project.

For exploration-stage projects of Crown minerals, a lender or financer can obtain minimal security due to the nature of the type of mineral tenure that is granted early in a project in most provinces or territories; typically, these are mineral claims granted under statute. The type of security that can be granted will depend on the statute creating the interest and the related registry. Some statutes deem mineral claims to be a form of personal property, while others deem mineral claims to be an interest in land equivalent to a lease.

Regardless of the interest, land title statutes and personal property security legislation typically do not apply to Crown minerals, and security must be registered in accordance with the mining statute. Most provincial mineral statutes and registries will, however, allow notices to be filed on mineral claims, giving notice of the security granted over such mineral claims. Many of these statutes do not provide a priority regime and are merely a notice to third parties regarding a potential encumbrance or interest, and the priority is governed by common law.

As a project advances, most companies will upgrade their mining or mineral claims to a more secure type of tenure, typically a mining lease (or equivalent). In most jurisdictions, mining leases are considered an interest in land and, therefore, mortgages and other encumbrances can be filed on title, which could provide priorities and enforcement rights to lenders or other financers, depending on the jurisdiction and nature of the mining tenure.

When the project has advanced to the stage of mine construction, the security for project financing is generally provided at the project level, by the project entity that owns the project and the minerals.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Exploration and Investment

Investor interest in the Canadian mining sector has been bolstered in recent years by:

- higher commodity prices, particularly for precious and energy-related minerals and metals;
- global demand for green energy-related minerals and metals; and
- traditional investment diversification during times of economic uncertainty.

Precious metals accounted for 50% of total exploration spending in 2023, which is expected to decrease as funds are increasingly directed toward critical minerals projects. Exploration spending for uranium has also climbed significantly in recent years, and this trend is expected to continue.

In 2023, Canada experienced a pullback in exploration spending as mining companies addressed rising costs flowing from inflation, geopolitical conflicts and other macroeconomic factors, including volatility affecting certain commodity prices. However, long-term forecasts suggest a return to growth for both junior and senior mining companies as demand strengthens for clean energy transition minerals.

Reconciliation With Indigenous Peoples

Haida Title Lands Agreement

In April 2024, the Haida Nation and the Province of British Columbia entered the Haida Title Lands Agreement, which is the first agreement to expressly recognise the existence of Aboriginal title over privately owned lands (ie, the entirety of the Haida Gwaii archipelago). Moving forward, provincial land and resource management decisions will be made in accordance with Haida title, including decisions regarding interests in land. The Haida Title Lands Agreement purports that private land interests, local governments and public service delivery will not be impacted, but it is currently unclear how such interests will be reconciled with Haida title. Jurisdiction and laws on Haida Gwaii will be made consistent through a to-be-negotiated process, in which other existing interests such as Crown leases will continue for the duration of their term. However, there will be uncertainty concerning continuing interests in land that overlap with Haida title until this process is concluded.

Indigenous ownership in projects

Indigenous ownership in resource-based projects is increasing throughout Canada. This trend provides Indigenous communities with independent and self-governing authority over resources overlapping their traditional territories and concurrently increases certainty for projects within such communities. For example, Nations Royalty Corp. is a publicly traded company that provides Indigenous communities with early benefits from mining projects while retaining royalty ownership. Governments are also facilitating Indigenous equity in projects (eg, the Province of Alberta may provide loan guarantees to Indigenous-led projects). Such participation is seen as a form of economic reconciliation, allowing Indigenous communities to benefit directly from resource development on their territories.

ECUADOR

Law and Practice

Contributed by:
Roque Bernardo Bustamante and Claudia Bustamante
Flor Bustamante Pizarro & Hurtado

Contents

Flor Bustamante Pizarro & Hurtado has a team of 15 senior partners and 25 attorneys, offering multidisciplinary advice for carrying out petroleum, energy, and mining projects. Headed by Roque Bustamante, the mining law team is composed of eight lawyers. Ecuador, a country blessed with a massive amount of natural resources, and it relies tremendously upon those resources. Nonetheless, investments in natural resources are subject to unstable political and economic scenarios, so the firm begins with a legal and financial analysis of each project, anticipating the potential risks during execution. The team's experience enables it to find the best investment opportunities and to maintain a stable and reliable projection for each project. It always offers clients assistance for warranting stability and balance, starting with the initial phase of acquisition, up to the completion of the negotiation, exploration and production phases. The firm designs legal strategies to protect clients' interests during the entire process, always looking to safeguard their investments.

Authors

Roque Bernardo Bustamante is a senior partner at Flor Bustamante Pizarro & Hurtado and the head of the natural resources department, with a wealth of experience in the practice areas of oil and gas, mining and the environment. He is a member of the Quito Bar Association, the International Bar Association and the Ecuador Mines Chamber, and lectured as a professor of economic law at the Universidad De Las Américas in Quito from 2012 to 2017. A knowledgeable practitioner, Roque has been contributing to industry publications for many years, particularly on the subject of natural resources and environmental topics.

Claudia Bustamante is an associate lawyer at Flor Bustamante Pizarro & Hurtado who has focused her practice on non-renewable natural resources, especially in providing legal services to multinational mining companies.

Flor Bustamante Pizarro & Hurtado

Office 803
Torre 6 Building
Av. 6 de Diciembre y Juan Boussingault
Quito
Ecuador

Tel: +59 399 946 3866
Email: roque.bustamante@fbphlaw.com
Web: www.fbphlaw.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Ecuador's main export for several decades has been oil. Minerals have not constituted a major export of Ecuador and the first large-scale mines only started production in November 2019, when the Fruta del Norte mine, operated by Lundin Gold through its local subsidiary Aurelian, started producing gold, and the Mirador mine, operated by Chinese Tongling and China Railway through its local subsidiary Ecuacorriente, started producing copper. Both projects are located in the south-east of Ecuador, in Zamora Chinchipe province. It is expected that together the projects will have combined sales of more than USD1 billion per year, an amount which will make mining one of Ecuador's biggest exports.

On 10 December 2019, the Fruta del Norte mine produced its first export: 177 tons of gold concentrate. A total investment of USD2.7 billion has been made in the project and it is expected to produce 310,000 ounces of gold per year and 400,000 of silver. In 2020, the Mirador project, owned by Ecuacorriente, also started production in the first large-scale copper mine in Ecuador. In June 2024, an exploitation contract was signed for the Cascabel project, making it the third large-scale mining project in Ecuador to transition into the exploitation phase. The construction of the mine is anticipated to commence in the near future.

Ecuador has not yet been fully explored for minerals and its potential has, in recent years, attracted major multinational companies such as Newcrest, Anglo American, BHP and Codelco. However, even though mining activities are fully regulated and legally possible, political opposition from different groups makes investment move slowly, with the need to overcome the legal and constitutional objections that are regularly brought against mining projects.

1.2 Legal System and Sources of Mining Law

Ecuador's legal system is a civil one; the main sources of legislation are the Ecuadorian Constitution, the Mining Law, the Environmental Law, plus the regulation applicable to all commercial activity, including the Civil Code, the Labour Code and various tax laws.

There are also several subsidiary regulations that detail further the pertinent procedures for obtaining a mining concession, maintaining it and all procedures for environmental and social matters.

The Ecuadorian Constitution provides that natural resources belong to the State of Ecuador, that their exploitation shall be conducted in accordance with all environmental and social provisions and that the benefit to the exploiting company shall always be lower than the benefit to the State of Ecuador. It also provides that environmental consultations and engagement between mining companies and indigenous communities shall be conducted in pertinent cases in accordance with the treaties entered into by Ecuador.

The Mining Law and regulations cover all aspects of the granting of a mining concession, payment of maintenance fees, royalties, passing into different stages, including advanced exploration and exploitation, and all other aspects concerned with a mining concession.

The Environmental Law and regulations provide all the aspects regarding environmental licences indispensable for mining activities.

The Civil Code is a set of general rules applicable for all matters when there is no special provision for a particular matter. The Tax Code and related laws and regulations also apply to mining activities, in addition to the Labour Code for all employment matters.

All Ecuadorian legislation is applicable to companies operating in Ecuador and therefore all mining subsidiaries holding mining concessions in Ecuador are subject to all the laws applicable in Ecuador.

The Constitutional Court of Ecuador has the capacity to qualify requests for public consultation on different matters, including mining matters. Its decisions are binding.

While several international treaties provide for consultation with indigenous communities, a law defining to whom, when and how a community consultation should be made has not been passed, in part due to the Constitutional Court prohibiting the issuance of a ministerial decree in that regard.

In March 2023, an Executive Decree was issued regulating the environmental consultation process; however, this Executive Decree will only be in force until the National Assembly issues an Organic Law regulating such consultation.

1.3 Ownership of Mineral Resources

In Ecuador, mineral resources belong to the Republic of Ecuador. The State of Ecuador has the right to explore and exploit all minerals and it can do this through the national mining company ENAMI (*Empresa Nacional Minera*). However, ENAMI does not have sufficient financial means and technical resources. Therefore, on the few projects it is handling, it has looked for partners.

The central government acting on behalf of the State of Ecuador is allowed to grant mining concessions for the exploration and subsequent exploitation of metallic and non-metallic minerals. Mining concessions for construction materials are granted by municipalities.

Article 1 of the Constitution mentions that the non-renewable natural resources on the territory of the State belong to its inalienable and imprescriptible patrimony. The central government will have exclusive competence over energy, miner-

als, hydrocarbons, water, biodiversity and forest resources.

Article 408 of the Constitution mentions that non-renewable natural resources and, in general, products of the subsoil, mineral and hydrocarbon deposits, substances whose nature is different from that of the soil, including those found in the areas covered by the waters of the territorial sea and maritime zones, as well as biodiversity and its cultural heritage and the radio-electric spectrum, shall be the inalienable, imprescriptible and unseizable property of the State. These assets may only be exploited in strict compliance with the environmental principles established in the Constitution.

The State will participate in the benefits flowing from the use of these resources, in an amount that will not be less than that of the company that exploits them.

The State shall guarantee that the mechanisms of production, consumption and use of natural resources and energy preserve and recover natural cycles and allow for dignified living conditions.

In spite of the fact that all subsoil products belong to the State, the regional autonomous governments in whose territory non-renewable natural resources are exploited or industrialised will have the right to participate in the income received by the State for this activity, in accordance with the law.

1.4 Role of the State in Mining Law and Regulations

The role of the state is always grantor-regulator. Since the State is also the owner of mineral resources, it can operate through its wholly owned company ENAMI but this is rarely the case. When this does happen, however, the State may be simultaneously grantor-regulator and owner-operator through different government entities.

ENAMI shall have the preferential right to apply to the Ministry of Energy and Mines for the concession to any free mining area, in accordance with the certification issued for this purpose by the Energy and Non-Renewable Natural Resources Regulation and Control Agency. It shall also have the right of first option to apply for the concession to areas whose rights have been extinguished due to expiry, extinction or nullity, or which have been restored to the State.

Mining concessions are always granted and regulated by the State, independently of those that are granted to a government-owned company or any other petitioner. Once production starts, the role of the State, in addition to controlling environmental, social and labour matters, is to collect royalties and verify that the rule which states that the benefits must always be higher for the State of Ecuador than for the mining concession holder is satisfied.

The mining sector is structured as follows:

- the Sectoral Ministry (Ministry of Energy and Mines);
- the Mining Regulation and Control Agency;
- the National Institute of Geological, Mining and Metallurgical Research;
- ENAMI; and
- the municipalities in the competences that correspond to them.

Article 8 of the Mining Law establishes the creation of the Mining Regulation and Control Agency (ARCOM) as the technical-administrative body in charge of exercising the state power of surveil-

lance, auditing, intervention and control of the phases of mining activity carried out by ENAMI, and in mixed-mining companies, private initiative, small-scale mining and artisanal and livelihood mining, in accordance with the regulations of this law and its regulations.

ARCOM has the competence to supervise and adopt administrative actions that contribute to the rational and technical exploitation of the mining resource, and to the claiming of the fair share of the benefits by the State as a result of its exploitation, as well as to the fulfilment of social and environmental responsibility obligations assumed by the holders of mining rights.

ARCOM has the following attributions, among others:

- to keep a register and cadastre of mining concessions and publish it by electronic means;
- to inspect the mining activities carried out by the holders of mining rights and titles; and
- to grant licences for the commercialisation of mineral substances determined in the present law.

ARCOM also regulates the assignment and transfer of mining rights as well as other industry issues, as it is the regulating entity.

1.5 Nature of Mineral Rights

All minerals and products thereof found underground belong to the State of Ecuador, as per the provisions of the Ecuadorian Constitution. The law allows the State of Ecuador to grant a mining concession through the issuance by the central government of a mining concession title, which, subject to the provisions of the law, including environmental laws and regulations, enables the mining concession holder to explore and produce minerals. Mineral rights granted through concessions do not have the status of property, but of rights to explore and produce. Once the minerals are produced, they become the property of the concession holder, who can sell them freely on the market.

Any natural or legal person, national or foreign, except those prohibited by the Constitution of the Republic, has the power to prospect freely, for the purpose of seeking minerals, except in protected areas and within the limits of mining concessions, in urban areas, populated areas, archaeological areas, goods declared to be of public utility and in Special Mining Areas.

The President of the Republic of Ecuador may declare Special Mining Areas, subject to Article 407 of the Constitution of the Republic, in those areas in which there is potential for mining development and which are not concessioned, with the purpose that the Ministry of Energy and Mines, through its attached entities, carry out cadastres, geological-mining investigations or other types of activity of scientific interest, within their respective competencies.

The declaration of a Special Mining Area shall expressly establish the term of validity of the Special Mining Area, which may not exceed four years; once this term has expired, it shall be lifted without the need for any provision that so declares. In all cases, the declaration will respect the legally established rights or those derived from them.

Natural or juridical persons, national or foreign, who are holders of mining rights or who carry out mining activities, are subject to the laws, courts and judges of the country.

Mining Scale

Mining concessions are divided into large-scale concessions, medium-sized mining and small-scale mining.

Small-scale mining is considered to be that which, due to the characteristics and geological conditions of the deposits of metallic and non-metallic mineral substances and construction materials, as well as their technical and economic parameters, makes their rational exploitation viable in a direct manner, without prejudice to the fact that exploration work precedes it, or that exploration and exploitation work is carried out simultaneously.

Medium-sized mining is considered to be that which, due to the size of the deposits and depending on the type of metallic and non-metallic mineral substances in question, has been able to quantify reserves that allow the exploitation of those reserves over the processing volume established for the special regime for small-scale mining and up to the volume established by law.

Large-scale mining is considered to be that which exceeds the maximum volumes established for medium-sized mining.

Non-Metallic Mining Regime and Construction Materials

The exploration and exploitation of non-metallic mining must comply with the general rules applicable to mining concessions in the terms provided by the Mining Law and its Regulations.

In the case of construction materials, the State, through the Ministry of Energy and Mines, may grant concessions for the use of surface clays, sands, rocks and other materials of direct employment in the construction industry, with the exception of river beds, lakes, sea beaches and quarries that shall be governed by the limitations established by law.

In the framework of Article 264 of the Constitution, each municipal government shall assume the powers to regulate, authorise and control the exploitation of arid and stone materials found in the beds of rivers, lakes, lagoons, beaches and quarries, according to the Special Regulations that will establish the requirements, limitations and procedures to that effect. The exercise of competence shall be limited to the principles, rights and obligations contemplated in the municipal ordinances that are issued in this regard. The municipal governments shall not establish conditions and obligations other than those established in this law and its regulations.

1.6 Granting of Mineral Rights

The granting authority for mineral rights is the central government, through the Ministry of Energy and Mines, which in turn has agencies in different regions of the country.

The granting of a mining concession is an administrative act issued in a form and substance predetermined by the law and in a format pre-established from time to time by the Ministry. The terms and conditions of the administrative act are not negotiable. All mining concessions have the same terms except for the area and remaining term of the concession. The law recognises different types of mining: small-scale, medium-scale and large-scale, plus non-metallic and construction material mining concessions.

Ecuadorian laws are applicable to all mining concessions and the mining title does not contemplate international arbitration.

For the granting of mining concessions, the Ministry of Energy and Mines will call for a public auction for the granting of all metallic-mining concessions. Likewise, it will call for a public auction for the granting of mining concessions on areas of concessions that have expired or that have been returned or reverted to the State, in which the petitioners shall participate and present their respective offers in accordance with the procedure established by the law.

The mining concession is an administrative act that grants a mining title, over which the holder has a personal right, which is transferable prior to the mandatory qualification of the suitability of the transferee of mining rights by the Ministry of Energy and Mines, and on this may be established pledges, assignments in guarantee and other guarantees provided by law, in accordance with the prescriptions and requirements contemplated in this law and its general regulations.

The mining title, without losing its personal character, confers on its holder the exclusive right to prospect, explore, exploit, benefit, melt, refine, commercialise and dispose of all the mineral substances that may exist and be obtained in the area of that concession, becoming a beneficiary of the economic yields obtained from those processes, within the limits established in the present regulation. The mining concessionaire must comply with its tax obligations in order to benefit from and carry out the activities conferred by this title and may only do so once the preliminary administrative acts have been met. These include acquiring an environmental licence and an independent certificate from the water authority that evidences that the proposed activities shall not have any impact on water sources.

The mining concession shall have a term of up to 25 years, which may be renewed for equal periods, provided that a written request from the concessionaire has been submitted to the Ministry of Energy and Mines for that purpose prior to its expiry and a favourable report has previously been obtained from ARCOM and the Ministry of the Environment.

The mining concession will be divided into an exploration stage and an exploitation stage. During the exploration stage, a distinction will be made between the initial exploration period, the period of advanced exploration and the period of integral economic evaluation of the deposit. It will incorporate the main, secondary and other minerals of economic value.

Mining holders may suspend activities when the protection of the health and life of mining workers or communities located within a certain distance of the area where mining activity takes place so requires, as provided in the general regulations of the law, when required by the Civil Defence or when non-compliance with the environmental licence by the competent environmental authority is verified. In any case, the suspension of mining activities shall be ordered exclusively by the Minister of Energy and Mines, by means of a reasoned resolution.

A mining concessionaire who is prevented from carrying out their mining activities normally, due to force majeure or a fortuitous case duly proven, may apply to the Ministry of Energy and Mines for the suspension of the concession term for the period that the impediment lasts. For this purpose, the Ministry of Industry, by means of a reasoned resolution, shall admit or deny any such request.

1.7 Mining: Security of Tenure

Grant, Exploration and Exploitation Stages

Mining concessions are granted through a competitive process where the first applicant has the right to match other offers, except in the case of applications made by ENAMI.

Unfortunately, the mining registry and procedure for new applications, called "*Catastro Minero*", has now been closed for almost seven years and it is impossible to predict when it will be reopened. Therefore, the only possible way to enter now is to partner with somebody who already holds mining rights or with ENAMI.

In accordance with the mining law, a mining concession has up to four years for initial exploration, up to four years for advanced exploration, up to two years (renewable by an additional two years) on economic evaluation and what remains of up to 25 years on exploitation. The exploitation period can be extended for up to another 25 years.

Once the initial exploration period or the advanced exploration period, as the case may be, has been completed, the mining concessionaire will have a period of up to two years to carry out the economic evaluation of the deposit and request, before its expiry, the beginning of the exploitation stage and the corresponding subscription of the Mining Exploitation Contract, in the terms indicated in this law. The mining concessionaire shall have the right to apply to the Ministry of Energy and Mines for an extension of the period of economic evaluation of the deposit for a period of up to two years from the date of the administrative act accepting that application.

In the event that the mining concessionaire does not request the start of the exploitation stage in the terms indicated in the foregoing, the mining concession shall be declared extinguished by the Ministry of the Sector.

Within six months from the resolution declaring the beginning of the exploitation stage, the mining concessionaire must sign with the State, through the Ministry of Energy and Mines, a Mining Exploitation Contract containing the terms, conditions and terms for the construction and assembly, extraction, transportation and commercialisation stages of the minerals obtained within the limits of the mining concession.

The holder of a mining concession may not carry out exploitation work without having previously signed the respective contract.

Fees, Royalties and Taxes

Maintenance fees per hectare "*patente*" must be paid annually during exploration and exploitation stages, on a scale that is adjusted annually in proportion to the minimum wage of Ecuador (USD460 for the year 2024). For small-scale mining, the *patente* is equivalent to 2% of the minimum wage (USD9.2 per mining hectare). For medium and large-scale mining, the *patente* shall be paid as follows:

- initial exploration, 2.5%, equivalent to USD11.50 per mining hectare;
- advanced exploration and economic evaluation, 5%, equivalent to USD23 per mining hectare; and
- exploitation, 10%, equivalent to USD46 per mining hectare.

The benefits of the project are understood to be the revenues from the sales of minerals, minus amortisation of investments, operating costs and all pertinent taxes, government royalties and profit-sharing. The benefit to the company must be lower than the benefit to the State that

is formed by all taxes and royalties paid by the company in the same fiscal year. An adjustable formula called "*ajuste soberano*" is incorporated into the contracts to ensure that the benefits to the State remain higher than the benefits to the operating company throughout.

If a project is considered to be large-scale before entering into the exploitation stage, the concession holder must execute a contract with the State of Ecuador where minimum investments on the project and future royalties are set up.

Termination and Transfer of Rights

The State of Ecuador may declare unilateral termination of a mining concession if the company has breached certain provisions of the law, including non-payment of annual per-hectare maintenance fees or royalties, not meeting minimum commitment investments, employment of children, material environmental damage duly proven through the Ministry of Environment and pertinent courts, and transference of mining rights without prior approval of the ministry.

Unilateral termination is conducted through a process where the company has the right to defend itself and, if possible, correct – and compensate for – the fault that led to the unilateral termination.

Mining rights are transferable, provided prior approval is granted by the Ministry of Energy and Mines. For the transfer process, a request must be submitted to the Ministry specifying the percentage of the area to be transferred and attaching supporting documents. If the documentation is complete, the Ministry will request ARCOM to issue three reports: legal, technical and economic. With these ARCOM reports, the Ministry will issue a resolution approving the transfer of concessions. This resolution must be registered in the Mining Registry under the charge of ARCOM. Subsequently, a Public Deed must be executed between the assignor and the assignee, attaching the registered approving resolution. At the end of the process, the Public Deed must also be registered in the Mining Registry under the charge of ARCOM.

Commercialisation, Marketing and Export

The mining law establishes the right to free commercialisation; the holders of mining concessions can commercialise their production freely inside or outside the country. However, in the case of gold from small-scale mining and artisanal mining, the Central Bank of Ecuador will market it directly, or through public and private economic agents previously authorised by the Bank.

Natural or legal persons who, without being holders of mining concessions, are engaged in the marketing or export of metallic mineral substances or in the export of non-metallic mineral substances, must obtain the corresponding licence from the Ministry of Energy and Mines, in accordance with the provisions of the general regulations of the law. The same licence must be obtained by the mining concessionaires who trade in metallic mineral substances or export non-metallic substances from areas outside their concessions.

Natural or legal persons engaged in the internal commercialisation of non-metallic mineral substances, as well as jewellery artisans, will not require this licence. The marketing licences granted are valid for periods of three years, are non-transferable and can be renewed for the same periods.

Clandestine trade in mineral substances is considered in the case of:

- holders of mining concessions who trade internally in metallic mineral substances, or export metallic or non-metallic minerals from other concessions, without the required licence; or
- mining producers who sell metallic mineral substances to persons or entities not authorised to commercialise them.

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

2.1 Environmental Protection and Licensing of Mining Projects

Before any activity on a mining concession can start, an environmental licence granted by the Ministry of Environment must be obtained. There are different types of licence depending on the activity contemplated. For initial exploration activities, the licence, called an environmental registry, can be obtained faster than for advanced exploration or exploitation, for which it can take up to two years to obtain the environmental licence.

In addition, it is a requirement that an independent certificate from the water authority be obtained, evidencing that the proposed activities shall not have any impact on water sources.

As a signatory of different international treaties, Ecuador also requires community consultation in cases involving indigenous communities and, in all cases, it is mandatory to disclose and inform the people of the area about the potential environmental impacts of each activity.

Community rights and continuous constitutional actions against mining companies brought by political leaders are a serious concern for mining investors and have to be analysed carefully before entering into any project in Ecuador.

Environmental licensing is an obligatory process for mining concessionaires, so that they can proceed with the different mining stages, and this must be managed through the Unified Environmental Information System (SUIA).

In order to obtain the environmental licence, it is necessary to request an Intersection Certificate which verifies the location of the concession within protected areas, or not, since, if this is the case, it will be necessary to act differently.

In all cases, the mining title holder must obtain from the National Environmental Authority the Intersection Certificate from which the intersection of the mining rights in relation to the National System of Protected Areas, Protected Forests and Vegetation, State Forest Heritage or other conservation areas declared by the National Environmental Authority is detached.

If the mining right intersects with the National System of Protected Areas, as far as extractive activities are concerned, it will proceed according to the provisions of Article 407 of the Constitution of the Republic of Ecuador and the competent environmental regulations.

In the event that the mining right intersects with Protective Forests and Vegetation or the State Forest Heritage, the mining title holder, prior to the start of the environmental licensing process, must apply to the National Forestry Directorate of the Ministry of the Environment for certification of environmental viability qualified with the report on the feasibility of the mining right. This certification will be issued by the National Forestry Director.

The Intersection Certificate will be issued for the mining rights, among others authorised by the Ministry of the Environment, or for those cases in which the title holder requires only the environmental licence of the operating area.

It is the responsibility of the mining title holder to contract an external consultant qualified by the Ministry of the Environment, who will be in charge of carrying out the Environmental Impact Study within which a technical file of the project must be included, a description of the study area and a complete description of the project prior to the beginning of any stage of exploration, exploitation or others.

Likewise, in conjunction with the Environmental Impact Study, it is necessary to carry out the Environmental Management Plan, which includes methods of evaluation and monitoring of the project, as well as a general schedule containing a budget within which the environmental policy requested by the same ministry is included.

The Environmental Impact Study must identify, describe, quantify and evaluate, in a precise manner and according to the characteristics of each case, the foreseeable effects that the execution of the mining project will produce on the different environmental and socio-economic aspects.

The Environmental Management Plan will also include aspects of monitoring, evaluation, monitoring and contingency, partial closures of operations and closure and abandonment of mining operations, with their respective programmes, schedules and budgets.

2.2 Impact of Environmentally Protected Areas on Mining

There are different types of environmentally protected areas throughout Ecuador. In most of them, mining is not possible; however, in certain buffer zones it may be possible with the Ministry of the Environment's prior consent.

The Ministry of the Environment manages the National System of Protected Areas, which guarantees the conservation, management and sustainable use of biodiversity, as well as the functional connectivity of terrestrial, insular, marine, marine-coastal ecosystems and the rights of nature.

Protected areas are priority spaces for conservation and sustainable development. Regional autonomous governments should incorporate protected areas into their land-use planning tools.

The National Environmental Authority will carry out periodic technical evaluations in order to verify that the protected areas comply with the objectives recognised for them. If necessary and considering the results of such technical evaluations, the National Environmental Authority may delimit them or change their status, as appropriate.

In all cases, the mine owner must obtain from the National Environmental Authority the Certificate of Intersection indicating the intersection of mining rights in relation to the National System of Protected Areas, Protected Forests and Vegetation, State Forest Heritage or other conservation areas declared by the National Environmental Authority.

Article 407 of the Constitution prohibits the extraction of non-renewable resources in pro-

tected areas and in areas declared as intangible, including logging. Exceptionally, such resources may be exploited at the justified request of the Presidency of the Republic and following a declaration of national interest by the National Assembly, which, if it deems it appropriate, may convene a popular consultation.

All types of metallic mining in any of its phases are prohibited in protected areas, urban centres and intangible zones.

2.3 Impact of Community Relations on Mining Projects

Community consent constitutes the most prominent issue for most mining projects in Ecuador. Opposition, political activism and community claims are common. There is no magic cure for the problems caused for mine owners by the issue; only companies' best practices can help to overcome community and community leaders' opposition to mining projects.

It is usual for community leaders and local politicians to file constitutional actions before the local judge, requesting suspension or termination of mining rights. The usual arguments are environmental damage and lack of proper indigenous or environmental consultation. How the local judge is going to rule is unpredictable. The decisions of the local judge can be appealed to a superior court that, again, has broad scope on how to decide. From the superior court it is possible to file an extraordinary protection action with the Constitutional Court; however, this Court hears only a limited number of cases and takes quite some time to resolve them.

The Mining Law establishes that all title holders must have a Community Relations Plan that reduces, mitigates and compensates for the socio-environmental impacts of their activity. This plan will be developed with the communities located in the area affected by the project, and in co-ordination with the development plans of the local governments involved.

2.4 Prior and Informed Consultation on Mining Projects

The Ecuadorian Constitution provides for several types of consultations, to indigenous aboriginal communities, to the affected population on environmental matters and even to the general population on any matter.

In accordance with the Ecuadorian Constitution and the Indigenous and Tribal Peoples Convention, 1989 ("ILO 169"), prior consultation is only mandatory for indigenous communities; however, other forms of consultation, such as with the public at large, can also block a project. The Constitutional Court has rejected some of the general requests for consultation but has not been able to provide a clear rule on how and when consultations are possible. Therefore, the issue is still uncertain and remains a great uncertainty for mining projects.

The Constitution recognises and guarantees indigenous communes, communities, peoples and nationalities free, prior and informed consultation, within a reasonable time, on plans and programmes for the prospecting, exploitation and commercialisation of non-renewable resources found on their lands that may affect them environmentally or culturally, allowing them to participate in the benefits that these projects bring and to receive compensation for the social, cultural and environmental damages caused to them. This type of consultation is known as indigenous/ancestral consultation. The consultation to be carried out by the competent authorities shall be obligatory and timely. If the consent

of the community consulted is not obtained, the Constitution and the law shall apply.

Article 398 of the Constitution establishes that any State decision or authorisation that may affect the environment must be consulted with the community, to which ample and timely information shall be provided. This type of consultation is known as the environmental consultation. The consulting subject shall be the State. The law shall regulate the deadlines, the people consulted and the criteria for assessment and objection to the activity submitted for consultation.

If the referred consultation process results in a majority opposition of the respective community, the decision to execute the project, or not, will be adopted by a duly motivated resolution of the corresponding higher administrative instance in accordance with the law.

The Environmental Law establishes that the competent environmental authority shall inform the population that could be directly affected about the possible realisation of projects, works or activities, as well as the possible expected socio-environmental impacts and the pertinence of actions to be taken. The purpose of the participation of the population will be to collect their opinions and observations in order to incorporate them in the Environmental Studies, provided that they are technically and economically viable.

A key aspect of the Environmental Impact Study is to include mechanisms of socialisation and citizen participation, so that the population is informed of the environmental impact of carrying out projects; this will be channelled through the tools set out in the Organic Code of the Environment.

In March 2023, an Executive Decree was passed regulating environmental consultations; however, indigenous groups filed an unconstitutionality action to the Constitutional Court claiming that the Executive Decree was unconstitutional. The Constitutional Court ruled that the Executive Decree will be in force until the National Assembly issues a new law regulating environmental consultation. As of January 2025, such a new law regulating environmental consultation has yet to be issued.

Regarding indigenous/ancestral consultation, in March 2024, an Executive Decree was issued regulating this consultation. However, similar to the Executive Decree regarding environmental consultation, a group of people made a filing before the Constitutional Court claiming that this Decree was unconstitutional. The Constitutional Court has not yet issued a decision. Therefore, as of January 2025, the only references and parameters to indigenous/ancestral consultation are those provided in the Executive Decree that is being challenged, in ILO 169 and in the parameters set by the Constitutional Court.

2.5 Impact of Specially Protected Communities on Mining Projects

Ecuador is made up of a large ethnic mix of indigenous peoples and immigrants who arrived a few centuries ago. Technically, only the indigenous/ancestral communities are required to have prior consultation but, considering the large and diverse ethnic mix, everybody claims to be a community subject to consultation and special rights. The issue has to be analysed on a case-by-case basis, and it is impossible to predict an outcome.

2.6 Community Development Agreement for Mining Projects

Community development agreements are possible, but not mandatory. It is advisable to have co-operation agreements with local communities and to include them as much as possible as part of the project.

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

Former President of Ecuador Guillermo Lasso issued Executive Decree No 754 by which the Regulations to the Environmental Organic Code were reformed, and a chapter regarding environmental consultation was included. Environmental consultation must be carried out during the process of obtaining an environmental registry for initial exploration and environmental licensing for advanced exploration and exploitation. Indigenous groups filed a constitutional action against the Executive Decree, claiming that environmental consultation should be regulated by virtue of an organic law and not subsidiary regulation. The Constitutional Court ruled that the Execute Decree No 754 is not constitutional because environmental consultation shall be regulated by organic law. However, it ruled that the Executive Decree will be valid and in force until the National Assembly issues an organic law regulating environmental consultation.

2.8 Illegal Mining

Illegal mining has become an issue in Ecuador in recent years, posing challenges to both the government and the legal mining sector. Large illegal mining operations, such as the one named the "Buenos Aires Mine", have gained control over some areas of the country, making it difficult for authorities to effectively intervene. Additionally, small but recurrent illegal mining operations have occurred within concessions legally held by mining companies, disrupting lawful industrial mining activities and creating environmental and social issues.

The Ecuadorian government has taken increasingly strict measures to address illegal mining, particularly in the last year. However, the problem remains widespread and challenging to control. Illegal mining is classified as a serious criminal offence under the Criminal Code and comes with severe penalties. Individuals engaging in unauthorised extraction, exploitation, exploration or commercialisation of mineral resources face imprisonment of 16 to 20 years. If the activity causes environmental damage, imprisonment increases to 22 to 26 years. In cases where the activity is linked to organised crime or armed groups, the penalty escalates to 26 to 30 years, along with fines ranging from 1,000 to 1,500 times the unified basic salary (the minimum wage for private sector workers se annually by the Ministry of Labour).

Despite these severe penalties, illegal mining persists as a pressing issue. Mining concession holders are legally required to report instances of illegal mining within their concessions. However, such reports often fail to produce effective results, highlighting the ongoing challenges in combating this issue.

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

The worst example is Cooper Mesa v Republic of Ecuador, regarding a large copper deposit. After several years of debate between the company and the community leaders, and independently of winning in court, the government of Ecuador declared unilateral termination of the mining concessions. This resulted in Cooper Mesa winning an arbitration award. The project

is now being developed by ENAMI in association with the Chilean mining company CODELCO.

One of the difficult issues to overcome in Ecuador is illegal mining. Lately, the government has been making important efforts to combat this, but it has not yet been controlled (see **2.8 Illegal Mining**).

The best example of community relations/consultation is the Lundin, Fruta del Norte Project that, with a good integration programme with surrounding communities in place, has started production on a large-scale gold mine.

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

3.1 Climate Change Effects

Climate change is not, in general, a major concern for the mining industry in Ecuador. The big issue is community consultations.

3.2 Climate Change Legislation and Proposals Related to Mining

No legislation is being passed regarding mining and climate change. What is being discussed is the right of the population, whether indigenous or not, to vote in a referendum or other type of consultation against mining projects.

3.3 Sustainable Development Initiatives Related to Mining

Ecuador has many NGOs; some of them promote sustainable development, but most of them simply oppose mining projects, and blocking mining development seems to be their ultimate goal.

3.4 Energy-Transition Minerals

There are no legislative initiatives related to the increasing demand for the so-called energy-transition minerals, such as lithium and nickel, in Ecuador. Political opposition to mining has caused the government to refrain from leading any mining initiative.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The main rule originating in the Constitution is that the benefit to the State shall always be higher than the benefit to the operating company.

The benefit to the State is mainly formed of a 12% share of mine profits, a 25% income tax, royalties between 3% and 8%, and 15% VAT. It is important to note that community support or generation of employment is not treated as a benefit for the purposes of satisfying the Constitutional rule.

The benefit to the operating company is the total amount of sales minus amortisation of investments in accordance with applicable accounting rules, minus all operating costs (it is important to note that contributions to community development are not tax-deductible), minus all amounts paid in royalties between 3% and 8% on large-scale mining projects, minus 12% profit-sharing currently being paid to the central government and minus 25% of income tax.

There is no different treatment for national or foreign investors. While a tax of 5% applies to all transfers of funds from Ecuador abroad, it is exempted for dividends.

4.2 Tax Incentives for Mining Investors and Projects

There are no material incentives, since the rule that the government benefit be greater than the company benefit is a Constitutional concept that does not admit any exemptions.

On large-scale mining projects, it is necessary to execute a contract before entering production. In that contract, stabilisation clauses may be possible, provided that the aforementioned benefit rule is maintained.

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

The general tax regime provides for capital gains of up to 10% on the transfer of mining concessions' rights or shares, except when the local project represents less than 20% of the value of the total transaction.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Ecuador had a boom in the attraction of mining investment in 2016 and 2017. This was due to several factors, including:

- exploration potential;
- that, at that time, it was possible to apply for new mining concessions directly from the government; and
- political and community opposition being manageable.

While the exploration potential remains, the other two factors are not so clear: it is uncertain when it will be possible to apply for new mining concessions and how judges and courts are going to rule on Constitutional actions aiming to block mining projects.

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

There are no restrictions on foreign investments. Foreign and Ecuadorian capital and companies receive the same treatment.

5.3 International Treaties Related to Exploration and Mining

Ecuador has resigned from most of the treaties it had signed for protection of investments from other countries, called bilateral investment treaties (BITs). The protection of investments can only be achieved from local judges and courts or, eventually, through clauses on the exploitation contract before the production period or a protection of investments agreement with the Ministry of Production aiming to achieve international arbitration for disputes between the parties.

5.4 Sources of Finance for Exploration, Development and Mining

Exploration, development and mining have been financed from different sources in Ecuador, depending on the type of company behind the projects. Most of the junior mid-sized companies seek capital in foreign stock exchanges and finance their activities with loans by finding a major as a partner. The few majors that have arrived have their own resources.

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

The domestic securities market has not been a player in the financing of exploration, development and mining in Ecuador. Most of its financing comes from abroad.

5.6 Security over Mining Tenements and Related Assets

It is possible to take security on the shares of local subsidiaries, the mining concession itself and the assets. Security must be registered on local registers.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Production of copper at the Mirador project, and gold on the Fruta del Norte project, both large-scale projects, indicates the considerable opportunities for the mining sector in Ecuador.

The arrival into Ecuador of Newcrest, Anglo American, BHP, CODELCO, Fortescue and others in 2016 and 2017 was a sign of trust in the country and, eventually, may provide a foreign income stream to replace that currently produced by oil exports, which may start to decline at some point.

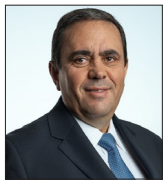
In 2024, the Cascabel project entered the exploitation phase, becoming the third large-scale mining project in Ecuador to reach this phase, with construction of the mine and production anticipated in the coming years. Additionally, the Curipamba project, a medium-scale mining project, has also advanced to the exploitation phase. This progress is a positive and encouraging development for the country's mining sector. Several other projects, such as La Plata and Cangrejos projects, are also on track to enter the exploitation phase and begin production in the near future, reflecting the growth of Ecuador's mining industry and the potential for further growth.

Trends and Developments

Contributed by:
Roque Bernardo Bustamante and Claudia Bustamante
Flor Bustamante Pizarro & Hurtado

Flor Bustamante Pizarro & Hurtado has a team of 15 senior partners and 25 attorneys, offering multidisciplinary advice for carrying out petroleum, energy, and mining projects. Headed by Roque Bustamante, the mining law team is composed of eight lawyers. Ecuador, a country blessed with a massive amount of natural resources, and it relies tremendously upon those resources. Nonetheless, investments in natural resources are subject to unstable political and economic scenarios, so the firm begins with a legal and financial analysis of each project, anticipating the potential risks during execution. The team's experience enables it to find the best investment opportunities and to maintain a stable and reliable projection for each project. It always offers clients assistance for warranting stability and balance, starting with the initial phase of acquisition, up to the completion of the negotiation, exploration and production phases. The firm designs legal strategies to protect clients' interests during the entire process, always looking to safeguard their investments.

Authors



Roque Bernardo Bustamante is a senior partner at Flor Bustamante Pizarro & Hurtado and the head of the natural resources department, with a wealth of experience in the practice areas of oil and gas, mining and the environment. He is a member of the Quito Bar Association, the International Bar Association and the Ecuador Mines Chamber, and lectured as a professor of economic law at the Universidad De Las Américas in Quito from 2012 to 2017. A knowledgeable practitioner, Roque has been contributing to industry publications for many years, particularly on the subject of natural resources and environmental topics.

Claudia Bustamante is an associate lawyer at Flor Bustamante Pizarro & Hurtado who has focused her practice on non-renewable natural resources, especially in providing legal services to multinational mining companies.

Flor Bustamante Pizarro & Hurtado

Office 803
Torre 6 Building
Av. 6 de Diciembre y Juan Boussingault
Quito
Ecuador

Tel: +59 399 946 3866
Email: roque.bustamante@fbphlaw.com
Web: www.fbphlaw.com

Large-Scale Mining Exploitation Contracts in Ecuador

General considerations of Ecuador's legal framework for mining

Article 1 of the Ecuadorian Constitution provides that all non-renewable natural resources within Ecuador's territory belongs to the State's patrimony. Given the economic, social, political and environmental significance of non-renewable natural resources, this sector is considered one of the country's strategic sectors, falling under the exclusive decision-making power and control of the State.

The Constitution mandates that the State will establish state-owned companies to manage strategic sectors; however, exceptionally, the State may delegate participation in the strategic sector to the private sector if it lacks the necessary economic or technical capacity to carry out exploration or exploitation activities directly. In the mining sector, this delegation is carried out through the granting of mining concessions.

A mining concession is an administrative act that grants a mining title, providing the holder with the exclusive right to prospect, explore, exploit, process, smelt, refine and sell all mineral substances that may exist and be extracted within the area of the concession, allowing them to benefit from the economic returns generated by these activities.

However, since non-renewable natural resources are part of the State's patrimony, the Constitution provides that the State must share in the profits generated from the exploitation of these resources, ensuring that its share is no less than that of the company carrying out the exploitation.

Mining titles have a duration of 25 years, which may be renewed for additional 25 years. These 25 years are divided into distinct phases and periods, as follows:

- Exploration phase:
  (a) initial exploration period: four years;
  (b) advanced exploration period: four years; and
  (c) economic evaluation of the deposit: two years, renewable for an additional two years.

- Exploitation phase: this covers the remaining years of the 25-year term.

Additionally, in Ecuador, mining activities are classified into different regimes based on production volume: artisanal mining, small-scale mining, medium-scale mining, and large-scale mining. Large-scale metallic mining is defined by the following production thresholds:

- over 1,000 tons per day for underground mining;
- over 2,000 tons per day for open-pit mining; and
- over 3,000 cubic meters per day for alluvial mining.

The exploitation contract as a requirement for large-scale mining projects

Although, as mentioned above, the mining title grants to the title holder the exclusive right to carry out mining activities including exploitation activities, the mining title alone is not sufficient to carry out exploitation activities in large-scale mining projects. Concessionaires in large-scale mining regimes are also required to secure an exploitation contract, signed with the Ministry of Energy and Mines (MEM) before entering production.

Pre-contractual negotiation process for mining exploitation contracts

The pre-contractual negotiation process for mining exploitation agreements in Ecuador allows concessionaires to begin negotiations with the State, through the MEM, during the exploration phase.

To initiate the process, the concessionaire must submit a formal application to the MEM, accompanied by a technical report detailing mineral resources and reserves. The MEM must review the documentation within 30 days to determine its admissibility. If the data confirms that the concessionaire's resources and reserves meet the thresholds for large-scale mining, the process moves forward, and the MEM grants authorisation to begin formal negotiations. If the documentation does not meet the criteria, the application will be rejected.

The negotiation process involves the creation of specialised teams by both parties, comprising experts in mining, legal, technical, environmental and financial matters. The MEM's team is led by the Vice Minister of Mining and the general legal co-ordinator, with the support of other officials or external advisors as required. A designated secretary oversees the documentation of all negotiation sessions. During these sessions, the parties define critical terms of the exploitation agreement, including work plans, investment schedules, royalty payments, and the rights and obligations of each party. The negotiation process is guided by a model exploitation contract issued by the MEM to ensure compliance with Ecuadorian law and other applicable regulations.

Once an agreement is reached, the MEM's negotiation team submits a final report and the signed minutes of the sessions (the "Final Negotiation Minutes") to the Vice minister of Mining for review and approval. If additional clarification is required, the negotiation teams may reconvene to address outstanding issues. Once approved, the process proceeds to the next stages.

Request to pass to exploitation phase

Once the Vice Minister of Mines approves and signs the Final Negotiation Minutes, the mining concessionaire is authorised to request transition to the exploitation phase. To proceed, the concessionaire must submit a formal request, accompanied by the following documents:

- the Final Negotiation Minutes;
- an audited technical report of mineral resources and reserves; and
- if the area to be exploited exceeds 5,000 hectares, a waiver of the right to exploit the additional hectares, which will be processed separately.

These documents ensure that the concessionaire has met all legal and regulatory requirements before transitioning to the exploitation phase.

Upon receiving the request, the MEM, within 60 days from the submission date or from the completion of all required documents by the mining concessionaire, will issue an administrative resolution declaring the start of the exploitation phase. This resolution will establish the beginning of a six-month period during which the mining concessionaire must sign the corresponding exploitation contract and register the executed exploitation contract in the Mining Registry within 30 days of execution.

Content of the exploitation contract

The exploitation contract, together with the mining title, will govern and outline the terms, conditions, and timelines for the construction, production, transportation, and commercialisation of minerals obtained within the boundaries of the mining concession.

The exploitation contract addresses several essential matters as set out below.

Duration of the exploitation contract

The Mining Law does not establish a specific duration for the exploitation contract, allowing the parties the flexibility to negotiate its duration. However, to address this issue objectively, the contract duration should be based on technical criteria, considering the time required for construction and the mine's operational lifespan.

In our opinion, this aspect should align with the duration of the mining title. As previously mentioned, the concession is granted for 25 years, and by the time the exploitation phase begins – after constructing the mine and obtaining all necessary environmental permits – approximately ten years remain for production activities. Based on the experience of most projects, this timeframe is often insufficient. While the Mining Law states that the State can extend the concession, in practice, the renewal process has proven to be challenging and on occasion, the State has requested (in our opinion) further requisites for the renewal than those provided in the Law and regulations, such as the discovery of new reserves.

It is therefore advisable to secure and renew the duration of the mining title before signing the exploitation contract. Once in the exploitation phase, renewing the concession can become more complex, and the State may seek to renegotiate the terms. It is crucial to establish a clear contract duration that reflects the realities of the project's life.

Additionally, the exploitation contract should be considered accessory to the mining title. This means that the concession's duration should take precedence, as there have been cases where the concession and contract durations do not align, causing potential operational and legal complications. Therefore, if the mining title is renewed, the contract should also be extended accordingly and have the same duration as the mining title.

Royalties paid to the State

The State, as the owner of non-renewable natural resources, has the right to receive royalty payments from mining concessionaires engaged in exploitation activities, and failure to pay royalties will result in the early termination of the concession.

In this regard, the mining concessionaire must pay royalties equivalent to a percentage of the sales of the primary and secondary minerals, ranging from 3% to 8%. The royalty rate will be determined using criteria such as the concessionaire's production volume, the type and price of the minerals, and progressivity principles. In existing exploitation contracts, some agreements have established fixed royalties, while others have set variable royalties, depending on the value of the mineral.

The law establishes that mining concessionaires are required to pay a 2% royalty on the total value of each transaction involving the commercialisation of metallic minerals extracted from their concessions. The 2% payment is considered a prepayment for royalties and will be credited against the concessionaire's semi-annual royalty declaration.

However, an exception to this rule applies to concessions where exploitation contracts include an agreement to pay advance royalties. In such cases, the concessionaire is exempt from the 2% transaction-based payment, as the advance royalties are already covered by the terms of the exploitation contract.

Sovereign adjustment

The concept of "Sovereign Adjustment" refers to the mechanism through which the State ensures that it receives a greater share of the benefits derived from the exploitation of non-renewable natural resources, as stipulated in Article 408 of the Ecuadorian Constitution. According to this provision, the State is entitled to receive a larger portion of the profits compared to the company conducting the exploitation.

The benefits that the State receives include various forms of taxation and economic returns. The benefits of the Ecuadorian State to be considered are the following:

- Value added tax (VAT) – the State collects VAT on the sale and commercialisation of minerals, generating revenue from the activities of mining companies (15%).
- Income tax – mining companies are subject to income tax on their earnings, contributing to state revenues (25%).
- Labour profit sharing – a total of 15%, where 12% shall be paid to the State and 3% to the workers.
- Royalties – the State imposes royalties on the extraction of minerals (from 3% to 8%).

The sovereign adjustment is calculated using a specific formula designed to determine whether the State is entitled to additional payments from the mining concessionaire based on the benefits derived from the exploitation of a mining concession. The formula ensures that the State receives a greater share of the profits than the mining concessionaire, as required by the Ecuadorian Constitution.

If the State's benefits from the concession are lower than the mining concessionaire's benefits, the sovereign adjustment is triggered. In this case, the adjustment is calculated and must be paid by March 31st of each fiscal year.

International arbitration

The Mining Law allows the parties to agree on international arbitration in Latin America as a mechanism for resolving disputes arising from the mining exploitation contract. The option of international arbitration in Latin America is a favourable and practical choice, offering advantages such as familiarity with the legal environment, cost savings and specialised expertise. Additionally, Latin America is home to several internationally recognised arbitration institutions, such as the International Chamber of Commerce (ICC).

Correction factors

The correction factor is a contractual mechanism that aims to restore the financial balance of a mining exploitation contract whenever specific unforeseen events disrupt the contract's economic equilibrium for the mining concessionaire. Its primary purpose is to compensate for these imbalances and ensure the concessionaire's financial sustainability under the contract while respecting the State's share of benefits.

The correction factor is triggered when defined events, create a financial burden for the concessionaire. These events generally include changes in tax rates, formulas, or the creation of new taxes. Such changes can impose unanticipated costs on the concessionaire, requiring a recalibration to preserve the contract's original economic terms.

The measures to correct the economic imbalance can take various forms, including amending the contract, revising or repealing specific regulations, or providing direct economic compensation. Regardless of the chosen method, any correction must ensure that the State's minimum share of 50% of the sovereign adjustment remains intact, protecting its benefits from the exploitation of mineral resources.

Conclusions

The exploitation contract is a key legal instrument governing the activities of large-scale mining concessionaires during the exploitation phase. This agreement sets the terms, conditions, and timelines for various activities, including construction, assembly, mineral extraction, transportation and commercialisation.

The process to execute this exploitation contract begins with the mining concessionaire submitting a formal request to negotiate the terms of the exploitation contract and a request to transition to the exploitation phase. Upon approval by the relevant authority to pass to the exploitation phase, a six-month period is granted for the parties to sign the exploitation contract.

The exploitation contract includes provisions that regulate the concessionaire's and the State's rights, benefits and obligations. The exploitation contract is designed to ensure clarity, predictability and a balance between the interests of the State and those of the mining concessionaire, while also adapting to potential economic or regulatory changes during the life of the project.

FINLAND

Law and Practice

Contributed by:
Tarja Pirinen, Fiiu Linninen, Teija Lius and Marko Koski
HPP Attorneys Ltd

Contents

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.

Authors

Tarja Pirinen is a partner at HPP Attorneys Ltd, with over 20 years' experience of mining law and the wide range of other legal issues relating to mineral exploration, project development and mining operations. She has assisted several mining companies in their operations in Finland in all phases of the life cycle of a mining project, from exploration to closure of mine, and has also advised in numerous M&A and finance transactions in the mining sector. Her areas of expertise include mining and environmental permit procedures, administrative court procedures, and tenement-related matters, as well as matters pertaining to environmental liabilities.

Fiiu Linninen is an associate in the environmental law team at HPP Attorneys Ltd. She advises clients on legal questions related to permitting, land use planning, environmental liabilities and nature conservation. In addition, her areas of expertise include mining law and other legal issues relating to mineral exploration and mining operations.

Teija Lius is a partner at HPP Attorneys Ltd, specialising in banking and finance. She advises clients on various financing transactions and arrangements, with particular emphasis on renewable energy and project finance and, in recent years, on the mining sector. Teija has been involved in numerous financing transactions on the borrower, lender and investor sides. She has approximately 17 years of experience in domestic and cross-border transactions at leading Finnish law firms and international financiers. Prior to joining HPP, Teija worked as an in-house lawyer at the European Investment Bank in Luxembourg and in a Finnish development fund in Helsinki.

Marko Koski is a senior adviser at HPP Attorneys Ltd and specialises in taxation law in the areas of indirect and direct taxation. Marko provides guidance on taxation questions related to M&A and structuring, as well as questions related to excise, such as mining mineral taxation and customs legislation. In addition, Marko is experienced in assessing the tax risks in underwriting tax-specific policies and general W&I insurance policies for international insurers in relation to Finnish transactions and business operations.

HPP Attorneys Ltd

Bulevardi 1 A
FI-00100
Helsinki
Finland

Tel: +358 403 507 797
Email: tarja.pirinen@hpp.fi
Web: www.hpp.fi

HPP ATTORNEYS

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 a 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 in respect of 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 are 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 *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 regulations 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 are 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 (as of 1 January 2025, the Act will be divided into the Land Use Planning Act (No 132/1999, *alueidenkäyttölaki*), governing the planning, construction and use of land, and the Building Act (751/2023, *rakentamislaki*), governing the planning, construction and use of buildings); 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 ura-

nium 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 auxiliary 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 the 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-opera-

tives 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

Certain voluntary mining-related CSR tools have been developed in Finland, being a system of annual CSR reporting for companies operating in Finland in the field of mining and ore exploration and a sustainability standard for mining based on the Canadian initiative Towards Sustainable Mining (TSM). The Finnish TSM includes ten tools for evaluating corporate responsibility and includes annual reporting and triennial reporting assurance. The CSR tools cover the entire lifecycle of mining operations. The tools were developed by the Finnish Network for Sustainable Mining, the operations of which ceased in 2023. The Finnish Mining Association is continuing the development and implementation of the corporate responsibility work.

2.8 Illegal Mining

Illegal mining is not considered an issue in Finland. The operators comply well with permitting requirements and granted permits. *Tukes* as the mining authority and the local ELY Centres as environmental supervising authorities intervene effectively in unauthorised activities. There is also a number of quite active NGOs that provide information and make initiatives to the supervising authorities.

2.9 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

The National Mineral Strategy of Finland was published in December 2024. The objective of the strategy is to promote the growth of the Finnish mineral cluster in order to strengthen the clean transition and strategic autonomy of Europe and to increase the value add of mining raw materials. It defines six main targets which include – eg, efficient implementation of the Critical Raw Materials Act and responsibility in all areas of sustainability. To meet the identified objectives, the strategy proposes measures such as promoting streamlining of permit procedures, ensuring adequate mapping of the mineral potential of bedrock and planning incentives for the introduction of the best technologies and circular economy solutions.

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. 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 to 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).

Tax incentives for energy-intensive industry, such as mining and enrichment, 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 25,5% 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 it 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.

Ongoing Legislative Projects

National preparatory legislative work to implement the EU's Critical Raw Minerals Act (2024/1252/EU) is currently ongoing. The aim is to set measures to streamline the permitting procedures of strategic raw material projects (including mining projects) by giving such projects certain priorities – eg, by setting binding timelines for the permitting.

In addition, there is currently a "single-window approach" legislative project in progress aiming to ensure that in future a single environmen-

tal authority with national competence will be responsible for co-ordinating the permitting process. The intention is to enable different stages of the permitting procedure to be co-ordinated in terms of time, and to the extent possible, handled at the same time allowing applicants to submit and process several permits simultaneously resulting in a single decision and single appeal possibility. The aim is for the one-stop service to enter into force on 1 January 2026.

There are also legislative proposals regarding the EIA procedure, environmental permit revision procedure as well as the environmental objectives for water management and related deviations.

According to the Finnish government programme, the government is planning to revise mining mineral tax as of the mid-term policy review session in spring 2025 and introduce another tax category. The revision is planned to increase the tax revenue by EUR15 million annually.

Trends and Developments

Contributed by:
Tarja Pirinen, Fiiu Linninen, Malin Holm and Jaakko Klemettilä
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.

Authors

Tarja Pirinen is a partner at HPP Attorneys Ltd, with over 20 years' experience of mining law and the wide range of other legal issues relating to mineral exploration, project development and mining operations. She has assisted several mining companies in their operations in Finland in all phases of the life cycle of a mining project, from exploration to closure of mine, and has also advised in numerous M&A and finance transactions in the mining sector. Her areas of expertise include mining and environmental permit procedures, administrative court procedures, and tenement-related matters, as well as matters pertaining to environmental liabilities.

Fiiu Linninen is an associate in the environmental law team at HPP Attorneys Ltd. She advises clients on legal questions related to permitting, land use planning, environmental liabilities and nature conservation. In addition, her areas of expertise include mining law and other legal issues relating to mineral exploration and mining operations.

Malin Holm is a senior counsel at HPP Attorneys Ltd, specialising in ESG as well as in banking and finance. She advises clients on different regulatory and other corporate sustainability and ESG matters. Furthermore, she has extensive experience in different financing arrangements and advises lenders, investors and borrowers in various domestic and cross-border financing transactions. In addition to experience from leading law firms, Malin has experience in impact financing. She has worked at the Finnish export credit agency Finnvera and acted as the leading legal counsel of the state-owned impact investor the Finnish Climate Fund (Ilmastorahasto).

Jaakko Klemettilä has over 20 years of experience in tax matters as an attorney, tax consultant, in-house tax counsel and with the Finnish tax authorities. Jaakko is the head of tax practice at HPP Attorneys. He holds Master of Laws degree (University of Helsinki). Jaakko's expertise covers wide range of tax matters including domestic and international tax issues, income taxation, value added taxation and transfer tax issues. Jaakko's main specialisation is transactional tax for foreign clients targeting investments into Finland in the form of M&A or direct investments. These services include tax due diligence, tax structuring, W&I tax issues and tax insurance.

HPP Attorneys Ltd

Bulevardi 1 A
FI-00100
Helsinki
Finland

Tel: +358 403 507 797
Email: tarja.pirinen@hpp.fi
Web: www.hpp.fi

HPP ATTORNEYS

Contributed by: Tarja Pirinen, Fiiu Linninen, Malin Holm and Jaakko Klemettilä, **HPP Attorneys Ltd**

Sustainability and Circular Economy as Drivers for the Mining Industry

The green transition has become a central theme in Finland's legislative and political landscape, reflecting broader European and global trends towards sustainability and climate neutrality. The current Finnish government's legislative programme outlines a comprehensive plan to transform the Finnish economy into a sustainable, circular and low-carbon model. The outlined legislative initiatives include streamlining and facilitating of permitting processes and increased financial support for projects advancing the green transition, such as direct state aid and tax credits – all aimed at accelerating the shift towards a more sustainable economy and meeting both national and international environmental targets. This development also impacts the mining industry.

The green transition such as in electric transport, the use of renewable energy and the storage of electrical energy results in an increased need for minerals required for the relevant implementing technology, such as battery minerals. Finland has good potential for battery minerals such as cobalt, nickel, lithium and graphite as well as for rear earth metals, which appears as interest in and as activity in exploration for such minerals. Finland is also the only producer of cobalt in the EU and is also a major producer of copper, which is essential in the energy transition.

Finland has expertise in the whole production chain of battery minerals, from the mining industry to the further processing of battery raw materials and production of battery chemicals as well as the technology related to manufacture, use and charging of batteries, and recycling.

EU Critical Raw Materials Act to Implement Priority and Binding Timelines for Permitting of Strategic Projects

The EU Critical Raw Materials Act (2024/1252/EU, the CRMA) is intended to support sustainable sourcing of raw materials aiming 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 also to promote the recycling of raw materials, for example by encouraging the recovery of critical raw materials from waste sites in the extractive industries.

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 materials, it is difficult to grow their production 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. 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 phos-

phorus. In addition, many other mineral deposits containing critical raw materials have been identified in Finland.

The CRMA regulates the establishment of a point of single contact authority for the permitting of critical raw material projects which is responsible for facilitating and co-ordinating the permitting process for projects involving critical raw materials and for providing information, including the acknowledgement that an environmental permit application is complete. Further, the CRMA regulates the priority status of the so-called Strategic Projects. Strategic Projects under the CRMA are initiatives that are crucial for reducing dependence on imports and securing the EU's supply of critical raw materials. These raw materials are vital for key sectors, such as renewable energy and digital technologies. The status of a strategic project can be obtained, for example, by a mining project or a circular economy project. Projects with the status of Strategic Project must be given the highest possible national status and be treated accordingly in the permitting procedures. The co-ordination of permit processes and communications between the operator and authorities is to be conducted by one national authority (the single point contact) to simplify the process. Further, the CRMA sets binding timelines for the permitting of Strategic Projects.

The national implementation of the CRMA regulations streamlining permitting procedures and timelines for Strategic Projects under the CRMA is currently ongoing in Finland. Provisions of the CRMA will be specified in a new draft legislative proposal on national implementation of the CRMA, whereby Finland will take advantage of the possibility offered by the CRMA to extend the permitting timelines for strategic projects if the requirements for the extension governed by the CRMA are met. The proposed changes require new provisions to be added to the existing national legislation and are expected to enter into force in Finland during 2025. Efficient implementation of the CRMA is also defined as one of the six main objectives in the National Mineral Strategy of Finland which was published in December 2024.

It should be noted that the proposed legislation and the facilitation measures it provides for the Strategic Projects will, however, not amend any permit requirements, which would continue to be stipulated by the Mining Act, Environmental Protection Act, and the Water Act, for example. In addition, the objectives for water management (the aim of good status of bodies of surface water and groundwater and the prohibition to cause deterioration thereof) will apply in permitting of Strategic Projects.

In addition to facilitating permitting, the CRMA 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. This will result – eg, in obligations on the members states to record the decommissioned extractive waste areas in a public database and to consider the economic recoverability thereof through various means.

The operators who are obliged to prepare an extractive waste management plan must also submit to the authorities a preliminary economic evaluation study of the potential for extractive waste recovery

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Introduction of New Permitting Authority and Single-Window Approach to Speed Up and Streamline Permit Processes

The Finnish government has acknowledged that smooth permit procedures are a prerequisite for attracting investments and especially for transitioning into a clean economy. Projects with environmental impacts may require many separate permits or approvals, which are currently applied for and granted by different authorities as governed by different environmental laws. Subsequently, the Finnish government proposes several measures to tackle the current problem of prolonged and expanding permitting processes.

One of these planned solutions is the establishment of a new national permit and supervisory authority. In the new draft legislative proposal, it is proposed that the new authority would replace the current permitting authorities and supervisory authorities with a single national permitting and supervision authority.

A legislative proposal to integrate various permit application processes is also being prepared, with the aim of making the permitting process faster and more efficient. This includes introducing a "single-window approach" (*yhden luukun periaate*), allowing multiple permit applications for the same project to be processed in one combined process. The intention is that this streamlined approach will enforce joint hearings for different permits and result in a single permit decision and appeal process, instead of separate ones for each permit.

The draft legislative proposal also highlights the existing challenges related to the ever-expanding scope of the environmental impact assessment (EIA) procedures and the excessive level of detail required in documents related thereto. The draft proposal calls for significant development in practices, which could be implemented as a part of the single-window approach project.

The aim is to ensure that the EIA procedure focuses only on the significant environmental impacts of projects, thereby speeding up the procedure and reducing the administrative burden placed both on the operators and relevant environmental authorities. Further, co-ordination of the permit procedure and the EIA procedure is promoted by expanding the scope of the joint hearing of the EIA report and the permit application.

The current estimation is that the new national environmental authority will be established on 1 January 2026, in conjunction with the enforcement of the single-window approach legislation.

Binding Environmental Objectives for Water Management and Process for Deviating Therefrom

The legislative change regarding environmental objectives for water management and related deviations was entered into force on 1 January 2025. The binding nature of the environmental objectives for water management as set out in the EU's Water Framework Directive (2000/60/EC) was recorded in law as outlined in the court practice of the Court of Justice of the European Union. The objective is to achieve good groundwater status and good ecological status or, where relevant, good ecological potential of a body of surface water and to prevent deterioration of the status of a body of surface water or groundwater. This is also expressly regulated as a condition for granting of an environmental or water permit which cannot be granted for a project that endangers the achieving of these objectives.

The legislative change also sets out the process for deviating from the environmental objectives in connection with environmental and water permits. The scope of application of the deviations is likely to remain fairly limited also in continuance, since the requirements for granting a deviation would be not changed. Accordingly – eg, deviation due to discharge of wastewater is only possible if a body of surface water would deteriorate from high status to good status as a result of new sustainable human development activities. The deviation is more likely to be applied in the case of new modifications to the physical characteristics of a surface water body.

The time set for achieving the good status of groundwater and good ecological status of bodies of surface waters cannot be postponed after 2027. The possible impact of this on the classification of bodies of surface waters and the permitting of projects that discharge waste waters to bodies of surface water not in good status is to be seen.

Proposal to Restore the Procedure for the Revision of Environmental Permit Regulations

One legislative change that is being prepared and may in the future impact permitting of mining projects is the proposal to restore the procedure for the revision of permit regulations under the Environmental Protection Act.

The revision would be intended to focus only on the necessary permit provisions for emissions from operations and monitoring of operations and their impacts, such as emission limit values. In view of the uncertainty of the impacts, in particular permit regulations for discharges into water could be subject to revision. The proposed procedure would involve a more extensive revision of the permit than allowed under the current Act, based, among other things, on the novelty of the technology to be introduced in the operation.

The revision, as proposed, could only be applied once after the commencement of a new activity. However, an order for revision regarding the same activity could be reissued if, as a result of a substantial change in the activity, the relevant permit had to be amended. The amendment is planned to enter into force on 1 January 2026.

This change could impact environmental permitting of mines since long-term modelling of – eg, impacts of emissions from mines to bodies of surface waters or groundwater is challenging and, despite careful modelling and expert estimations, there may remain uncertainties in relation thereto in the permitting phase. With the revision of the environmental permit regulations, one could avoid the granting of the permit only for a fixed term or, in the worst case, rejection of the permit application due to such uncertainties based on the precautionary principle.

Advancing the Circular Economy

Traditionally, Finland is known as a pioneer of the circular economy, given that it drafted the world's first national roadmap to a circular economy in 2016. More recently, Finland promotes the circular economy through legislation and aims to increase Finland's material efficiency and carbon-neutrality.

This mindset is further reflected in the Ministry of the Environment's initiative to replace the existing Waste Act with a new Circular Economy Act – the main purpose of which is to clarify legislation in the waste sector and strengthen the life cycle perspective of the regulation. The aim is to reduce the regulatory burden, clarify the relationship between waste regulation and product and chemical regulation, and to develop the

operating and investment environment for circular economy operators. At the same time, it will be assessed whether some parts of the current Waste Act should be divided into separate Acts. The working group responsible for outlining the reform was established in the summer of 2024 and will operate until the end of 2025. Planning of incentives for the introduction of the best technologies and circular economy solutions is also defined as one of the six main objectives in the National Mineral Strategy of Finland which was published in December 2024.

The circular economy is a particularly good opportunity for the mining industry because it generates various side streams. According to Statistics Finland, in 2022 mining and quarrying produced circa 76% of Finland's total waste load measured in tonnes.

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.

In a study commissioned by the Ministry of Economic Affairs and Employment, mining mineral tax has been considered as one feasible way to influence exploitation of waste rock. The mining mineral tax took effect in Finland on 1 January 2024. The revenue collected from the mining mineral tax was estimated to be around EUR25 million annually, but the view of the mining sector appears to be that the estimated revenue was already exceeded in 2024. In the study the mining mineral tax was considered to affect the equation of how rich/poor ore is still worth exploiting as one of the cost factors. It was considered that by keeping the mining mineral tax at a competitive level, it would be 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 the formation and amount of waste rock. Increasing costs is not likely to increase the exploitation 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 as of the 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 the coming years.

Impact of the Increased Corporate Sustainability Regulation

The increase of corporate sustainability regulation in the EU also affects the mining industry. The Corporate Sustainability Reporting Directive (2022/2464/EU) entered into force in 2023, and the first in-scope companies will report regarding the financial year 2024 in 2025 according to the implementing national legislation. The reporting is made in accordance with the European Sustainability Reporting Standards (ESRS), which require detailed information on environmental, social, and governance aspects. The ESRS introduces a double materiality concept that

serves as a basis for sustainability disclosures. In addition to the traditional financial materiality concept, an issue may also be material and should therefore be included in the reporting based on materiality of impacts, thereby requiring in-scope companies to assess the impacts caused by their operations.

Furthermore, EU regulations will introduce corporate due diligence obligations that will also reflect on the mining sector. The Corporate Sustainability Due Diligence Directive (2024/1760/EU) has entered into force and is now being implemented into national legislation. The obligations will be applied to the first in-scope companies in 2026. The directive establishes a corporate due diligence duty on large companies and thereby requires them to identify and address potential and actual adverse human rights and environmental impacts not only in the company's own operations, but also in its business partners' operations in its chain of activities. As companies in the mining sector, if not in scope themselves, may be relevant upstream business partners, the due diligence duty may – eg, increase the need for information on impacts of their operations.

The new Batteries Regulation (2023/1542/EU), which entered into force in 2023 and started to apply in part in 2024, includes obligations as regards battery due diligence policies and risk management that will apply from 18 August 2025 to economic operators that place batteries on the market or put them into service. Such obligations specifically include information on upstream actors in the supply chain and raw materials. The Batteries Regulation also includes obligations regarding – eg, battery carbon footprint declarations, battery performance, durability and labelling, battery removability and replaceability, substance restrictions, recycled content requirements, and extended producer responsibility.

State Aid Schemes for Large Investments in Clean Transition

To improve Finland's competitiveness and attract green investments, the Finnish government is planning to introduce financial measures to support clean transition projects and investments. Preparatory legislative work is currently going on for the purpose of introducing two parallel state aid schemes for significant investments in the clean transition which are both based on the European Commission Temporary Crisis and Transition Framework for State Aid (2023/C 101/03) Crisis and Transition Framework. Both the Direct Aid and the Tax Credit can be obtained for investments in strategic sectors for the transition to a climate-neutral economy. Such investments are considered to include the production of equipment and components essential for the transition to a climate-neutral economy, as well as the production or recovery of related critical raw materials necessary for the production of the equipment and components. Critical raw materials refer to the raw materials listed in Annex 4 of Commission Regulation (EU) 2014/651 declaring certain categories of aid compatible with the internal market, such as lithium, cobalt and nickel.

According to the draft decree, Direct Aid could be awarded if the eligible costs of the investment project in Finland are at least EUR30 million. The Tax Credit would be granted only for new projects and the minimum size of an eligible investment would be EUR50 million (each investment considered individually). The application of both state aids must be submitted no later than 31 December 2025, and prior to commencement of works on the investment project. The purchase of land and preparatory works, such as obtaining

permits and conducting preliminary feasibility studies, are not considered as the commencement of works.

The amount of Tax Credit is 20% of the costs approved as the basis for the credit, but no more than EUR150 million per company or group of companies. The full amount of the Tax Credit is therefore obtained with investment costs of EUR750 million. The amount of Direct Aid may not exceed 15% of the eligible costs and may not exceed EUR150 million per company. The Direct Aid and the Tax Credit can be used only within the framework of the EU state aid regulation's so-called cumulation rules.

The Direct Aid would be granted by the end of the year 2025. Tax Credit can be deducted from the company's income tax as of tax year 2028 and the following 19 tax years. However, the Tax Credit can be deducted in the tax year in which the investment is completed, at the earliest. For each tax year, the Tax Credit can be deducted by up to 10% of the total Tax Credit granted to the company. Because the Tax Credit is deducted from the company's income tax, the use of the Tax Credit requires that the company makes a taxable profit.

It is possible that some changes may still be made to both state aids during the legislative process. Furthermore, the European Commission must find both state aids compatible with the single market before they can enter into force.

GUINEA

Law and Practice

Contributed by:
Kanto Andrianjakamanantsoa and Tiavina Rakotonaivo
John W Ffooks & Co

Contents

John W Ffooks & Co is a leading corporate and commercial law firm providing local counsel advice across French-speaking Africa. The firm's bilingual team of 11 partners and 40 lawyers uniquely combines Napoleonic legal expertise with a common law approach, making it the preferred choice for international transactions in the region. John W Ffooks & Co specialises in supporting inward investors, bridging the gap between Anglo-Saxon business practices and local legal systems derived from the Napoleonic Code. Trusted by global corporations, financial institutions, private equity firms, and government bodies, the firm offers tailored legal solutions, advising on a wide range of commercial legal issues in countries including Benin, Burkina Faso, Cameroon, Chad, Ivory Coast, Mali, Niger, Senegal and Togo. With senior colleagues in every jurisdiction, the firm's partner-led services ensure high-quality advice across all sectors. Leveraging firm-wide expertise, John W Ffooks & Co manages complex transactions efficiently, saving clients time and costs while delivering exceptional legal solutions tailored to their needs.

Authors

Kanto Andrianjakamanantsoa focuses on mining and natural resources, advising clients on regulatory and transactional matters across OHADA member states and Francophone Africa. Her expertise includes corporate and commercial transactions, particularly acquisitions and joint ventures in the mining sector. She plays a key role in assisting partners with complex cases, managing both domestic and cross-border matters within the OHADA legal framework. Fluent in French and English, Kanto offers strategic guidance to clients navigating mining operations and regulatory landscapes. Her deep understanding of the industry and local regulations ensures tailored solutions, fostering compliance and successful ventures in Guinea and beyond.

Tiavina Rakotonaivo specialises in mining and natural resource law, with a focus on Guinea and OHADA member countries in Francophone Africa. Her expertise in local regulations and corporate law enables her to guide clients through the complexities of mining operations and resource management. Tiavina provides strategic advice on corporate matters, cross-border transactions and regulatory compliance, catering to both local enterprises and multinational corporations. Fluent in French and English, she bridges linguistic and legal gaps, delivering tailored solutions for mining and resource ventures. Her knowledge ensures clients achieve their strategic objectives in Madagascar and the broader OHADA region.

John W Ffooks & Co

Immeuble Fellah
4ème Étage
Kipé-Centre Emetteur
En Face du Collège Kipé,
Commune de Ratoma
Guinea

Tel: +22 133 825 8482
Email: Guinea@JWFLegal.com
Web: www.jwflegal.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The Guinean mining sector is based on a concentration of mineral resources recognised as one of the largest in the world, including bauxite, iron ore, gold and diamonds, as well as significant uranium, graphite, copper and petroleum deposits. The mining industry contributes between 12% and 15% of Guinea's gross domestic product (GDP) through a range of operations.

The Republic of Guinea has significant mining potential, which is considered to be one of the levers of the national economy. As such, the mining sector has been placed at the centre of a vast and far-reaching reform process aimed at strengthening its impact on the national economy. To this end, since 2011, the government of the Republic of Guinea has undertaken a series of reforms in the mining sector to ensure that the country's natural mining resources contribute sustainably and effectively to the country's economic and social growth. Among the main reforms undertaken in this area is the reform of the legal, administrative and institutional framework.

1.2 Legal System and Sources of Mining Law

As a former French colony, the Republic of Guinea's legal system largely derives from civil law.

The following laws and regulations are the main sources of mining legislation in the Republic of Guinea:

- Law No L/2011/006/CNT, dated 9 September 2011, enacting the Mining Code of the Republic of Guinea (the "Mining Code");
- Law L/2013/No 053/CNT, dated 8 April 2013, amending the Mining Code;
- Decree No D/2011/112/PRG/SGG, dated 11 April 2011, allocating and organising the Ministry of Mines and Geology;
- Decree No D/2012/041/PRG/SGG, dated 26 March 2012, on the creation, attribution and functioning of the National Mining Commission;
- Decree No D/2014/013/PRG/SGG on the application of the financial provisions of the Mining Code;
- Decree No D/2014/012/PRG/SGG on the management of mining permits and licences;
- Decree No D/2015/007/PRG/SGG, dated 14 January 2015, establishing a system for the

accelerated processing and monitoring of integrated mining project files;
- Order No A/2016/5002/MMG/SGG, introducing a new cadastral procedure; and
- Joint Order No A/2018/5212/MEF/MMG/MB/MATD/SGG, dated 13 July 2018, implementing Article 165 of the Mining Code.

1.3 Ownership of Mineral Resources

In the Republic of Guinea, mineral resources are the property of the state. Indeed, the Mining Code provides that mineral or fossil substances contained in the subsoil or existing on the surface are, within the territory of the Republic of Guinea, the property of the state and may not be subject to any form of private appropriation, except as provided otherwise in the Mining Code and in the Code on Private and State-Owned Land (*Code Foncier et Domanial*).

1.4 Role of the State in Mining Law and Regulations

The Guinean state has the role of an owner-operator. In this regard, the state may engage in any mining activity on its own behalf, either directly or through a public limited company responsible for the management of a mining patrimony.

Since the enactment of the Mining Code, the grant of a mining exploitation title immediately gives the state an ownership interest, at no cost, of up to a maximum of 15% in the capital of the company holding the title.

1.5 Nature of Mineral Rights

While an exploration permit (*permis de recherche*) confers on its holder the exclusive right to prospect a type of mineral substance, an exploitation permit (*permis d'exploitation*) confers on its holder the exclusive right to explore, exploit and freely dispose the mineral substances for which it has been granted, within the limits of its perimeter and without limitation as to depth. This means that mineral rights typically derive from an exploitation permit that has been granted in accordance with the provisions of the Mining Code.

A mining concession can also be granted, conferring on its holder the exclusive right to carry out within its perimeter, and without any depth limitation, all mining operations on deposits (*gisements*) of the mineral substances for which the concession is granted. A mining concession is granted by way of decree to a Guinean company and to a holder of an exploration permit who has met its prescribed obligations under the Mining Code. The application for a mining concession must be made at least three months prior to the expiration of the validity period of the exploration permit under which the application is being made.

1.6 Granting of Mineral Rights

An exploration permit is granted by way of order of the Ministry of Mines and Geology, on the recommendation of the Mining Promotion and Development Centre and after receiving the approval of the Technical Committee of Titles.

As regards the exploitation permit, it is granted by way of decree issued during a Council of Ministers, on the recommendation of the Ministry of Mines and following approval by the National Mining Commission.

Mining concessions are granted by way of decree issued during a Council of Ministers, on the recommendation of the Ministry of Mines and following approval by the National Mining Commission.

1.7 Mining: Security of Tenure

With respect to exploration permits, an industrial exploration permit can only be granted for an initial period of three years, and a semi-industrial exploration permit can only be granted for an initial period of two years. The term of an industrial exploration permit may be renewed twice, for a maximum period of two years each time, while the term of a semi-industrial exploration permit may be renewed only once for a maximum period of one year. It is worth noting that an exploration permit confers on its holder a movable property right that is undivided, not assignable and may not be pledged or mortgaged.

As regards exploitation permits, an industrial exploitation permit is granted for a maximum period of 15 years, and a semi-industrial exploitation permit is granted for a maximum period of five years. The term of an industrial or semi-industrial exploitation permit is renewable several times, each time for a period lasting no more than five years. It is also worth noting that an exploitation permit creates a divisible and assignable movable right in favour of its holder. This right may be pledged in order to secure loans for operations.

In general, the granting of an industrial or semi-industrial exploitation permit will result in the cancellation of the exploration permit within the perimeter of the exploitation permit. However, exploration in relation to the mining operations may continue. Should a mineral substance other than the one for which the exploitation permit has been granted be discovered in the course of that exploration, the holder of the exploitation permit shall have a pre-emptive right in respect of the exploitation of such mineral substance. This right must be exercised within a maximum period of 18 months from the date of notification of the discovery to the state.

Mining concessions are granted for a maximum period of 25 years and may be renewed once or several times, each time for a maximum period of ten years. It is worth noting that a concession is a divisible property right that can be assigned and mortgaged to secure loans for operations.

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

2.1 Environmental Protection and Licensing of Mining Projects

Law No L/2019/0034/AN, enacting the Environmental Code as well as its implementing regulations, constitutes the legal framework governing the environment in the Republic of Guinea. The Guinean Environmental Code aims to establish the fundamental principles for promoting sustainable development, managing and protecting the environment and natural capital against all forms of degradation.

The Mining Code provides that any mining activity undertaken must comply with the legislation governing environmental protection. In particular, any application for an authorisation or a mining exploitation title must include an environmental and social impact study, in accordance with the Environmental Code and its implementing regulations. Requirements in this regard are modulated according to the scope of the work planned, ranging from a simple environmental impact notice for an exploration permit to a detailed environmental and social impact study for an exploitation permit or a mining concession.

The detailed environmental and social impact study must include the following elements:

- a description of the project (in this case, a mining project);
- an analysis of the initial state of the site and its environment;
- an assessment of the foreseeable consequences of implementing the mining project on the site, including for the natural and human environment;
- a statement and description of the measures planned to avoid, reduce if possible or compensate for the harmful consequences of the mining project on the environment, including the residual impacts;
- a presentation of possible alternative solutions; and
- an estimation of the corresponding costs.

The preparation of an environmental impact notice for an exploration permit is also subject to the requirements set out in the foregoing.

The environmental impact notice or the detailed environmental and social impact study is carried out at the national level, albeit in accordance with internationally accepted standards. Non-compliance with the environmental requirements set out in the Mining Code and the Environmental Code may lead the environmental authorities to impose administrative and/or criminal sanctions.

2.2 Impact of Environmentally Protected Areas on Mining

Under the Environmental Code, an environmentally protected area is a clearly defined geographical area that is recognised, dedicated and managed by any effective means, legal or otherwise, to ensure the long-term conservation of nature and ecosystem services as well as the associated cultural values.

The Mining Code also contains provisions relating to (i) closed zones and (ii) protected or prohibited zones.

For reasons of public order, the President of the Republic may classify certain zones as closed zones for a limited period and suspend the granting of an exploration permit, exploitation permit or mining concession for some or all mining substances. As regards protected and prohibited zones, it is provided that perimeters of any size may be established within which the exploration and exploitation of mining substances are subject to certain conditions or simply prohibited. Such restrictions may be implemented anywhere it is deemed necessary for the public interest and, in particular, for the purposes of protecting buildings and agglomerations, cultural or burial sites, waterholes, coastal areas, communication channels, works of art and works of public utility, without the holder having any claim whatsoever for compensation in this regard.

2.3 Impact of Community Relations on Mining Projects

Under the Mining Code, any holder of a mining exploitation permit must enter into a local development agreement (LDA) with the local community residing on or in the immediate vicinity of the mining title. The purpose of the LDA is to:

- create the conditions for efficient and transparent management of the local development contribution, which is paid by the holder of the mining exploitation permit; and
- strengthen the capacity of the local community to plan and implement the community development programme.

2.4 Prior and Informed Consultation on Mining Projects

Any opening or closure of exploration and/or exploitation of mines or quarries is subject to a prior declaration to the National Mining Authority. This declaration must be made at least one month before opening – and three months before closure of – the works. Any significant change in the method of operation, scope of the work or the work programme is also subject to a prior declaration at least one month in advance.

The holder of a mining exploitation title is also required to make all necessary efforts to proceed with the closure of its operations in a gradual and orderly manner, in order to prepare the local community for the cessation of its activities. The holder will notify the relevant administrations at least 12 months before the planned closure date and will prepare, six months before the closure date, a plan for the closure of its mining operations in collaboration with the territorial administration and the local community.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no protected communities, such as indigenous and traditional peoples, in the Republic of Guinea.

2.6 Community Development Agreement for Mining Projects

It is mandatory for a holder of mining exploitation title to enter into an LDA with the local community in the Republic of Guinea.

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

There are no specific ESG guidelines or regulations in place in the Republic of Guinea.

2.8 Illegal Mining

Illegal mining is an issue in the Republic of Guinea, especially when it comes to classic artisanal mining operations for gold extraction. The Mining Code provides that classic artisanal mining exploitations must be carried out using manual and traditional methods and processes. There are, however, those who practice mechanised artisanal mining exploitation, which is not in compliance with the provisions of the Mining Code. Encouraging this illegal form of gold extraction enriches individuals and lobbies to the detriment of the state. This practice also reduces the number of applications for semi-industrial mining permits, depriving the state of significant tax revenue and job creation opportunities.

Illegal mining is severely punished under the Mining Code. Anyone involved in illegal mining may be punished by imprisonment of two months to three years and/or the payment of fine of up to GNF15,000,000 (approximately USD1,742).

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

Some mining companies in the Republic of Guinea are committed to respecting local communities and ensuring a positive legacy for future generations. To achieve this objective, they are committed to:

- complying with all laws, regulations and permits;
- assessing the risks and potential impact of their activities on local communities, and defining the objectives and standards that form part of their management practices;
- respecting the dignity, culture, well-being and human rights of their employees, communities and others affected by their activities;

- pursuing dialogue with local communities to ensure good relations that benefit all parties involved;
- working with the local community and other stakeholders to achieve tangible improvements in the standard of living of the local community by supporting the education of children in local schools, promoting procurement from local suppliers and promoting economic alternatives that enable the development of the local economy; and
- improving the health and well-being of local people through education and health programmes aimed at reducing the impact of preventable diseases.

Despite the foregoing initiatives, however, conflicts between mining companies and local communities remain a major problem is some regions. In the Republic of Guinea, industrial exploitation often leads to open conflicts, negative effects (real or perceived) and frustrations within the population, which represent latent conflicts between mining companies and local communities. Cyanide pollution of watercourses, which are used to wash gold in industrial mining, is one concrete example that leads to conflict between communities and mining companies. This conflict has been mentioned several times by the local and prefectural authorities as one of the major conflicts affecting the locality of Lero and Siguirini in the Republic of Guinea.

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

3.1 Climate Change Effects

Despite the implementation of a National Climate Change Strategy (NCCS) in the Republic of Guinea, it must be said that it takes time for initiatives to deal with climate change to have a significant impact on the mining industry.

3.2 Climate Change Legislation and Proposals Related to Mining

There is not currently any climate legislation related to mining in the Republic of Guinea. Moreover, the authors are not aware of any potential climate change legislation that is being discussed in the country.

3.3 Sustainable Development Initiatives Related to Mining

The National Sustainable Development Strategy of the Republic of Guinea includes a commitment to reform the governance of the mining sector of the country. The governance of mining resources will be oriented more towards the interests of local communities, minimising the environmental impact of mining and improving transparency and accountability in order to contribute to real, sustainable and equitable economic growth. To achieve these objectives, the following initiatives have been contemplated:

- better integration of the mining sector with the other sectors necessary for sustainable development;
- promoting local processing of raw materials;
- improving the effectiveness of assessments of environmental impact on the environment;
- developing mechanisms to compensate for biodiversity losses; and
- ensuring strict compliance with environmental conformity and local content.

3.4 Energy-Transition Minerals

The authors are not aware of any government or legislative initiatives related to the increasing demand for energy-transition minerals in the Republic of Guinea.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

On the one hand, holders of exploration permits are entitled, throughout the period of exploration, to exemption from:

- value added tax (VAT) on imports of equipment, materials, machines and consumables before the beginning of the exploration phase;
- the annual minimum tax;
- the business licence fee;
- contributions to professional training;
- the single tax land; and
- the apprenticeship tax.

To benefit from the foregoing exemptions, a mining list must be filed before the start of the exploration phase, in accordance with the provisions of the Mining Code. The duration of these exemptions is limited to the duration of the exploration phase, and all other provisions of the General Tax Code in the Republic of Guinea apply with full effect. It also worth noting that holders of an exploration permit are subject to the statutory reporting obligations set out in the General Tax Code.

On the other hand, holders of a mining exploitation title who enter into the exploitation phase are eligible – for three years from the date of first commercial production – to exemption from:

- the annual minimum tax; and
- the single land tax.

During the exploitation phase, the holders of an exploitation permit are subject to all taxes other than those for which they benefit from the exemptions provided for in the foregoing, including but not limited to:

- VAT, excluding on the import of some equipment provided in the mining list in accordance with the provisions of the Mining Code;
- the tax on industrial and commercial profits or corporate tax;
- the tax on income from securities;
- registration dues on deeds relating to company formation, increasing share capital through new capital contributions, capital contributions, the capitalisation of profits or reserves, or mergers;
- lump-sum salary payments;
- withholding on non-salary income;
- withholding on salaries;
- the single automobile tax, with the exception of industrial vehicles and equipment at the rate in effect;
- contributions to professional training or the apprenticeship tax, as the case may be;
- contributions to local development;
- fixed fees and annual royalties;
- surface royalties;
- tax on the extraction of mineral substances other than precious metals;
- tax on the industrial or semi-industrial production of precious metals;
- the export tax on mineral substances other than precious metals; and
- the export tax on precious stones and gemstones.

In addition, the holders of an exploitation title are subject to the payment of environmental taxes and royalties on classified establishments, in accordance with the Environmental Code and its implementing regulations.

It is worth noting that there is no specific distinction made between the taxation of national and foreign investors in the Republic of Guinea.

4.2 Tax Incentives for Mining Investors and Projects

The stabilisation of the fiscal and customs regime is guaranteed to holders of mining exploitation titles who have signed a mining agreement. The maximum duration of the period of stabilisation is 15 years. This period of stabilisation runs from the date on which the mining exploitation title is granted. During this period, the rates of levies, duties and taxes will neither be increased nor reduced. Instead, these rates will remain as they were on the date the mining title was granted. Furthermore, no new tax or levy of any kind whatsoever is applicable to the holder of a mining title during this specific period.

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

Any transfer of an exploitation permit, mining concession or authorisation to exploit quarry substances is subject to capital gains tax, in accordance with the provisions of the General Tax Code of the Republic of Guinea. The calculation basis for this capital gain is the difference between the transfer price of the mining title or authorisation stipulated in the deed of transfer and the net book value of the mining title or authorisation.

Any transfer of shares or other ownership interest of a legal entity holding a mining title or authorisation is taxed in accordance with the capital gains regime in the Republic of Guinea. The basis of assessment for capital gains on the sale of a share or corporate interests is the difference between the sale price of the share and its net book value. It is worth noting that where the transferor is not established in Guinea, this capital gain is taxed at source in Guinea at the standard rate of corporate income tax under the General Tax Code. The tax is deducted at source by the legal entity holding the mining title or authorisation. This withholding tax is payable when the capital gain is realised. Failure to pay the withholding tax due will result in the withdrawal of the mining title or authorisation.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The main features of attracting investment for mining in the Republic of Guinea are as follows.

- The creation of the *Centre de Promotion et de Développement Minier* (CPDM), a one-stop shop offering comprehensive assistance to simplify the investment process. The CPDM facilitates investors' access to essential information, encouraging responsible and sustainable investment. Under the supervision of Guinea's Ministry of Mines and Geology, the CPDM assists investors in preparing permit applications and completing administrative formalities. The CPDM also facilitates the acquisition of mining titles and authorisations.
- The guarantee of systematic and transparent management of the mining sector, which will be advantageous for investors not to mention conferring sustainable economic and social benefits for the Guinean people.
- Large reserves of bauxite, iron ore, diamonds and gold.

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

There are no special rules on foreign investment approval in the Republic of Guinea. Moreover, there are no restrictions on foreign investment in

the exploration and mining sectors of the country.

5.3 International Treaties Related to Exploration and Mining

The Republic of Guinea is not part of any multilateral or bilateral treaties that favour and protect investments in exploration and mining.

However, the Republic of Guinea has ratified the Treaty of the Economic Community of West African States (ECOWAS). In its Article 31, it stipulates the need to harmonise and co-ordinate member states' natural resource policies and programs. ECOWAS includes Directive C/DIR 3/05/09, dated 27 May 2009, on the harmonisation of guidelines and policies in the mining sector. This Directive aims to ensure that ECOWAS member states adopt compatible and coherent mining legislation and policies that facilitate the attraction of regional and national mining investments. It promotes transparent and responsible management of mining resources in member states and proposes standards for environmental protection, and it also requires the local population to share in the benefits of mining resources.

It is also worth noting that the Republic of Guinea is one of the countries that applies the Kimberley process and the Extractive Industries Transparency Initiative (EITI) standards.

5.4 Sources of Finance for Exploration, Development and Mining

The main sources of finance for exploration, development and mining in the Republic of Guinea for investors are loans, own funds and technical partnerships. As far as the state is concerned, the Mining Investment Fund finances mining research and training, as well as actions promoting the mining sector.

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

In the Republic of Guinea, domestic and international securities markets are still under process. The Republic of Guinea is currently working on a draft law on securities exchange. The aim of setting up a securities market in the Republic of Guinea is to diversify financial resources and ensure better management of funds. Briefly, domestic and international securities markets in the Republic of Guinea do not currently have an important role in the financing of exploration, development and mining.

5.6 Security over Mining Tenements and Related Assets

The legal features relating to security over mining tenements and related assets in the context of exploration, development and mining finance in the Republic of Guinea are as follows:

- exploration permits cannot be pledged or mortgaged – nevertheless, the holder of an exploration permit can enter into a technical partnership enabling them to raise the necessary capital to finance the exploration activities required for the discovery of a deposit;
- exploitation permits may be pledged to secure loans intended for operating purposes;
- The mining concession is a divisible real estate right that may be amended and mortgaged to guarantee borrowings for operating purposes; and
- the various mining authorisations cannot be pledged or mortgaged.

The Organization for the Harmonization of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*) (OHADA)) Uniform Act on Security (AUS) governs securities in the Republic of Guinea.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The Republic of Guinea is rich in mineral resources such as graphite, cobalt and lithium, all of which contribute to the country's energy-transition minerals. However, the country has no specific plans for energy-transition minerals. The government's priority projects relate to renewable energy – solar, wind and hydraulic power – to improve electricity services in the Republic of Guinea. The authors are not aware of any government initiatives or prospects regarding the mineral energy transition. As a result, no change in this area is expected in the next couple of years.

With regard to carbon net zero, the authors are not aware of any initiatives or prospects envisaged to achieve carbon net zero or carbon neutrality in the Republic of Guinea. However, the current law and the national strategy on climate change, imposed by the Ministry of the Environment, requires that the exploitation of Guinea's mineral resources be climate-compatible and developed in an environmentally friendly manner, gradually combining the use of low-emission energy sources and technologies. The authors are not aware of any impending changes in legislation in the mining sector, including in respect of energy-transition minerals and carbon net zero.

INDIA

Law and Practice

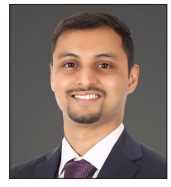
Contributed by:
Vishnu Sudarsan, Kartikeya Gajjala and Mehar Vasant
J Sagar Associates

Contents

J Sagar Associates (JSA) is a leading national law firm in India comprising over 400 lawyers, including 150 partners, based in Ahmedabad, Bengaluru, Chennai, Gurugram, Hyderabad, Mumbai and New Delhi. For over three decades, JSA has provided legal advice and services to international and domestic clients on the entire spectrum of legal, contractual, regulatory and policy issues. The firm's mission is to provide outstanding legal solutions in its chosen practice areas, with a strong emphasis on ethics. JSA's advice is delivered by well-informed, accessible, partner-led teams that strive to provide the highest quality of service to clients, by listening, understanding their needs, responding promptly and living up to commitments. The teams are prized for their domain knowledge, multi-dimensional expertise and strengths in grappling with complex issues involving public policy, economics, technology, finance and project management, in addition to law. JSA is credited for contributing to several landmark and precedent-setting transactions.

Authors

Vishnu Sudarsan is experienced in diverse areas of investments, development, regulatory and policy in select sectors, and is consistently ranked by Chambers as a leading practitioner. His practice focuses on clean tech, extractives, industrial, mobility, climate change and logistics. He has more than 20 years' experience in advising investors, developers, lenders and governmental agencies on equity, debt, business risks, procurement, divestment, project development and related aspects in select sectors. Vishnu is currently leading the ESG Initiative at and serving on the advisory board of Carbon Registry – India (India's only carbon market registry).



Kartikeya Gajjala specialises in projects, regulatory and policy-related work in the infrastructure sector. He has advised domestic and international clients (including developers, investors, banks, multilateral agencies, governments and government authorities) on diverse matters spanning contractual, transactional and regulatory issues. His areas of focus include mines and minerals, energy (electricity and renewable energy), transportation (roads, railways and ports), construction and engineering, and urban infrastructure (metro railways, sanitation and water).

Mehar Vasant has advised on transactions across multiple sectors, with a focus on power (including renewable energy), green hydrogen, fintech, defence, and mines and minerals, having undertaken corporate, regulatory and commercial work within these sectors. As a part of her practice, Mehar has rendered advisory and legal assistance to various government authorities, developers and concessioning authorities across different stages of transactions, including bid advisory, risk assessment, and contract and project management.

J Sagar Associates

Sandstone Crest
Opposite Park Plaza Hotel
Sushant Lok
Ph 1
Gurugram 122 009
India

Tel: +91 124 439 0600
Email: gurugram@jsalaw.com
Web: www.jsalaw.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Engine of Economic Growth

The mining sector is a core driver of India's economic development, contributing significantly to the gross domestic product. It is a major source of employment and a catalyst for growth in other vital industries (such as power, steel and cement) that are, in turn, critical for overall economic growth.

As aptly stated in India's National Mineral Policy, 2019 (NMP): "[m]inerals are a valuable natural resource being the vital raw material for the core sectors of the economy. Exploration, extraction and management of minerals have to be guided by national goals and perspectives, to be integrated into the overall strategy of the country's economic development."

Mineral Resources

India is richly endowed with metallic and non-metallic mineral resources – the country produces as many as 95 minerals, including four fuel, ten metallic, 23 non-metallic, three atomic and 55 minor minerals. India is largely self-sufficient in minerals that are primary input for industry (such as iron and steel, aluminium, cement, refractories, ceramics, glass) and in bauxite, chromite, limestone, iron ore and sillimanite.

The country is deficient in kyanite, magnesite, rock phosphate, manganese ore, etc, which are imported to meet demand. To meet the increasing domestic demand for uncut diamonds, emeralds and other precious and semi-precious stones, India is dependent on imports of raw uncut stones for their value-added re-exports.

Rare earth resources in India are reported to be the fifth largest in the world. Indian resources are significantly lean and contain light rare earth elements, while heavy rare earth elements are unavailable in extractable quantities. 13.07 million tonnes of in-situ monazite (containing ~55-60% total rare earth elements oxide) have been found in the states of Kerala, Tamil Nadu, Odisha, Andhra Pradesh, Maharashtra, Gujarat, Jharkhand, West Bengal and Tamil Nadu. Magnetic rare earth elements such as Neodymium and Praseodymium are available and are being extracted.

Major and Minor Minerals

The legal and regulatory framework broadly classifies minerals into two categories:

- "minor minerals", which are defined to include building stones, gravel, ordinary clay, ordinary sand and any other minerals so declared by the central government; and
- minerals other than minor minerals, which are referred to generally as "major minerals".

Concessions in respect of both major minerals and minor minerals are awarded at the level of the state governments. However, the central government has primacy with regard to the legal and regulatory framework for major minerals, while the regulation of minor minerals is largely left to the state governments.

Unless otherwise specifically mentioned, the responses set out herein concern onshore major minerals (other than atomic and fuel minerals, for which the legal and regulatory framework is distinct and separate).

Mineral Production

Mineral production (excluding atomic and fuel minerals) was valued at INR192,734 crore in FY 2023–24, marking an increase of about 2.03% over the previous year. In FY 2023–24, about

97.5% of production was in eight states. Odisha led with a share of 46%, followed by Chhattisgarh with a share of 14%, Rajasthan with 13%, Karnataka with 12%, Maharashtra with 4.6% and Jharkhand with 4.7% in the total value of mineral production (excluding atomic, fuel and minor minerals).

The industry is characterised by a number of small operational mines; approximately 1,426 mines reported mineral production in FY 2023–24. Most mines are in Madhya Pradesh, followed by Gujarat, Karnataka, Odisha, Andhra Pradesh, Chhattisgarh, Rajasthan, Tamil Nadu, Maharashtra and Jharkhand. During FY 2022–23, the private sector emerged to play a dominant role in mineral production, accounting for 60% of the total value (or INR74,725 crore).

Auction of Mineral Blocks

The law contemplates two types of mineral concessions that grant a person the right to undertake mining operations, as set out below.

- Mining leases are granted for undertaking mining operations – ie, operations undertaken for the purpose of winning any mineral. Mining leases are granted in respect of areas where there is evidence to show the existence of mineral contents in the manner prescribed.
- Composite licences envisage a prospecting licence for undertaking prospecting operations (ie, operations undertaken for the purpose of exploring, locating or proving mineral deposit), upon successful and satisfactory completion of which the licensee is granted a mining lease for undertaking mining operations. Composite licences are granted in respect of areas where there is inadequate evidence to show the existence of mineral contents as prescribed.

Owing to rulings of the Supreme Court of India urging the distribution of state largesse in a fair and transparent manner, auctions conducted by the state governments have been the predominant mode of awarding mining concessions since 2015. Since the commencement of the auction regime, 442 mineral blocks have been auctioned. The auctions have been dominated by:

- limestone (152 blocks);
- iron ore (114 blocks);
- manganese (39 blocks);
- bauxite (39 blocks);
- graphite (21 blocks); and
- gold (21 blocks).

The majority of the blocks auctioned are in the states of:

- Rajasthan (86);
- Madhya Pradesh (82 blocks);
- Odisha (48 blocks);
- Karnataka (45 blocks);
- Maharashtra (40 blocks); and
- Chhattisgarh (35 blocks).

1.2 Legal System and Sources of Mining Law

The Constitution of India stands at the apex of the Indian legal system, which has its basis in common law. The Constitution provides for a tripartite demarcation of legislative powers between the centre and states:

- List I, the Union List, sets out the subjects over which the centre has exclusive powers of legislation;
- List II, the State List, sets out the subjects over which states have powers of legislation; and

- List III, the Concurrent List, sets out the subjects over which the centre and states have shared power.

In this regard, the following is notable.

- Entry 54 of the Union List reads as follows: "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."
- Entry 23 of the State List reads as follows: "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

Pursuant to Entry 54 of the Union List, the Parliament of India has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act), which is the main source of legislation governing the development and regulation of mines and minerals in India. The MMDR Act declares that it is in the public interest that the Union should take the regulation of mines and the development of minerals under its control, to the extent provided in the MMDR Act. This means that the jurisdiction of the states is excluded to the extent of the fields covered by such declaration.

The MMDR Act lays out various key aspects regarding the mining sector, including the types of mineral concessions that may be granted, the manner of granting such concessions, the persons eligible to win such concessions, and the maximum permissible area for mining by any particular person. The following rules have been notified by the central government pursuant to the MMDR Act, and are key elements of the governing framework:

- the Mineral (Auction) Rules, 2015, which set out the terms, conditions and procedure for conducting mineral auctions, including the net worth requirements and bidding parameters;
- the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, which detail the terms and conditions of mineral concessions, stipulations concerning mining plans, procedures for transferring mineral concessions and the manner of calculating royalty payable on minerals; and
- the Mineral Conservation and Development Rules, 2017, which set out provisions concerning sustainable mining, the requirements for plans and sections, and the stipulations concerning mining operations.

The central government has also formulated the NMP, which highlights the following principles/objectives for the mining sector in India:

- the promotion of domestic industry, reducing import dependency and feeding into the Make in India initiative;
- in order to make the regulatory environment conducive to the ease of doing business, the procedures for the granting of mineral concessions shall be transparent and seamless, with an assured security of tenure along with transferability of concessions playing a key role in mineral sector development;
- simpler, transparent and time-bound procedures for obtaining clearances to ensure the regulatory environment are conducive to the ease of doing business;
- the government will endeavour to design fiscal measures, within the context of the budget, that are conducive to the promotion of mineral exploration and development, including beneficiation and other forms of product refinement; and

- efforts will be made to benchmark and harmonise royalty and all other levies and taxes with mining jurisdictions across the world to make India an attractive destination for exploration and mining.

Lastly, the Mines Act, 1952 (read with the rules issued thereunder) consolidates the law relating to the regulation of labour and safety in mines, with detailed provisions concerning health and safety, hours and limitation of employment, and leave of absence.

Pursuant to Entry 54 of the Union List, the Parliament of India has enacted the Offshore Areas Mineral (Development and Regulation) Act, 2002, which provides for the development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. This act lays out various key aspects regarding offshore mining, including the types of operating rights that may be granted, the manner of granting such rights, and the persons eligible to win such rights. The following rules have been notified under this act, and form essential components of the regulatory framework:

- Offshore Areas Mineral (Auction) Rules, 2024, which set out the terms, conditions and procedure for conducting mineral auctions, including the net worth requirements and bidding parameters;
- Offshore Areas Operating Right Rules, 2024, notified on 16 October 2024, which detail the terms and conditions of operating rights, stipulations concerning production plans, procedures for transferring operating rights and the manner of calculating royalty; and
- Offshore Areas Mineral Conservation and Development Rules, 2024, which set out provisions concerning sustainable mining, the requirements for plans and sections, and the stipulations concerning production operations.

1.3 Ownership of Mineral Resources

The issue of the ownership of minerals is not conclusively settled in law. While it is commonly understood that the state governments own minerals located within their respective boundaries, the Supreme Court of India held in its 2013 judgment in Threesiamma Jacob and Ors. v Geologist, Department of Mining and Geology and Ors., reported as (2013) 9 SCC 725, that there was nothing in the law declaring that all mineral wealth and sub-soil rights vest in the state, holding that ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived thereof by some valid process.

Nevertheless, it is noteworthy that the MMDR Act clearly stipulates that no person shall undertake any mining operations in any area without a mining lease granted under the MMDR Act and the rules made thereunder. As noted in **1.1 Main Features of the Mining Industry** and **1.2 Legal System and Sources of Mining Law**, mineral concessions to undertake mining operations are ordinarily granted by the state government by way of auctions. Thus, from a practical perspective, it would appear that no mining operations may be undertaken except under a right granted by the state government pursuant to the MMDR Act, regardless of the issue of ownership.

1.4 Role of the State in Mining Law and Regulations

As outlined in **1.2 Legal System and Sources of Mining Law**, the regulation of mining is vested in the central government (including the manner of and eligibility for the granting of mineral concessions, and the terms and conditions of

mineral concessions), while the state government is ordinarily responsible for conducting the process of granting mineral concessions, and for the granting thereof. Thus, the role of the state is that of grantor-regulator, with the central government being the regulator and the state government being the grantor.

There is no mandate for national or government joint venture, contracting or participation. The MMDR Act stipulates that any Indian national or company that satisfies such conditions as may be prescribed is eligible for the granting of a mineral concession. However, the law does empower the central government or state government to reserve any area (that is not already held under any prospecting licence or mining lease) for undertaking prospecting or mining operations through a government company or corporation owned or controlled by the central or state government, as the case may be. If such company or corporation proposes to carry out the operations in a joint venture with other persons, the joint venture partner is required to be selected through a competitive process, and such company or corporation must hold more than 74% of the paid-up share capital in such joint venture. Such reservation, however, lapses if such operations are not commenced within five years from the date of the reservation.

1.5 Nature of Mineral Rights

Please see **1.2 Legal System and Sources of Mining Law** and **1.3 Ownership of Mineral Resources**. Mineral rights are granted by the state governments pursuant to law (ie, the MMDR Act), by way of a mining lease, which permits the lessee to undertake mining operations. Mining leases may be transferred by their holder to another person, subject to obtaining requisite approval from the state government in this regard.

1.6 Granting of Mineral Rights

State governments are the granting authority for mineral concessions; please see **1.5 Nature of Mineral Rights**.

Notably, by way of amendments to the MMDR Act, the central government has been empowered to conduct the auction of mineral concessions in certain circumstances – namely, where the state government fails to complete the auction or re-auction of a mineral block within the stipulated timeframe. The central government is also empowered by way of a 2023 amendment to the MMDR Act to exclusively undertake auctions for certain "critical minerals", such as lithium, cobalt, nickel-bearing minerals, etc. Nevertheless, even in such instances, the eventual grantor of the mineral concession continues to be the state government, so there is no overlap in jurisdiction.

1.7 Mining: Security of Tenure

Term for Mineral Concessions

With effect from the 2015 amendments to the MMDR Act, all mining leases are granted for a period of 50 years; the amendment also extended the term of pre-2015 mining leases to 50 years. There is, however, no allowance for the renewal or extension of such a term. Blocks in respect of which the mining leases have expired are put up for re-auction.

With regard to composite licences, which govern prospecting operations pursuant to a prosecting licence before the commencement of mining operations under a mining lease, the MMDR Act states that prospecting licences may be granted for a maximum period of three years. A prospecting licence may be renewed for a period not exceeding two years if the state government is satisfied that a longer period is required

to enable the licensee to complete prospecting operations.

Progress From Exploration to Mining

The MMDR Act originally contemplated a vested right to obtain a mining lease after completing prospecting operations (and a prospecting licence followed by a mining lease after completing reconnaissance operations). However, these rights were brought to an end by way of an amendment to the MMDR Act in 2015, although pre-existing rights were grandfathered. Subsequently, even grandfathered rights were entirely extinguished by way of another amendment to the MMDR Act in 2021. Notably, these amendments are pending challenge before the writ courts.

Nevertheless, as noted above, the law recognises the concept of a "composite licence", whereby a prospecting licence is first granted for undertaking prospecting operations (ie, operations undertaken for the purpose of exploring, locating or proving mineral deposit) and, upon the successful and satisfactory completion of such prospecting operations, the licensee is granted a mining lease for undertaking mining operations.

Maintenance Requirements and Operating Control

Pursuant to rules notified under the MMDR Act, the central government has prescribed various conditions for undertaking mining operations, including an obligation to carry out mining operations in a proper, skilful and workman-like manner, and in such a manner so as to ensure the systematic development of mineral deposits, the conservation of minerals and the protection of the environment. In this regard, it is notable that the NMP envisages the promotion of zero-waste mining, the prevention of sub-optimal and unscientific mining, and the conservation of minerals oriented towards the augmentation of reserve/resource base.

Cancellation Procedures

The rules notified under the MMDR Act empower the state government to terminate a mining lease to the extent that the mining lessee is in breach of certain obligations thereunder, such as failing to permit the state government to carry out inspections or failing to make payment of statutory dues.

In addition, the state government may – either of its own accord or upon the request of the central government, and subject to giving the mineral concession holder an opportunity to be heard – prematurely terminate a prospecting licence or mining lease in the interest of:

- the regulation of mines and mineral development;
- the preservation of the natural environment;
- the control of floods;
- the prevention of pollution or avoiding danger to public health or communications; or
- ensuring the safety of buildings, monuments or other structures, or for such other purposes as may be deemed appropriate.

The MMDR Act also stipulates that a mining lease will lapse if a mining lessee fails to undertake production and dispatch for a period of two years after the date of execution of the lease or, having commenced production and dispatch, discontinues the same for a period of two years. Notably, in Common Cause v Union of India, reported as (2016) 11 SCC 455, the Supreme Court of India held that such lapsing of a mining lease is not automatic – the lease is not deemed to have lapsed until the state government pass-

es an order declaring and communicating the same to the leaseholder.

Marketing

A mining lessee is entitled to market and sell the ore that has been won pursuant to mining operations to any person of its choosing, subject to making the requisite payments or royalties and other amounts due to the government under law. The regime earlier contemplated the concept of "captive mining", with mining leases being awarded subject to the restriction that all or part of the mined output would be utilised in a specified end-use plant. However, this concept has been done away with following the 2021 amendment to the MMDR Act, with mines no longer being permitted to be reserved for captive purpose in auctions.

Transferability

As noted in **1.1 Main Features of the Mining Industry** and **1.5 Nature of Mineral Rights**, the MMDR Act permits the transfer of a mineral concession subject to prior approval of the state government. No transfer charges are due in respect thereof. The framework allows for deemed approval, inasmuch as the permission is deemed to have been granted if the state government does not convey its approval within a period of 90 days.

The transferor is required to intimate to the state government the consideration payable by the successor-in-interest for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations. Any transfer is subject to the condition that the transferee accepts all conditions and liabilities under any law to which the transferor was subject in respect of such a mineral concession.

There is some ambiguity as to whether the acquisition of a controlling equity stake in a company holding a mineral concession would amount to a transfer of such concession, thereby necessitating approval of the state government. In this regard, in State of Rajasthan and Ors. v Gotan Lime Stone Khanji Udyog Pvt. Ltd and Anr, reported as (2016) 4 SCC 469, the Supreme Court of India made a pronouncement that may be interpreted as holding that the transfer of shares would, in substance, amount to a transfer of a mineral concession, requiring prior approval of the state government. However, it is understood that, per extant practice, approval in such instances is not being sought.

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

2.1 Environmental Protection and Licensing of Mining Projects

Regulatory Framework

The Constitution of India provides a holistic foundation for Indian environmental law, comprising:

- Article 48-A – a directive principle of state policy requiring the state to endeavour to protect and improve the environment and safeguard forests and wildlife; and
- Article 51A(g) – citizens have a fundamental duty to protect and improve the natural environment, including forests, lakes, rivers and wildlife.

In addition, the Supreme Court of India has interpreted the fundamental right to life guaranteed under Article 21 of the Constitution to include the right to live in a clean environment.

The legislative framework for environmental protection comprises several federal-level environmental protection laws, including the following.

- The Water (Prevention and Control of Pollution) Act, 1974 provides for the prevention and control of water pollution and the maintaining or restoration of the wholesomeness of water. Pollution control boards at the state and federal levels have been constituted pursuant to this law.
- The Air (Prevention and Control of Pollution) Act, 1981 provides for the prevention, control and abatement of air pollution.
- The Environment (Protection) Act, 1986 provides for the protection and improvement of the environment. Various notifications/rules/regulations have been issued under this act concerning emissions reduction, management of waste, regulation of activities in coastal zones, ozone-depleting substances, etc.
- The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 sets out provisions relating to the conservation of forests (read with the Compensatory Afforestation Fund Act, 2016).
- The Wildlife (Protection) Act, 1972 provides for the protection of wild animals, birds and plants.
- The Public Liability Insurance Act, 1991 provides for public liability insurance in order to provide immediate relief to persons affected by accidents occurring while handling hazardous substances.
- The Biological Diversity Act, 2002 provides for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits of using biological resources.
- The National Green Tribunal Act, 2010 provides for the establishment of the National Green Tribunal, which has jurisdiction over cases relating to environmental protection and the conservation of forests and other natural resources, including the enforcement of any legal rights relating to the environment.

Environmental Licensing

The above legal and regulatory framework for environmental protection prescribes various approvals that have to be obtained before establishing, operating or undertaking mining activities. The key permits include the following.

- Consent to establish/operate – prior consent of the State Pollution Control Board has to be obtained in order to establish and operate any industry or plant in a designated air pollution control area, or any industry or plant that is likely to discharge sewage or trade effluent into a stream, well or sewer or on land.
- Environmental approvals – various approvals have to be obtained under the notifications/rules issued under the Environment (Protection) Act, 1986, including "prior environmental clearance" (from the central government in case of mining projects with over 100 ha of lease area, and otherwise from the state government) and approvals regarding the use of hazardous waste, development in coastal areas, etc.
- Forest clearance – permission has to be sought from the government for the use of any forest land for any non-forest purpose, with a process of "compensatory afforestation" required to be undertaken in this regard.

As can be seen from the above, the environmental licensing regime operates at both the national and state levels, with a mix of executive and statutory agencies being responsible. These agencies are fairly robust, with suitable and sufficient capabilities and personnel. Previously, criticisms were levelled that the licens-

ing regime was slow and inefficient, resulting in undue delays in project implementation. These concerns have somewhat eased in recent years, with digitisation and time-bound service commitments hastening processes.

2.2 Impact of Environmentally Protected Areas on Mining

In a notable development, in its June 2022 judgment in In Re: TN Godavarman Thirumulpad v Union of India and Ors., I.A. No 1000 of 2003 in WP (C) No 202 of 1995, the Supreme Court upheld that mining within national parks and wildlife sanctuaries (and up to a certain distance from the demarcated boundary of such area) shall not be permitted. By an order dated 26 April 2023 in said matter, the Supreme Court has also prohibited mining activities within an area up to one kilometre from the boundary of national parks and wildlife sanctuaries.

It is also notable that the NMP envisages that mining operations shall not ordinarily be taken up in identified ecologically fragile and biologically rich areas, with the government identifying such areas as "inviolate areas" or "no-go areas" out of bounds for mining.

2.3 Impact of Community Relations on Mining Projects

The MMDR Act stipulates that the state government shall establish a "District Mineral Foundation" in any district affected by mining-related operations, with the aim of working for the interest and benefit of persons and areas affected by mining-related activities. A mineral concessionaire is required to pay a percentage (which will not exceed one third) of the royalty payable by such lessee to the foundation of the district in which the mining operations are carried on. The operation of the foundation for the inclusive and equitable development of project-affected persons is guided by the provisions of a scheme entitled "*Pradhan Mantri Khanij Kshetra Kalyan Yojana*", which has been launched by the central government.

The MMDR Act also empowers the central government to issue directions to the state governments on any policy matter in the national interest, including to promote restoration and reclamation activities so as to make optimal use of mined out land for the benefit of local communities.

Furthermore, where land is acquired by the government for the purpose of any mining project, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is applicable. This law mandates the conduct of a social impact assessment, based on which the land that is eventually identified for acquisition should ensure the minimum displacement of people, minimum disturbance to the infrastructure and ecology, and minimum adverse impact on the individuals affected.

Notably, the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 provide that a mining lessee shall, in matters of employment, give preference to tribals and to persons who become displaced because of the taking up of mining operations.

Lastly, the NMP recognises that, where mining activities are spread over decades, mining communities become established and the closure of the mine means not only the loss of jobs but also the disruption of community life. In order to address this, the NMP provides that mines shall be closed in an orderly and systematic manner.

2.4 Prior and Informed Consultation on Mining Projects

The process of obtaining "prior environmental clearance" under the Environment (Protection) Act, 1986 requires a public consultation to be conducted by the State Pollution Control Board. There are two elements to the consultation:

- a public hearing at the project site or in its close proximity; and
- obtaining written responses from other concerned persons who have a plausible stake in environmental aspects.

This process aims to ascertain the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity in order for all the material concerns in the project or activity design to be taken into account, as appropriate. All such concerns are required to be addressed in the environmental impact assessment and environmental management plan that are required to be prepared as part of the approval process (and which are to be complied with by the project proponent).

2.5 Impact of Specially Protected Communities on Mining Projects

India is home to various tribal communities. The Constitution of India accords special protections to certain identified tribes, with the state being responsible for promoting the educational and economic interests of such tribes with special care, and for protecting them from social injustice and all forms of exploitation. Notably, there are district councils in respect of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram that are granted a degree of autonomy and are entitled to a certain share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by state government in respect of any such area.

Various laws also seek to protect the rights and interests of such tribes. For example, the federal Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 recognises and grants forest rights and occupation in forest land to forest-dwelling scheduled tribes. Furthermore, as noted in **2.3 Impact of Community Relations on Mining Projects**, the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 provide that a mining lessee shall, in matters of employment, give preference to tribals and to persons displaced by the taking up of mining operations.

The NMP also emphasises an integrated approach encompassing mineral development, regional development and the social and economic well-being of the local tribal population.

2.6 Community Development Agreement for Mining Projects

Community development agreements are not mandatory under the mining laws in India. Please see **2.5 Impact of Specially Protected Communities on Mining Projects**.

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

There are no specific ESG guidelines or regulations in India for the mining sector. Instead, the framework in this regard is spread across various laws governing corporate governance (the Companies Act, 2013) and environmental protection (as outlined in **2.1 Environmental Protection and Licensing of Mining Projects**), labour laws and stipulations in the MMDR Act and the rules issued thereunder.

In May 2021, the Securities and Exchange Board of India introduced new reporting requirements on ESG parameters: the "Business Responsibility and Sustainability Report" (BRSR). These requirements took effect from the financial year 2022–23, and from FY 2023–24 onwards were made mandatory for the top 1,000 listed companies (by market capitalisation), which are obliged to disclose their performance based on the nine principles relating to responsible business conduct.

This initiative is aimed at enabling companies to engage more meaningfully with their stakeholders, by encouraging them to look beyond financials and towards social and environmental impacts. The report covers:

- research, development and investments in technologies that improve ESG impact;
- social impact assessments of projects undertaken as per applicable law;
- beneficiaries of corporate social responsibility projects (including from vulnerable and marginalised groups);
- emissions reduction and waste-management initiatives; and
- mechanisms for addressing human rights issues.

In July 2023, the "BRSR Core" was introduced, as a sub-set of the BRSR, consisting of a set of key performance indicators/metrics under nine ESG attributes, and applies mandatorily to the top 150 listed companies (by market capitalisation) in FY 2023–24, to the top 250 listed companies in FY 2024–25 and to the top 1,000 listed companies by FY 2026–27 in a phased manner.

The central government is considering introducing similar reporting obligations for unlisted companies. Indian companies have also been voluntarily adopting various ESG policies aimed at reducing their carbon footprint and increasing expenditure on corporate social responsibility.

India is also a signatory to the United Nations Framework Convention on Climate Change, 1992 and has adopted the Paris Agreement under its framework. Courts in India, including the Supreme Court, have interpreted and enforced the rights and obligations of parties under Indian law in light of such treaty commitments.

2.8 Illegal Mining

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 define "illegal mining" as any reconnaissance, prospecting or mining operations undertaken by any person or company in any area without holding a mineral concession.

The MMDR Act empowers the state governments to make rules to prevent the illegal mining, transportation and storage of minerals. Thus, the control of illegal mining is primarily the responsibility of the state governments. These rules may provide for:

- the establishment of check-posts to check minerals in transit;
- the establishment of weighbridges to measure quantities of minerals being transported; and
- inspection, checking and search of minerals at their place of excavation or storage, or during transit.

The punishment for illegal mining prescribed by the MMDR Act is imprisonment for up to five years and a fine of up to INR5 lakh per hectare of the area.

In an effort to combat illegal mining, a "Mining Surveillance System" has been developed by the central government in collaboration with Bhaskaracharya National Institute for Space Applications and Geo-informatics – it uses satellite technology for real-time monitoring of illegal mining activities.

The courts of law have taken a very strict view on illegal mining, directing that rules have to be strictly enforced by state governments in order to control and regulate the mining, storage and transportation of minerals and prevent leakages and evasion of revenue (see Goa Foundation v Union of India and Ors., reported as (2014) 6 SCC 590). Indeed, the Supreme Court has gone so far as to temporarily impose an absolute ban on mining activities in three districts of the state of Karnataka (vide orders dated 29 July 2011 and 26 August 2011 in Samaj Parivartana Samudaya and Ors. v State of Karnataka and Ors., Writ Petition (Civil) No. 562 of 2009) on the basis of the principle of intergenerational equity and to prevent huge ecological and environmental degradation following the rampant illegal mining in these three districts.

The Supreme Court has also seen fit to enlarge and clarify the scope of "illegal mining", having opined in Common Cause and Ors. v Union of India and Ors., reported as (2017) 9 SCC 499, that illegal mining is not confined only to mining operations outside a leased area but also covers excess extraction of a mineral over the permissible limit even within the mining lease area that is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement – a narrow interpretation is unacceptable since the issues concern a natural resource intended for the benefit of everyone and not only for the benefit of the mining lease holders.

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

The mining sector in India has been witness to both positive and negative cases of environmental and community relations/consultation.

Good Example

A good example of community relations is the strategy adopted by a large mining conglomerate in India, whose outreach efforts span multiple fronts, including:

- children's well-being and education;
- women's empowerment;
- healthcare;
- drinking water and sanitation;
- sustainable agriculture and animal welfare;
- labour market-related skills for young people;
- environmental protection and restoration;
- sports and culture; and
- the development of community infrastructure.

These efforts are aimed at improving the quality of life of the communities in and around its operational areas, and have yielded positive responses from locals, thereby fostering a sense of trust and inclusion.

Bad Example

An instance of a public consultation being poorly conducted is the public hearing for the expansion of an iron ore mining facility in the Surjagarh Hills region of Maharashtra. On grounds of security concerns, the public hearing was planned at a location 130 km away from the affected villages. This did not sit well with locals, and reportedly triggered panic and protest over rumours that 13 villages would be displaced as a result of the proposed expansion plans. While the authorities had arranged transport for the villagers, it is understood that many from the 13 hamlets did

not have an opportunity to speak at the hearing, being constrained to remain outside the venue as mute spectators (video screens had been set up for them in order to observe proceedings). The media was also kept out of the public hearing, and suspicions were raised regarding the presence of police officials to allegedly intimidate those attending the hearing.

Such a public hearing process can undermine the legitimacy of the approval process, and can subsequently be struck down if challenged in court. Belated cancellation would, in turn, have the undesirable impact of impeding project development.

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

3.1 Climate Change Effects

Given the nature of mining operations, the mining industry has long been subject to stringent environmental norms. Please see **2. Impact of Environmental Protection and Community Relations on Mining Projects** regarding the applicable environmental regime and licensing requirements.

In addition, India has committed to ambitious goals to manage the threat of climate change, most recently committing to reduce the emission intensity of its GDP by 45% from 2005 levels by 2030. While there are no specific climate action-related measures currently applicable to the mining sector, India is contemplating a number of measures, including a carbon trading market, with a view to meeting these goals.

3.2 Climate Change Legislation and Proposals Related to Mining

See **3.1 Climate Change Effects**.

3.3 Sustainable Development Initiatives Related to Mining

The Mineral Conservation and Development Rules, 2017 confer upon a mining lessee the responsibility for taking all possible precautions to undertake sustainable mining while conducting mining operations. In this regard, the Indian Bureau of Mines has instituted a "Star Rating" system for evaluating sustainability efforts. Mining lessees are required to obtain at least a three-star rating within four years from the date of commencement of mining operations, and to maintain such rating on a yearly basis.

Furthermore, the MMDR Act empowers the central government to issue directions to the state governments for the scientific and sustainable development and exploitation of mineral resources, including with regard to the following, without limitation:

- the implementation and evaluation of sustainable development frameworks;
- a reduction in waste generation and related waste management practices and the promotion of the recycling of materials;
- minimising and mitigating adverse environmental impacts, particularly in respect of ground water, air, ambient noise and land;
- ensuring minimal ecological disturbance, in terms of biodiversity, flora, fauna and habitat; and
- promoting restoration and reclamation activities so as to make optimal use of mined out land for the benefit of the local communities.

The NMP recognises that mining needs to be carried out sustainably – ie, mining that is finan-

cially viable, socially responsible and environmentally, technically and scientifically sound, with a long-term view of development, and that uses mineral resources optimally and ensures sustainable post-closure land uses. To this end, the NMP envisages:

- that environmental, economic and social considerations must be considered early in the decision-making process, to ensure sustainable development in the mining sector;
- that the central government shall set a benchmark for evaluating the sustainability of mining operations, and enforce commitments to adopt sustainable development practices for achieving environmental and social goals; and
- an inter-ministerial body to institutionalise a mechanism for ensuring sustainable mining with adequate concerns for environment and socio-economic issues in mining areas, and also to decide the limits of the extent of mining activities, having regard to the principles of sustainable development and intergenerational equity.

3.4 Energy-Transition Minerals

The MMDR Act was amended in 2023 so that energy-transition minerals such as lithium, cobalt and nickel are now classified as "Critical and Strategic Minerals". Notably, lithium had earlier been classified as an atomic mineral, with minerals concessions in this respect being restricted to the public sector. Pursuant to this amendment, the central government alone is empowered to conduct auctions to grant mineral concessions for such minerals to any person who is otherwise eligible to receive a mineral concession under the terms of the MMDR Act. Upon successful completion of the auction, the central government intimates the details of the winning bidder to the state government, which then grants a mineral concession to such bidder. All royalties in respect of minerals won under the concession accrue to the state government.

Notably, the amendment has also introduced the concept of an "exploration licence", which is to be granted by state governments in respect of certain identified minerals (which include lithium, cobalt and nickel). These licences are for the purpose of undertaking reconnaissance or prospecting operations, or both. The exploration licence is granted for a period of five years, with an option to extend by a period of two years. To the extent that a mining lease is granted in respect of the area so explored, the licensee is entitled to a prescribed share of the auction-discovered amounts payable by the mining lessee to the state government. The auction for grant of the mining lease is required to be completed within one year of the exploration licensee having submitted their geological report in the manner prescribed. If a winning bidder is not selected within such period, the state government shall pay the exploration licensee a prescribed amount.

In addition, in a bid to encourage private participation in exploration activities, particularly for critical minerals, the government of India has launched schemes for the partial reimbursement of exploration expenses, whereby up to 50% of the exploration expenditure incurred by the licence holder is reimbursed.

These amendments and initiatives are aimed at increasing the exploration and mining of critical minerals that are vital to ushering in the green transition and increased sustainability (including helping India achieve net-zero emissions by 2070), and essential for economic development and national security (the unavailability of which minerals may lead to supply chain vulnerabilities and even disruption of supplies). The proposed

reforms are expected to facilitate, encourage and incentivise private sector participation in all spheres of mineral exploration for these critical minerals.

IREL (India) Limited (formerly Indian Rare Earths Limited) is a government of India undertaking under the administrative control of the Department of Atomic Energy, and is engaged in the mining and separation of atomic minerals, including extracting rare earth minerals. The procurement and refinement of rare earth minerals are likely to get a fillip, given the US government's recent announcement to delist certain Indian entities from the sanction list, with IREL (India) Limited possibly being one such entity.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Under the MMDR Act, a mining lessee is liable to make payment of the following.

- A royalty in respect of any mineral removed or consumed by them or by their agent, manager, employee, contractor or sub-lessee, the rate of which is set out in the second schedule to the MMDR Act, and varies from mineral to mineral. The royalty is payable either as a flat rate per tonne or on an ad valorem basis, having regard to a sale price published by the Indian Bureau of Mines.
- Dead rent for all the areas included in the instrument of lease, at rates set out in the third schedule to the MMDR Act. Lessees that are also liable to pay royalties are liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.
- A contribution to the National Mineral Exploration Trust constituted by the central government with the objective of using its funds for regional and detailed exploration. The rate of such contribution is 2% of the royalty paid.
- A contribution to the District Mineral Foundation in the manner set out in **2.3 Impact of Community Relations on Mining Projects**.

Other taxes that are applicable without being specific to the mining industry include Income Tax, indirect taxes (customs duties, Goods and Services Tax, etc) and stamp duties.

The current dispensation does not distinguish between national and foreign investors when it comes to the above levies. In any case, as noted in **1.4 Role of the State in Mining Law and Regulations**, mineral concessions can only be granted in favour of Indian entities (although such entities may have foreign investment or be foreign-owned or controlled).

4.2 Tax Incentives for Mining Investors and Projects

The Income Tax Act, 1961 allows any entity engaged in any operations relating to prospecting for, or extraction or production of, any mineral to claim a deduction of one tenth of the expenditure on any prospecting operations or on the development of a mine. There are, however, no tax stabilisation agreements in India.

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

The transfer or sale of a mineral concession attracts capital gains tax, as mineral rights are considered a capital asset.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Foreign Direct Investment (FDI)

The central government has permitted FDI up to 100% under the "automatic route" (ie, without requiring prior government approval) with regard to the mining and exploration of metal and non-metal ores, including diamonds, gold, silver and precious ores.

Ease of Doing Business

The Department for Promotion of Industry and Internal Trade has spearheaded reform aimed at improving India's business regulatory environment, in co-ordination with various central ministries/departments, states and union territories. The reform initiatives are focused on streamlining existing regulations and processes, and eliminating unnecessary requirements and procedures. They cover areas such as reducing the compliance burden to improve the overall business regulatory environment in the country.

Production-Linked Incentive Scheme

The central government has announced a production-linked incentive scheme for specialty steel. The scheme envisages a financial outlay of INR6,322 crore. The objective of the scheme is to promote the manufacturing of such steel grades within the country by attracting significant investment and helping the Indian steel industry to mature in terms of technology as well as moving up the value chain. As of December 2023, companies have already invested around INR12,900 crore against an investment commitment of INR21,000 crore. The Ministry of Steel envisaged an investment of INR10,000 crore in FY 2024–25.

Memoranda of understanding have been executed to attract an investment of INR29,500 crore, create an additional production capacity of 25 million tonnes, and generate approximately 17,000 new jobs by FY 2027–28.

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

As noted in **5.1 Attracting Investment for Mining**, 100% FDI is allowed in India under the automatic route in the area of mining and the exploration of metal and non-metal ores, including diamonds, gold, silver and precious ores (subject to the provisions of the MMDR Act).

However, FDI in the mining of titanium-bearing ores (an atomic mineral) is subject to government approval, and no FDI is permitted in certain prescribed atomic minerals.

5.3 International Treaties Related to Exploration and Mining

The central government has been working to strengthen its co-operation in the area of geology and mineral resources with mineral-rich countries such as Australia and Russia, and with African and Latin American countries. To this end, numerous memoranda of understanding have been signed or are proposed to be signed with mineral-rich countries, including, more recently, with Argentina and Cote D'Ivoire in the field of geology and mineral resources.

Commencing in the 1990s, India has been party to a number of bilateral investment treaties aimed at the reciprocal promotion and protection of investments. However, these treaties have been terminated in recent years, and India is currently in the process of negotiating fresh treaties with various countries.

5.4 Sources of Finance for Exploration, Development and Mining

Mining activities undertaken by private companies are ordinarily funded through a mix of equity and debt (domestic or foreign) from banks and non-banking financial companies. Project finance for mining is available based on the strength of the projected cash flows from the mining activity.

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

Mining companies in India may opt to finance exploration, development and mining by way of domestic or foreign equity investments, by availing debt, by the issuance of debt instruments (such as debentures) and by listing their securities on domestic and foreign stock markets.

5.6 Security over Mining Tenements and Related Assets

Rule 25 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 provides that the holder of a mineral concession may create an encumbrance over the concession. If the security interest over the encumbrance is enforced, the mineral concession may be transferred only to such persons who meet all eligibility conditions required to be met by the transferor for the grant of the concession. An application for the transfer of the concession may be made by the creditors enforcing the security interest.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Considering the abundance of minerals in India, the mining sector has huge economic potential and could play a crucial role in terms of its own economic output and also in responding to the demands of other allied/dependent industries. In addition, the sector has the capacity to create millions of jobs directly and indirectly, which will be vital given the growing Indian population.

The central government envisions doubling the production of important minerals in coming years, with a view to reducing import dependency. It intends to do so by allocating and regulating minerals in a transparent and sustainable manner, promoting the exploration and mining of deep-seated and critical minerals, and by attracting foreign investment to meet growing needs. To this end, recent years have witnessed a flurry of amendments to the legal framework for mining, indicating the authorities' intent to rapidly and proactively address issues in the sector and facilitate smooth and timely project development. A similar level of alacrity is expected to persist in the coming years.

The mining sector has also been gradually adopting advanced technologies to improve operational efficiency and safety, while also practising sustainable mining practices such as waste management and investing in eco-friendly technologies. Mining companies are increasingly focusing on corporate social responsibility initiatives, investing in local communities, education, healthcare and sustainable development projects.

As the economy expands and as the demand for mineral resources grows, the challenge of balancing economic growth with environmental sustainability will be ever more pressing. It is imperative that India charts the course of its economic development and mineral exploitation in a manner that is responsive to the dire and pressing demands for climate action, both present and future.

Trends and Developments

Contributed by:
Anuja Tiwari, Mallika Anand, Aditya Pandey and Aman Raj
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AZB & Partners is one of India's premier law firms. Founded in 2004, it has a pan-India presence, with 650+ lawyers focusing on delivering practical and comprehensive advice to clients. The firm's core strength lies in its members' profound understanding of the legal, regulatory and commercial landscapes. Collaboration is a cornerstone of its approach, leveraging individual and collective strengths for shared success. AZB's purpose is to excel as a cohesive team of lawyers, offering innovative solutions, prompt execution and seasoned judgement while remaining steadfastly committed to advancing clients' interests. AZB routinely advises on a range of matters, including contractual arrangements for mining operations, M&A in the mining industry, fundraising by mining entities, and regulatory matters in the mining sectors. The firm's expertise also extends to other specialised practice areas, such as banking and finance, dispute resolution and competition law.

Authors

Anuja Tiwari is a senior partner at AZB & Partners and is part of the firm's energy, infrastructure and sustainability practice in the Delhi office. She has more than 16 years' experience in the energy and infrastructure sector, and regularly advises clients on all aspects of project development and operation, M&A, entry-level strategies and transaction structuring. She assists clients to adapt their businesses to regulatory and policy changes. Anuja specialises in advising clients in the infrastructure sectors, including mining, oil and gas, battery storage, e-mobility, aviation, airports, roads and ports, and conventional and renewable energy.

Mallika Anand is a partner at AZB & Partners and is part of the firm's energy, infrastructure and sustainability practice in the Delhi office. She has more than 13 years of experience, and her expertise includes advising on all aspects of project development and operation, transaction structuring as part of M&A transactions, and assisting clients to adapt their businesses to regulatory and policy changes. Mallika specialises in advising clients in the infrastructure sectors, including mining, oil and gas, battery storage, e-mobility, aviation, airports, roads and ports, and conventional and renewable energy.

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Aditya Pandey is a senior associate at AZB & Partners and is part of the firm's energy, infrastructure and sustainability practice in the Delhi office. He has more than eight years' experience, and his expertise includes advising on all aspects of project financing, development and operation, including advising banks and financial institutions on structuring lending transactions and regulatory frameworks for project finance, and on drafting and negotiating financing documents. Aditya specialises in advising clients in the infrastructure sectors, including mining, oil and gas, battery storage, e-mobility, aviation, airports, roads and ports, and conventional and renewable energy.

Aman Raj is a senior associate at AZB & Partners and is part of the firm's energy, infrastructure and sustainability practice in the Delhi office. He has more than five years of experience, and his expertise includes advising on all aspects of project development and operation, transaction structuring as part of M&A transactions, and assisting clients to adapt their businesses to regulatory and policy changes. Aman has extensive experience in advising clients in the infrastructure sectors, including mining, oil and gas, battery storage, e-mobility, airports, roads and ports, and conventional and renewable energy.

AZB & Partners

AZB House,
Plot No A-7 and A-8
Sector 4, Noida
Uttar Pradesh 201301
India

Tel: +91 120 417 9999
Fax: +91 120 417 9900
Email: delhi@azbpartners.com
Web: www.azbpartners.com

AZB & PARTNERS
ADVOCATES & SOLICITORS

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Overview of India's Mining Industry

India has one of the most diverse landscapes and topography, and has mineral resources in abundance. The Indian mining sector contributes about 2.5% to the nation's GDP and creates millions of direct and indirect jobs. It is an essential sector for reducing India's fiscal deficit, and is critical for the socio-economic growth of the country. The Indian mining industry comprises mostly small-scaled operations, with a total of 1,426 operational mines. Notably, the private sector plays a significant role in the industry, contributing 60% of the industry's overall revenue.

Status of minerals

India has a diverse array of approximately 95 mineral deposits, and the country ranks amongst the top ten global producers of bauxite, iron ore, manganese ore, aluminium and zinc. Other than conventional minerals, India is making strides in the mining of critical and strategic minerals like lithium, cobalt and rare earth elements, which are pivotal for global energy transitions. In 2023, the Indian government announced lithium reserves of 5.9 million metric tons in Jammu and Kashmir, a component crucial to achieve net-zero goals.

Past challenges

Despite abundant resources, India has failed to scale its mining industry to its maximum potential, and still relies on imports of minerals such as manganese, copper ore and phosphorite. In 2023, India imported 90.31 metric tons of coal from Indonesia, primarily to meet the electricity demand of the country. The industry is also often criticised for its adverse environmental impact and poor safety for workers. The lack of growth in the Indian mining industry is attributable to a variety of factors, as follows.

Regulatory framework

The process for auctioning new mines and renewing existing mining leases is lengthy, due to bureaucratic inefficiencies and delays in obtaining environmental clearances, which is a pre-condition for the implementation of a mining project. Mining and ore beneficiation also requires prior approvals from the pollution control authorities of the respective states.

Entities in the mining sector are currently required to obtain multiple permits, such as licences and environmental clearances from different government bodies for each activity throughout the value chain. The government has recently made some major reforms in this aspect, the impact of which is still to be assessed. One key amendment is the removal of dual compliance of obtaining environment clearance and consent to establish, which should reduce the compliance burden on the entity undertaking mining activity.

Environmental and social concerns

The mining sector across the globe is perceived to be a major contributor to environmental degradation. In India, the social and environmental impacts of mining are often ignored as mining operations are undertaken by predominantly small-sized entities.

Critical minerals such as coal, mica and bauxite are found in traditional dwellings of tribal communities, which has resulted in the displacement of and disruption to these communities. The remoteness and inaccessibility of tribal areas poses a challenge to the enforcement of environmental laws and reduces the deterrence on mining companies for non-compliance.

In previous audits by government authorities, the pollutants emitted by most mines were found to be beyond the prescribed limits. Coal mining in

the state of Jharkhand has led to deforestation, soil erosion and water pollution. Since climate mitigation measures and Sustainability Development Goals are key factors for international private and public investors, these investors tend to invest in sectors that fulfil any of the ESG criteria. The mining industry in India requires introspection to align business practices with ESG requirements.

Illegal mining

According to the Ministry of Mines, illegal mining of various major and minor minerals is carried out extensively in India due to high demand for these minerals. Illegal mining, particularly in the states of Karnataka and Goa, has depleted resources and caused revenue losses to the government. Over-extraction of resources by licensed agencies is also a key contributor to illegal mining.

To combat these issues, the government has been trying to implement novel methods, such as the deployment of satellites for surveillance. The Indian Bureau of Mines has also formulated standard operating procedures for conducting drone surveys of mines. Further measures include monthly and annual reporting requirements in relation to the production, utilisation and trade of minerals.

The government has also set up state-level task forces to monitor mining activity and conduct effective enforcement of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). The consequences for illegal mining under the MMDR Act have also been bolstered, to reduce non-compliance. Despite these government initiatives, illegal mining continues to subsist and needs to be addressed through stricter enforcement of the regulatory framework.

Modernisation

In comparison to international standards, the technology being utilised in the Indian mining industry is dated. The government does not facilitate the necessary financial support required to modernise mining operations in India. Outdated technology also poses a threat to the health and safety of workers in this industry. In offshore mining, the government has emphasised the promotion of technology-driven solutions for deep-sea mining, with the National Institute of Ocean Technology and other global participants being encouraged to develop environmentally sustainable extraction methods.

Exploration

Prior to undertaking production activity, an exploration exercise must be undertaken, in order to assess the viability of a mineral block. However, there is a lack of interest among private participants in undertaking exploration and production, partly due to the lack of framework mandating detailed and general exploration.

Separately, in cases where exploration exercises have been undertaken, India has seen low interest in recent auctions as only a reconnaissance survey (G4) or preliminary exploration (G3) survey is undertaken in most blocks prior to auction, which does not provide details of the mineral potential of the blocks explored. To combat this issue, the government has mandated the implementation of at least a general exploration (G2) survey prior to the auctioning of the production lease of a mining block through a recent amendment.

Infrastructure

The deficiency in the infrastructure ecosystem around mining areas has also resulted in slower growth. Roads, railways and ports need to

be upgraded or developed to complement the growth of the mining industry.

Government policies

The government of India has made key reforms in the regulatory landscape in this decade, realising the issues in this sector, and its untapped potential. Since 2023, the government has accelerated the process of making reformatory changes to simplify the process of the allocation of mines and to make the exploration and production of minerals financially attractive and bankable for private players.

Mines and Minerals (Development and Regulation) Act, 1957

In 2023, the MMDR Act was amended to introduce an exploration licence for deep-seated and critical minerals. The exploration licence would facilitate, encourage and incentivise private sector participation in all spheres of mineral exploration, bringing in advanced technology and expertise. The explored blocks will thereafter be auctioned for a mining lease, and the exploration agency will be entitled to a share in the premium payable by the mining lease holder.

This has been introduced with the aim of enabling an ecosystem where the exploration agencies bring expertise in data acquisition and leverage the risk-taking ability for the discovery of deposits. Similar to the practice followed in the oil and gas sector, revenue sharing between the mining lease holder and the government is undertaken if minerals are discovered, which ensures that exploration agencies as well as the government derive benefits from the exploration and mining activity.

The central government has been empowered to exclusively auction mining leases and composite leases for 24 critical minerals, as these minerals are indispensable for the growth of the economy. The auction rules have also been amended to authorise the central government to conduct auctions for the grant of mining leases or composite licences in respect of these critical and strategic minerals. These regulatory changes have led to increased participation from private players in the sector, and around 281 blocks have been successfully auctioned since 2021.

Mineral Conservation and Development (Amendment) Rules, 2024

These rules aim to implement provisions for exploration licences, to rationalise penalties for small miners with lease areas of up to 25 hectares and to relax the requirement to submit mining plans for certain categories. The rules seek to promote sustainable mining practices and enhance compliance standards within the sector.

Atomic Minerals Concession (Amendment) Rules, 2024

These rules relate to atomic minerals and focus on the procedures for granting concessions, ensuring compliance with safety standards and promoting the sustainable development of atomic mineral resources. The rules aim to streamline the concession process and enhance regulatory oversight in the extraction of atomic minerals.

There is a greater emphasis on sustainable practices, as afforestation, water conservation and land reclamation are pre-conditions for lease renewals and operations. Special incentives are introduced for the exploration and mining of critical minerals (eg, lithium and rare earths), which are vital for energy transition and the EV industry.

Offshore mining – major reforms

While the MMDR Act regulates exploration and mining activity on Indian land, the Offshore Areas

Mineral (Development and Regulation) Act, 2002 (OAMDR Act) was introduced to regulate the development of mineral resources in Indian territorial waters and other maritime zones of India. India's exclusive economic zone spans over 2 million square kilometres and is estimated to hold significant mineral reserves.

Although the OAMDR Act was introduced in 2003, nothing noteworthy took place in the offshore mining sector until 2023. Since then, the government has been proactive in streamlining the regulatory framework to, inter alia, allow private participation and extraction of minerals such as construction-grade silica sand, lime mud, precious metals and rare earth elements that lie thousands of metres below the seabed. These minerals play a crucial role in the renewable energy, EV and battery technology sectors. The OAMDR Act was amended to introduce transparent and non-discretionary auction processes for allocating operating rights in offshore areas and to enable private participation in offshore mining operations.

Existence of Mineral Resources Rules, 2024

The Ministry of Mines has recently introduced certain rules to expedite offshore mining in India. The Existence of Mineral Resources Rules lay down the procedure for identifying areas for auctions of production leases and composite leases. The process includes a survey of such areas and the preparation of a report in the prescribed form before notifying an area for auction. The rules define stages of exploration, feasibility studies, economic viability assessments and classification of mineral resources and reserves.

A minimum of general exploration (G2) is required for an area to be considered for auction for a production lease, while a reconnaissance survey (G4) is necessary for an area to be considered for auction for a composite licence. Comprehensive environment assessments have been made mandatory for all offshore mining projects.

Offshore Areas Mineral (Auction) Rules, 2024

These rules were introduced to provide the procedure for conducting competitive bidding through electronic auctions for the grant of production leases and composite licences. Auction processes are to be initiated by the administrative authority for specific mining sites or areas. The grant of any of the following operating rights in an offshore area is subject to satisfaction of the conditions contained in the Existence of Mineral Resources Rules:

- the right to conduct preliminary reconnaissance operations for minerals;
- the right to explore mineral deposits; or
- the right to extract mineral deposits for processing or dispatch.

The objective is to promote fair competition, attract private sector participation and create a level playing field for interested entities.

Offshore Areas Mineral Trust Rules, 2024

The Offshore Areas Mineral Trust has been established under these rules to regulate the management and utilisation of funds. As part of its objectives, the trust is required to utilise funds towards sustainable development of affected areas and the welfare of local communities.

The Ministry of Mines has also prepared draft Offshore Areas Mineral Conservation and Development Rules to promote sustainable mining practices. The rules set guidelines for the conservation of marine ecosystems, the rehabilitation of mined areas and the development of local communities. They require comprehensive environmental impact assessments and adherence

to international best practices in order to minimise ecological disruption. Once these rules are notified, they should result in pivotal changes in the offshore mining industry and assist in achieving sustainability goals.

Reforms and the way forward

In the current era, sustainability and mining are juxtaposed, as industries strive to balance resource extraction with ecological preservation. There is also a greater emphasis on sustainability, as tailor-made policies for strategic minerals have been introduced, to align with India's energy security and EV targets. Special incentives for the exploration and mining of critical minerals (eg, lithium and rare earths) are vital for energy transition and EV industries. The amendments require stronger environmental compliance and revenue-sharing mechanisms to ensure balanced growth with minimal ecological impact.

In January 2024, India signed an agreement with Argentina's state-owned enterprise, Catamarca Minera y Energética Sociedad del Estado, to explore and develop five lithium blocks in Argentina. This marks India's first overseas lithium mining project. In October 2024, India and the United States of America signed a memorandum of understanding to strengthen co-operation on critical mineral supply chains, including lithium and cobalt. These strategic partnerships aim to enhance international collaboration in securing the minerals that are essential for India's clean energy initiatives.

In addition to reforms supporting new technology, the Indian government has also made reforms to improve the framework of minerals associated with conventional energy. A star rating policy has been issued for rating each coal mine based on socio-economic factors. The government has developed a portal where the star rating of each coal mine is published. More than 90% of mines were rated by the Ministry of Mines in 2024. The government has also developed the PARIVESH portal as a single window online portal for obtaining environmental clearances, which will reduce the bureaucratic ineffectiveness associated with the mining sector.

The central government recently issued an order directing state governments to:

- expedite mineral block auctions with transparency;
- adopt sustainable practices; and
- implement technologies like artificial intelligence for exploration and monitoring.

The order also requires the optimisation of low-grade mineral use, value addition within India and real-time monitoring to curb illegal mining. State governments are required to submit quarterly progress reports on auctions, sustainability practices and regulatory compliances. This directive aligns India's mining sector with global environmental standards while enhancing efficiency and competitiveness in critical mineral production.

Private initiatives towards sustainability

Mining companies are also taking voluntary measures towards sustainability. In the past, Tata Steel's iron ore mine at Noamundi installed a 3 MW solar power plant to meet its energy needs. Hindustan Zinc, the largest zinc producer in the country, launched EcoZen, Asia's first green zinc brand to meet the growing demand for sustainable and eco-friendly materials, particularly in the automotive sector. Zinc is manufactured using renewable energy, which has 75% lower carbon footprint than the global average. Vedanta Aluminium, India's largest producer of aluminium,

announced the recycling of over 15 billion litres of water across its operations during 2024.

NDMC Limited, the largest iron ore producer in India, is running multiple schools and hospitals near its mines, across the country. Mining companies like Adani Enterprises are integrating renewable energy into operations, with over 30% of power sourced from solar and wind energy.

Conclusion

India's mining industry is at a transformative juncture. Regulatory reforms, technological advancements, ESG integration and the commencement of offshore mining are driving the sector towards sustainable and efficient growth. By utilising its vast mineral wealth responsibly, India can secure a pivotal role in the global supply chain for critical minerals and green technologies.

As the sector evolves, collaboration between the government, private enterprises and local communities will be essential. With continued policy support and investment in innovation, India's mining industry is ready not only to meet domestic demands but also to contribute significantly to global energy transitions and industrial development.

KAZAKHSTAN

Law and Practice

Contributed by:
Timur Odilov, Mikhail Abdulov, Olzhas Abubakirov and Dauren Sadykov
Haller Lomax LLP

Contents

Haller Lomax LLP was founded in October 2017 and operates from offices in Astana, Almaty and Singapore. The firm specialises in construction, environmental protection, public-private partnerships (PPP), energy and natural resources, corporate law and M&A, banking and finance, as well as legislative drafting and reform. Haller Lomax is a trusted adviser to leading Kazakhstani and international mining and metallurgy groups, state-owned enterprises, regulatory authorities, chemical industry leaders, oil and gas companies, investment firms and banks. What sets Haller Lomax apart is its deep understanding of clients' operations, practical expertise in regulatory enforcement, and contributions to the evolution of legal frameworks. The firm's clientele includes, among others, international development institutions, transnational corporations, oil and gas companies, as well as major mining and junior exploration companies.

Authors

Timur Odilov is a co-founding partner of Haller Lomax, specialising in the energy and natural resources sector, law-making, regulation and M&A practices. For over 16 years, Timur has been advising major private companies on various transactions and regulatory issues and the Kazakhstan government authorities and officials on reforms in the field of subsoil use (the SSU Code), the environment (the Environmental Code) and other sectors.

Mikhail Abdulov is a senior associate at Haller Lomax, specialising in energy and natural resources, environmental protection, corporate and M&A, commercial agreements, and procurement. For over ten years, Mikhail has been advising major international and local clients on issues related to subsoil use (including transactions for the acquisition of mining and oil and gas assets in Kazakhstan), commercial agreements, and regulated procurements. Mikhail's recent experience includes advising on joint ventures, mining rights and licensing, environmental issues, infrastructure projects and investments, among other things.

Olzhas Abubakirov is an associate at Haller Lomax, specialising in energy and natural resources, environmental protection, commercial agreements, antitrust and corporate and M&A practices. Olzhas has experience advising clients in the subsoil use, environmental and technology industries. His recent experience includes representation of prominent petrochemicals companies in cross-border merger and acquisition deals, as well as representation of companies in administrative court on environmental violation disputes.

Dauren Sadykov is an associate at Haller Lomax, practising in the fields of energy and natural resources, environmental protection, and data protection. His previous experience is associated with one of the Big Four companies and a subordinate organisation of the Ministry of Environment and Natural Resources. Dauren has experience of advising large local and international companies on various complexities and, in particular, conducting legal due diligence, handling transactions for the acquisition of companies with state share interests, and providing legal support in commercial agreements.

Haller Lomax LLP

Office 163
6/1 Kabanbai Batyr Avenue
Kaskad Business Center
Floor 16
Astana City
Kazakhstan

Tel: +7 777 791 72 72
Email: info@hallerlomax.com
Web: www.hallerlomax.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Mining holds an important role in Republic of Kazakhstan's (RoK) industrial framework, making a substantial contribution of 13.2% to the country's GDP during the period of January to September 2024.

The country has approximately 8,000 different deposits of solid minerals, aggregates and hydrocarbons, according to the state's records. Kazakhstan is a prominent producer of diverse minerals and currently holds the top position globally in the mining of uranium, chromite, coal, iron, steel, copper, manganese, bauxite, tungsten, silver, lead, titan, gold and zinc.

The largest mining companies operating in Kazakhstan include Eurasian Resources Group, Kazakhmys, Kazzinc, Kaz Minerals, Kazatomprom, QARMET (previously known as ArcelorMittal), Solidcore Resources (previously known as Polymetal), RG Gold, Rio Tinto, Central Asia Metals, and Fortescue Metals Group, etc.

The Code on Subsoil and Subsoil Use (the "SSU Code"), which was adopted on 27 December 2017, and became effective on 29 June 2018, distinctly segregates the regulatory provisions for solid minerals from those applicable to hydrocarbons and uranium.

The SSU Code regulates matters such as access to geological data in the state's possession, granting mineral titles in the form of licences, requirements to licence holders, licence conditions, project documents, exploration and mining operations, transfer of mineral titles and interests in licence holders, treatment and disposal of mining waste (called as technical mineral formations), mine closure and reclamation, reporting, etc.

Based on the regulatory approach of the Western Australian Mining Act and Canadian mining laws, the SSU Code for the first time introduced the "first come – first served" licence allocation mechanism in Kazakhstan.

Moreover, the SSU Code introduced recognition of resource and reserves reports prepared under the national instrument KAZRC (based on CRIRSCO template) by the state.

However, a temporary transition period initially provided until January 2024 to allow reporting on resources and reserves under soviet-era standards of the State Commission for Reserves (GKZ standards) under the Geology Committee (GeoCom) of the Ministry of Industry and Construction (MIC), has been extended until January 2026 and there is a mandate for the GeoCom to consider and reject KAZRC reports on resources and reserves before registering them at state mineral records.

1.2 Legal System and Sources of Mining Law

Kazakhstan has a civil-based legal system. However, the Astana International Financial Centre (AIFC) operates under a common law framework, in areas such as corporate law, commercial law, dispute resolution, labour regulations, personal data protection, currency regulation, and other related domains.

The main legislative act governing the mining industry is the SSU Code, which applies to mineral titles granted both under licences issued following enactment of the SSU Code as well as the subsoil use contracts for exploration, production and combined exploration and produc-

tion of solid minerals executed prior to the SSU Code.

There are also several government resolutions and an extensive list of subordinated by-laws of the mining authority (currently the MIC) which regulate specific issues and procedures in the exploration and mining sectors.

Other main legislative acts applicable to the exploration and mining activity include:

- the Environmental Code of 2 January 2021 (the "Environmental Code");
- the Tax Code of 25 December 2017 (the "Tax Code");
- the Land Code of 20 June 2003;
- the Business Code of 29 October 2015 (the "Business Code");
- the Law on Precious Metals and Precious Stones of 14 January 2016; and
- the Law on Civil Protection (safety law) of 11 April 2014.

1.3 Ownership of Mineral Resources

The RoK Constitution mandates (as amended on 8 June 2022), that the land and its subsoil, water, flora and fauna, and other natural resources are owned by the people of Kazakhstan. However, the property right on behalf of the people of Kazakhstan is exercised by the state.

The state, represented by the government, grants mineral titles on the grounds, conditions and to the extent provided by the SSU Code.

Minerals mined and extracted by subsoil users become their private property.

However, the government and/or the parliament may introduce any restrictions they consider appropriate. For instance, as noted in last year's Practice Guide to the Parliament, amendments were made to the Industrial Policy Law of 27 December 2021 (the "Industrial Law") on 9 October 2024, requiring producers of domestic raw materials to supply them to domestic manufacturers at special competitive prices, should such raw materials be included in the list of domestic raw materials ("Supply List").

The amendments imply the export ban of listed raw materials until satisfaction of domestic demand. It is provided that the listed raw materials may be exported under a special licence issued by the MIC ("Export License") subject to conclusion and compliance with supply agreement with local manufacturing enterprises.

1.4 Role of the State in Mining Law and Regulations

Depending on the type of mineral (eg, solid minerals, aggregates, hydrocarbons or uranium) and the type of operation, the state is represented by the following authorities.

- MIC, which is responsible for state policy in the mining sector other than mining uranium, granting and revoking exploration and mining licences, and overseeing compliance by the licence holder with the conditions of the licence and requirements of the SSU Code.
- Ministry of Energy, which is responsible for the state policy in the uranium and hydrocarbon industries, concluding and terminating exploration and/or production contracts for hydrocarbons and contracts on mining uranium, and overseeing subsoil users' compliance with the conditions of their contracts and requirements of the SSU Code.
- GeoCom, which is responsible for the state policy in geology; granting licences for geological survey and licences for the use of subsoil space, overseeing reporting on mining

and geological data, and is generally responsible for the aggregation and provision of access to geological data.
- Local executive bodies (*akimats*), which are responsible for granting rights to land, granting and revoking licences for artisanal mining, mining aggregates, and overseeing compliance with the licence conditions and requirements of the SSU Code by holders of such licences.

Please also refer to **5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors** regarding a mining right to uranium deposits.

1.5 Nature of Mineral Rights

As noted in **1.3 Ownership of Mineral Resources**, subsoil use right has a constitutional basis and these rights are issued by state authorities. Subsoil use (minerals) rights hold the status of property.

1.6 Granting of Mineral Rights

The granting authorities are described in **1.4 Role of the State in Mining Law and Regulations**.

There are no overlaps of jurisdictions in Kazakhstan. Exploration and mining rights are granted at the central ministerial level and mining rights for aggregates and artisanal mining are granted at local jurisdiction.

Before 29 June 2018, the date of enactment of the SSU Code, mineral rights were granted through contracts.

From 29 June 2018, mineral rights are granted by acts in the form of various types of licences: exploration licence, mining licence, aggregates mining licence, artisanal mining licences and licence for use of subsoil space (for disposal of mining wastes).

1.7 Mining: Security of Tenure

Mineral rights are protected by the general provisions of the Civil Code, specific provisions of the SSU Code, Administrative Procedural and Process-Related Code of 29 June 2020 (APPC) and additionally by bilateral investment treaties (BITs) ratified by Kazakhstan and applicable to foreign investments.

Regarding BITs, please refer to **5.3 International Treaties Related to Exploration and Mining**.

Exploration Licence

An exploration licence has the following features.

- A reclamation security instrument to be furnished before the licence grant.
- Licence area is exclusive and formed by blocks (a part of a block can be included).
- No limit on the number of licences per person/company. Transferable, subject to national security review.
- Entitles holder to explore any minerals.
- Granted for six years plus potential extension for five years subject to fulfilment of all licence obligations and mandatory surrender of blocks (if applicable).
- If it includes ten or more blocks, 40% of blocks must be surrendered at the end of the initial licence term to allow further extension of the term.
- Exclusive right to obtain a mining licence on priority basis within the term of the licence (subject to the discovery of a deposit of solid minerals, with confirmed resources and reserves substantiated by a report assessing the resources and reserves of such solid minerals).

Mining Licence

A mining licence has the following features.

- Granted for up to 25 years plus possible extensions for a period not exceeding the original term of the licence (unlimited times).
- Licence area is exclusive and must be in the form of a rectangle or quadrangle where at least two opposite sides are parallel or, if impossible, a polygon with the least possible number of angles. No minimum or maximum size.
- A security instrument for mine closure and reclamation to be furnished before commencing mining activities.
- Entitles holder to mine any minerals, except for uranium deposits.
- No limit on the number of licences per person/company. Transferable, subject to national security review.
- Retention status for up to five years with potential extension for a further five years.

After the issuance of a subsoil use licence, if the RoK legislation, which governs relations in the field of subsoil use, introduces additional conditions for such licences, these conditions shall not be applicable to licences issued prior to the legislative amendment (except for changes of the legislation concerning national security, defence capability, environmental safety, healthcare, taxation and customs regulation).

The SSU Code delineates an exhaustive set of conditions under which a licence can be invalidated, specifically:

- providing the MIC with knowingly unreliable information that influenced its decision to issue a licence;
- violations of the licence issuance procedure that led to an unjustified decision, as a result of a malicious agreement between an official of the MIC and the applicant;
- issuing a licence to a person recognised as legally incompetent, and who was such on the day of issue; and
- if the issuance of a licence is not provided for or prohibited by the SSU Code.

The authority to invalidate a licence rests with the court.

The statute of limitations for disputes related to the invalidity of a licence is three months from the day when the plaintiff becomes aware, or ought to have become aware, of the circumstances that constitute the basis for declaring the licence invalid.

Also, note that APPC specifies the principle of "Protection of the Right to Trust", which serves as a "guarantee" for the administrative authority that the adopted administrative act (such as a licence) is lawful and consistent. An administrative act (licence) is considered lawful and justified until the administrative authority, public official, or court establishes otherwise in accordance with the RoK legislation.

An error committed by the administrative authority (such as the MIC) cannot be turned against the party (subsoil user).

At that, a subsoil user cannot invoke such a principle except in cases specified in Article 84.6 of the APPC (eg, when there is established deliberate falseness of a document or information provided by a subsoil user).

The Civil Code specifies that an individual/legal entity whose rights are violated may demand full compensation for the losses incurred, including actual damages and lost profits.

Losses incurred by an individual or legal entity as a result of the issuance of an act by a state authority or another government body that does not comply with the legislation, as well as the actions (or inaction) of the officials of these bodies, shall be compensated by the Republic of Kazakhstan or, respectively, by the administrative-territorial unit.

Subsoil Use Contracts for Solid Minerals (Except for Uranium) Concluded Before 29 June 2018

Exploration contract

A standard contract for exploration of solid minerals could be concluded for a period of six years.

In the event of a deposit discovery, the subsoil user has the right to extend the exploration period for the duration necessary for appraisal.

The subsoil user who discovers a deposit of solid minerals, as outlined in the subsoil use contract, has the exclusive right to obtain a mining licence on a priority basis.

Mining contract

A standard contract for exploration mining of solid minerals could be concluded for a period of no more than 25 years, and for deposits with large and unique mineral reserves – no more than 45 years.

A mining contract can be extended for no more than 25 years (unlimited times).

In case of extension of a mining contract or combined exploration and mining contract (mining period) of solid minerals on a subsoil site containing a large deposit for a period exceeding ten years, the MIC may include in the terms of such extension one of the following obligations of the subsoil user:

- creation by a subsoil user or its subsidiary or a joint venture of processing facilities;
- modernisation or reconstruction of the subsoil user's existing production facilities;
- modernisation or reconstruction of existing processing facilities;
- supply of mined minerals to processing enterprises (production facilities) located in the territory of the Republic of Kazakhstan; and
- procurement by a subsoil user, its subsidiary or a joint venture of an investment project in accordance with the Business Code or a project aimed at the social and economic development of the region.

If the subsoil user declines to extend the contract under the above terms, the corresponding deposit will be put up for auction upon the contract's expiration.

The contract area is exclusive both under the exploration, mining or combined exploration or mining contract.

Grandfather clause

Subsoil use contracts also include a provision known as the "grandfather clause", commonly expressed as follows:

"The subsoil user is guaranteed protection of their rights in accordance with the legislation of the Republic of Kazakhstan. Changes and additions to the legislation that adversely affect the results of a subsoil user's business activities under contracts do not apply to contracts concluded before these changes and additions were made.

The above-mentioned guarantees do not apply to changes in the legislation of the Republic of Kazakhstan related to national security, defence capability, environmental safety, healthcare, taxation, and customs regulation."

Transition from contractual to licensing regime

Subsoil users under the subsoil use contract are entitled to apply for the transition of their contracts to the relevant subsoil use licence, subject to the decision of the MIC's commission. However, the transitioning rules are not well drafted. Most issues are at the discretion of the MIC's commission, for example, inclusion of the additional obligations, grounds for rejection, etc.

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

2.1 Environmental Protection and Licensing of Mining Projects

The main legal act regulating environmental protection is the Environmental Code. It covers a wide range of environmental issues, including air and water quality, waste management, biodiversity conservation, and environmental impact assessment.

Some of the key distinguishing novelties of the Environmental Code are the best available technologies at environmental management, environmental monitoring and control and "polluter pays" principle. According to interpretation of this principle in Kazakhstan, a polluter is financially responsible for the environmental damage they cause and are required to take measures to mitigate the damage.

Certain activities with potential environmental impacts, such as mining activities, require an environmental permit. The Environmental Code contains the lists of activities and quantitative criteria, according to which a facility is allocated to Category I, II or III (ie, facilities that have either a significant, or moderate, or insignificant negative impact on the environment, respectively). Obtaining an environmental permit is mandatory for construction and/or operating Category I or II facilities. In contrast, Category III facilities can be constructed and operated by submitting a notification to the relevant permitting authority.

Generally, exploration activities under the exploration licences fall under Category IV (objects that have a minimal negative impact on the environment) that do not require obtaining an environmental permit.

There are two types of environmental permits:

- integrated environmental permit; and
- environmental impact permit.

The environmental permits for Category I facilities are issued by the Committee for Environmental Regulation and Control, the subordinate entity of the Ministry of Environment and Natural Resources or its territorial departments (for Category II – by local executive authorities) in electronic form through the e-government web portal.

In order to secure a permit, a legal entity needs to apply to the relevant permitting authority along with supporting documents. These documents should include project documentation for the construction and/or operation of facilities, draft emission limits, a draft waste management programme, a draft programme of industrial environmental control and other documents.

In general, the effectiveness of environmental authorities in Kazakhstan displays a combination of positive and negative aspects. While there has been progress in developing a legal framework and institutions, significant challenges arise from the lack of enforcement capacity and reaching the institutional development ceiling in terms of government management, as well as economic dependence on oil production and mining.

2.2 Impact of Environmentally Protected Areas on Mining

Kazakhstan features environmental preserved zones with a cumulative area of approximately 29.3 million hectares dedicated to safeguarding its natural landscapes. The main protected areas are the following:

- 14 state national natural parks;
- ten state nature (wildlife) reserves;
- seven natural reserves; and
- five state-protected areas.

Furthermore, subsoil use activities are prohibited within the territories of environmental preserved zones, with certain exceptions. Such exceptions include exploration activities at state-protected areas subject to approval of the authorised state body, and mining is allowed subject to approval of the RoK government.

Moreover, Article 25 of the SSU Code lists the areas where exploration and mining operations are prohibited, such as water fund lands, areas of groundwater of potable quality, lands designated for the needs of defence and national security, lands of townsites, roads, railways and airports.

2.3 Impact of Community Relations on Mining Projects

The SSU Code mandates the establishment of conditions that facilitate the active involvement of the concerned public community, local executive bodies, and territorial environmental authorities throughout the entire Environmental Impact Assessment (EIA) process.

Prior to seeking approval from environmental authorities, subsoil users are obligated to conduct public hearings. In preparation for these hearings, they must proactively inform the community where subsoil use activities are slated to take place, providing details such as the date, time and location of the impending hearings. Additionally, they are required to outline the procedure for interested parties to access pertinent materials related to the EIA of the project.

Generally, for exploration activities, an EIA is not required, and accordingly, public hearings are not necessary. However, the subsoil user will need to conduct public hearings in case of transitioning to mining.

The public hearings entail creating a record of the proceedings, encompassing the remarks and objections voiced by the public community throughout the hearing. This record is documented in written form and subsequently made available on the website of the local executive body (*akimat*).

According to the SSU Code, there is no explicit obligation to consider the results of consultations when designing and operating the mine. Instructions for formulating liquidation plans only mandate taking public opinion into account when defining elimination tasks.

At the same time, Kazakhstan legislation does not provide for a concept of social impact assessment.

2.4 Prior and Informed Consultation on Mining Projects

There are no requirements for mandatory consultation, except for public hearings. Please refer to **2.3 Impact of Community Relations on Mining Projects**.

2.5 Impact of Specially Protected Communities on Mining Projects

In Kazakhstan, there are no specially protected communities, such as indigenous people.

2.6 Community Development Agreement for Mining Projects

The SSU Code imposes mandatory obligations for community development agreements in the case of territorial borders of settlements. The execution of an agreement on socio-economic development of the region is required if a requested area of exploration or underground mining wholly or partially belongs to the lands of townsites and adjacent territories within a distance of one thousand meters.

Also, the rental fees paid by a holder of exploration and mining licences are allocated directly to the local budget (city, village, etc) where the licence areas are located.

Moreover, subsoil use contracts concluded before the enactment of the SSU Code usually include commitments for contributing to the socio-economic development of the region. These commitments are expressed as a percentage and usually amount to 1% of annual exploration or mining costs or a fixed cost agreed upon with the competent authority.

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

ESG guidelines in Kazakhstan differ from their representation in other regions. Kazakhstan's legislative framework addresses ESG requirements through separate channels for environmental aspects, social aspects and governmental aspects, thereby lacking a unified structure to consolidate them.

Specifically, the Environmental Code and associated regulations set out requirements concerning environmental protection, including standards for emissions, waste management, water usage, and biodiversity protection. Companies, especially those in sectors with significant environmental footprints, must comply with these regulations.

Labour and employment laws in Kazakhstan address several social issues, such as workers' rights, safety standards, and non-discrimination. Additionally, there are laws and programmes aimed at promoting social welfare, health, and community development.

Governance in the ESG context typically refers to the system of rules, practices and processes by which a company is directed and controlled. Kazakhstan's corporate law outlines basic governance structures for businesses operating in the country. These include rules about shareholder meetings, board compositions, audit requirements, and disclosure norms.

2.8 Illegal Mining

Illegal mining is strictly prohibited in Kazakhstan, and the government takes measures to prevent and address such activities. While not a pervasive issue, the state remains vigilant, employing various strategies to combat illegal mining. For

instance, in 2023, advanced satellite monitoring enabled Kazakhstani authorities to detect 77 new cases of illegal mining across the country.

Engaging in illegal mining incurs severe penalties, including substantial fines and potential criminal liability.

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

Positive outcomes resulting from mining activities in local communities are often linked to the initiation of social initiatives by subsoil users in the cities and villages surrounding mining areas. These initiatives encompass the construction of essential infrastructures, such as roads, parks, and sports complexes, as well as providing financial and technical assistance to local businesses and entrepreneurs, thereby contributing to the well-being of local residents. Additionally, comprehensive environmental management programmes are implemented, featuring reforestation projects and measures to control pollution. For instance, Eurasian Resources Group, Kazzinc and other major mining companies have demonstrated their commitment by investing in the establishment of schools, hospitals, and various other infrastructure projects within communities near their mine sites.

Examples of negative impacts are typically linked to pollution or the damage of natural resources, resulting in environmental degradation and adverse effects on the health and livelihoods of local residents. In addition, unsatisfactory labour practices, such as low wages and lack of safety compliance, contribute to these negative impacts.

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

3.1 Climate Change Effects

General provisions regarding climate change are contained in the Environmental Code. Additionally, in response to the tangible threats of climate change, the President of Kazakhstan has signed the Strategy for Achieving Hydrocarbon Neutrality in the Republic of Kazakhstan by 2060.

Kazakhstan has also ratified the following international treaties in climate change:

- the Paris Climate Agreement;
- the Convention on Long-Range Transboundary Air Pollution;
- the Vienna Convention for the Protection of the Ozone Layer; and
- the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

By 31 December 2030, Kazakhstan aims to reduce its carbon balance by at least 15% from the 1990 level and is committed to achieving hydrocarbon neutrality by 2060.

In addition, in order to reduce greenhouse gas emissions, the Environmental Code establishes carbon quotas for carbon dioxide emissions. In simple terms, hydrocarbon quotas mean the volume of free carbon units distributed by the Ministry of Environment and Natural Resources based on the benchmarking methodology. Installations in the sectors of electricity, oil and gas, mining, metallurgical and chemical industries, as well as manufacturing industries in terms of the production of cement, lime, gypsum and bricks are subject to carbon quotas if they emit more than 20,000 tons of carbon dioxide per year.

There are no specific climate change programmes or requirements for the mining sector.

3.2 Climate Change Legislation and Proposals Related to Mining

Please refer to **3.1 Climate Change Effects**.

3.3 Sustainable Development Initiatives Related to Mining

In 2013, the President of Kazakhstan adopted the concept of the country's transition to the Green Economy ("the Concept") in order to ensure the sustainable development of the country and that it becomes one of the 30 most developed countries in the world by 2050. It assumes that the transition will require annual investments of about 1% of Kazakhstan's GDP (or USD3-4 billion).

The priority tasks of the Concept are:

- improving the efficiency of resource use;
- modernisation of existing infrastructure and construction of new infrastructure;
- improving the well-being of the population and the quality of the environment through cost-effective measures to reduce pressure on the environment; and
- improving national security, including water security.

The threat of water scarcity and the inefficient management of water resources can be major obstacles to sustainable economic growth and social development in Kazakhstan. According to the Concept, the following projects are necessary in order to achieve national security:

- the construction of reservoirs and reservoirs to capture water run-off during floods;
- the repair and reconstruction of main irrigation channels and large irrigation infrastructure;
- the construction of wastewater treatment plants and water desalination units to treat brackish water; and
- the construction and/or modernisation of treatment facilities in the 20 largest cities in Kazakhstan.

Please also refer to **3.1 Climate Change Effects** regarding the Strategy for Achieving Hydrocarbon Neutrality in the Republic of Kazakhstan by 2060.

3.4 Energy-Transition Minerals

Kazakhstan produces approximately 18 of the 34 essential raw materials identified by the EU as crucial for batteries, electric vehicles, solar panels, and other components in the renewable energy sector. These materials encompass bismuth, gallium, rare earth elements, silicon, vanadium, tungsten, lithium, indium, cobalt, etc.

Despite this significant resource, there are currently no specific legislative initiatives related to "energy-transition minerals".

In 2023, the MIC developed a Comprehensive Plan for the Development of the Rare and Rare Earth Metals Industry for 2024–2028.

The comprehensive plan provides for the expansion of the resource base and the introduction of technologies for the complex extraction of rare metals, the modernisation of existing production facilities, the development of standards regulating the industry and the lifting of the secrecy regime for certain metals.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Mining companies operating in Kazakhstan are obligated to adhere to the standard taxes and duties applicable to all legal entities, including:

- corporate income tax is currently set at a rate of 20%. The government is considering raising it to 25% for the financial sector, and gambling industry;
- value-added tax is currently set at a rate of 12%;
- property tax (1,5%); and
- land tax (the rates vary),

as well as specific subsoil use taxes and duties. In this regard, the mining companies shall maintain separate tax accounting for the activity under a subsoil use licence/contract and its non-subsoil use-related activity. Both companies and joint ventures registered in Kazakhstan are regarded as residents for tax purposes.

The specific taxes and other payments of a fiscal nature for mining companies are as follows.

- Signature bonus – a one-off payment made by a subsoil user upon either acquiring a subsoil use right for a particular territory or in case of its enlargement. The signature bonus for an exploration licence equates to 100 MCIs (approximately USD738); for a mining licence it is 200 MCIs (approximately USD1,477).
- Mineral extraction tax (MET) – a volume-based tax applicable to extracted minerals. The taxable base is the value of the whole extracted volume of minerals. The price of minerals is determined based on the information from the London Metal Exchange.
  (a) MET is paid separately at specific MET rates for each type of extracted mineral, ranging from 0% to 21.06%.
  (b) Under the previous tax legislation, Kazakhstan used the system of royalties paid by subsoil users, however this system was abolished and replaced by the MET system on 1 January 2009.
- Rental fees – paid as a licence obligation under exploration and mining licences. The amounts are as follows: for an exploration licence, between 15 and 60 MCIs (approximately USD112 to USD443) for one block, depending on the year of exploration; for a mining licence, 450 MCIs (approximately USD3,333) per square kilometre of the licence area.
- Payment for compensation of historical costs – a fixed payment made in instalments to compensate the state for the costs of a geological survey and exploration conducted on a subsoil area that were incurred before the execution of a subsoil use contract.

The tax legislation in Kazakhstan does not distinguish between national and foreign investors. Note that a new tax code is under development, scheduled for adoption by late 2025 and implementation starting in January 2026.

4.2 Tax Incentives for Mining Investors and Projects

Generally, subsoil users carrying out operations for the exploration and/or mining of mineral resources are not allowed to enjoy tax or other preferences.

Investment preferences (including tax preferences) for subsoil users may be provided by conclusion of the following.

- Agreement for investment project. The investment project is a set of measures providing for investments in establishing new, as well as upgrading and modernising current manufacturing facilities in eligible regions. Such an agreement would grant certain benefits such as exemption from import VAT for certain specified products during five consecutive years.
- Agreement on investment commitments. Agreement on investment commitments is an agreement concluded between the RoK government and a legal entity, outlining the commitments of the legal entity regarding the financing of capitalised subsequent expenditures and/or expenditures for the acquisition, production, and construction of new fixed assets. It also covers the financing of other costs that increase the value of fixed assets in accordance with international financial reporting standards and/or the requirements of the legislation of the RoK on accounting and financial reporting.
  (a) These commitments extend over a period of eight years, including the year in which the application for the conclusion of such an agreement is submitted, and the total amount should be no less than 75 million MCIs (approximately USD553,800,000).
  (b) In the event of concluding an Agreement on Investment Commitments with a legal entity engaged in the mining and/or processing of solid minerals, such agreement is exclusively for activities in the field of mining and/or processing solid minerals.
  (c) An investment commitment agreement provides tax stabilisation for ten years (except for VAT, emissions and certain other taxes).
- Agreement on the processing of solid minerals. If the mining licence holder intends to create new facilities for the processing of solid minerals, or to expand or modernise existing ones, and the amount of investment exceeds 7 million MCIs (approximately USD51,688,000), then it is entitled to conclude a special processing agreement which, depending on the results of a negotiation, provides for investment preferences (including tax preferences) (Note that the parliament is currently considering increasing the investment amount to 70 million MCIs (approximately USD 516,880,000)).
- Conclusion of an intergovernmental agreement. In practice, subsoil users may obtain preferences outlined in intergovernmental agreements. These preferences, encompassing various aspects, including tax stabilisation, are contingent upon negotiations.

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

The transaction involving the sale of subsoil use rights is liable to a 12% value-added tax. In practice, parties to such transactions prefer to use “share deal” structures, since the sale of shares in local companies is exempted from value-added tax.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Despite possessing a substantial quantity of mineral resources, Kazakhstan secured the 79th position out of 86 in the Fraser Institute’s Annual Survey of Mining Companies in 2023, being in the bottom ten (beginning with the worst) of the Investment Attractiveness Index. The reason for this is low investor perception of the political environment and understated geological potential.

Kazakhstan is balancing between institutional development and public micromanagement, between promotion of local manufacturing and improvement of investment climate, particularly in the mining sector. To achieve these objectives, Kazakhstan implemented the SSU Code, thereby opening up the state territory for exploration on a "first come, first served" basis.

This proactive approach is part of Kazakhstan's broader strategy to enhance transparency and simplify regulatory processes in the mining industry. The SSU Code introduced reforms aimed at streamlining administrative procedures, reducing bureaucratic hurdles, and promoting a more investor-friendly environment. By adopting this SSU Code, Kazakhstan aims to boost investor confidence and create a competitive edge in the global mining landscape.

Beyond regulatory changes, Kazakhstan has undertaken strategic efforts to improve its investment climate. The country has embraced common law principles under the AIFC, reinforcing legal frameworks and providing additional incentives for investors.

One of the primary issues surrounding investment in the mining sector in Kazakhstan revolves around frequent alterations to tax legislation, leading to inconsistent application and interpretation. Companies argue that the unexpected and frequent shifts in the tax regime have resulted in delays in making investments.

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

There are no general restrictions on foreign companies holding mining rights. Any individual and legal entity (whether national or foreign) can hold exploration or mining rights, provided they comply with the requirements of the SSU Code (eg, availability of financial, professional, and technical capabilities). The procedure of obtaining licences is the same for national and foreign investors.

However, the MIC retains the right to refuse an application for an exploration or mining licence due to national security issues.

Mining rights to a uranium deposit may only be granted to the National Atomic Company Kazatomprom JSC (KAP) and can be subsequently transferred to an investor or joint venture, by which more than 50% of direct or indirect interest must remain for KAP.

Moreover, recent practical trends indicate that licences for exploration of solid minerals in areas containing uranium mineralisation or uranium deposits are to be issued exclusively to KAP.

Previously, the MIC issued exploration licences for such areas to third parties. However, there is court practice where such licences have been invalidated for further reservation by KAP.

In addition, a mandatory condition for granting the subsoil use right for hydrocarbons at Caspian and Aral Sea is that the National Company KazMunayGas JSC (national hydrocarbon company) must have a minimum 50% of share participation as a subsoil user under the contract in the field of hydrocarbons.

5.3 International Treaties Related to Exploration and Mining

Kazakhstan is a party to actual BITs with approximately 50 countries, establishing guarantees for the protection of investment activities. Texts of these treaties can differ in terms of defining an investor, an object of investment, protected

rights of an investor, and the procedure of investment protection. Nevertheless, all treaties stipulate the right of an investor to resolve an international investment arbitration, to protect their rights and investment.

Additionally, Kazakhstan is a signatory to:

- the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States;
- the Energy Charter Treaty and;
- the Agreement on Promotion and Reciprocal Protection of Investments in the Member States of the Eurasian Economic Community.

5.4 Sources of Finance for Exploration, Development and Mining

In Kazakhstan, at the exploration stage, the main financial resources come from either the funds of subsoil users themselves using the capital contribution or involving joint venture transactions. In the context of joint ventures, a smaller company, overseeing a set of exploration licences, provides an option for a senior company. This is done in exchange for the latter expending funds on exploration according to a mutually agreed schedule. Also, in practice, exploration financing is carried out through loans from both third companies and banks and IPOs.

As for the mining stage, loans from parent companies, investors, as well as banks and financial institutions, along with project financing and offtake agreements are expected to become more accessible.

Please refer to **5.5 Role of Domestic and International Securities Markets in the Financing of Exploration, Development and Mining** regarding financing from Securities Markets.

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

Securities Market

Currently, there are two securities markets functioning in Kazakhstan: the Kazakhstan Stock Exchange (KASE) and the Astana International Exchange (AIX). Despite their existence, both local and foreign companies usually raise funds on the global stage in Hong Kong, London, Toronto and Sidney financial centres.

Kazakhstan issuers offering their securities (including derivatives) outside of Kazakhstan must offer not less than 20% of the total number of securities or derivatives offered abroad on KASE or AIX and notify the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market on the outcome of the placement of such securities or derivatives abroad.

In the State of the Nation Address in September 2023, President of Kazakhstan Kassym-Jomart Tokayev demanded the merger of KASE and AIX. However, the merger process between KASE and AIX was suspended due to the imposition of sanctions on one of KASE's shareholders, Moscow Exchange. On 11 October 2024, the Moscow Exchange was withdrawn from the list of shareholders of KASE.

Issuing Securities in Securities Markets

The SSU Code provides for the definition of objects related to the subsoil use right (the "Objects"), encompassing various forms of equity participation such as shares, participatory interests, and securities verifying ownership rights or convertible into any type of equity par-

ticipation in either a subsoil user or a legal entity or another organisation with the ability to directly and/or indirectly influence decisions made by the subsoil user.

The SSU Code requires obtaining prior approval of the MIC for an IPO or SPO of Objects on either domestic or international securities markets.

5.6 Security over Mining Tenements and Related Assets

Mineral rights (or a share in them) may be pledged under the conditions provided by the SSU Code or encumbered in other ways.

However, a pledge of an exploration licence during the first year of the term of the licence is prohibited.

Other than other types of encumbrances, a pledge of mineral rights or a share thereof requires registration with the MIC, and it becomes valid from the moment of registration.

Related assets such as equipment and machinery may be pledged, within the limits and conditions envisaged by the RoK Civil Code.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The mining sector in Kazakhstan is navigating a period of uncertainty driven by regulatory reforms, environmental challenges, and geopolitical dynamics. Central to this is the ongoing implementation of the SSU Code, where the pace and effectiveness of reforms remain critical. The outcomes will largely hinge on the government's commitment to transparent policymaking and its ability to balance competing interests.

Among the key developments is the consideration of a new water code, designed to protect dwindling water resources in Central Asia. Proposed measures include stringent restrictions on activities near water bodies, with exceptions for select industries. If enacted, these regulations could introduce significant operational challenges for mining companies, increasing costs and complicating project viability.

The trajectory of the mining sector over the next two years will be shaped by the resolution of these legislative debates. While some reforms offer the promise of modernisation and transparency, the reintroduction of centralised mechanisms risks undermining investor confidence. The ability to strike a balance between regulatory control and market-driven principles will be pivotal in determining Kazakhstan's long-term appeal to international investors and its capacity to sustain growth in the mining industry.

Trends and Developments

Contributed by:
Timur Odilov, Mikhail Abdulov, Olzhas Abubakirov and Dauren Sadykov
Haller Lomax LLP

Haller Lomax LLP was founded in October 2017 and operates from offices in Astana, Almaty and Singapore. The firm specialises in construction, environmental protection, public-private partnerships (PPP), energy and natural resources, corporate law and M&A, banking and finance, as well as legislative drafting and reform. Haller Lomax is a trusted adviser to leading Kazakhstani and international mining and metallurgy groups, state-owned enterprises, regulatory authorities, chemical industry leaders, oil and gas companies, investment firms and banks. What sets Haller Lomax apart is its deep understanding of clients' operations, practical expertise in regulatory enforcement, and contributions to the evolution of legal frameworks. The firm's clientele includes, among others, international development institutions, transnational corporations, oil and gas companies, as well as major mining and junior exploration companies.

Authors

Timur Odilov is a co-founding partner of Haller Lomax, specialising in the energy and natural resources sector, law-making, regulation and M&A practices. For over 16 years, Timur has been advising major private companies on various transactions and regulatory issues and the Kazakhstan government authorities and officials on reforms in the field of subsoil use (the SSU Code), the environment (the Environmental Code) and other sectors.

Mikhail Abdulov is a senior associate at Haller Lomax, specialising in energy and natural resources, environmental protection, corporate and M&A, commercial agreements, and procurement. For over ten years, Mikhail has been advising major international and local clients on issues related to subsoil use (including transactions for the acquisition of mining and oil and gas assets in Kazakhstan), commercial agreements, and regulated procurements. Mikhail's recent experience includes advising on joint ventures, mining rights and licensing, environmental issues, infrastructure projects and investments, among other things.

Contributed by: Timur Odilov, Mikhail Abdulov, Olzhas Abubakirov and Dauren Sadykov, **Haller Lomax LLP**

Olzhas Abubakirov is an associate at Haller Lomax, specialising in energy and natural resources, environmental protection, commercial agreements, antitrust and corporate and M&A practices. Olzhas has experience advising clients in the subsoil use, environmental and technology industries. His recent experience includes representation of prominent petrochemicals companies in cross-border merger and acquisition deals, as well as representation of companies in administrative court on environmental violation disputes.

Dauren Sadykov is an associate at Haller Lomax, practising in the fields of energy and natural resources, environmental protection, and data protection. His previous experience is associated with one of the Big Four companies and a subordinate organisation of the Ministry of Environment and Natural Resources. Dauren has experience of advising large local and international companies on various complexities and, in particular, conducting legal due diligence, handling transactions for the acquisition of companies with state share interests, and providing legal support in commercial agreements.

Haller Lomax LLP

Office 163
6/1 Kabanbai Batyr Avenue
Kaskad Business Center
Floor 16
Astana City
Kazakhstan

Tel: +7 777 791 72 72
Email: info@hallerlomax.com
Web: www.hallerlomax.com

The mining industry in Kazakhstan remains a cornerstone of the national economy, contributing significantly to its growth and diversification. According to the ministry, over the past six years, the sector has attracted substantial investment in geological exploration, exceeding USD1 billion, following legislative reforms under the Subsoil and Subsoil Use Code (the "SSU Code"). These investments have facilitated the discovery and development of reserves, including iron, manganese, gold, uranium and hydrocarbons, while driving the adoption of innovative technologies to modernise exploration and extraction processes.

Regulatory Changes and Legislative Developments

Kazakhstan is undergoing significant regulatory transformations to enhance the mining sector's transparency, efficiency, and investment appeal. Key trends include the following.

Expansion of exploration opportunities

The government plans to open all regions for exploration activities, encouraging broader investor participation. Existing deposits that have been or will be returned to the government are expected to be auctioned to ensure transparency in their allocation. This shift represents an effort to democratise access to mineral resources, fostering competitive participation and enabling small to mid-sized investors to engage in subsoil use.

Digitalisation of licensing

The Ministry of Industry and Construction (MIC) has transitioned to an online licensing system, streamlining application processes and reducing bureaucratic hurdles. The launch of the minerals.e-qazyna.kz platform in November 2024 exemplifies these efforts. The platform offers subsoil users access to geological data, licence information, and an interactive map, providing greater transparency and efficiency. The system is expected to simplify the onboarding process for investors, reduce the risks of administrative delays, and foster a more business-friendly environment.

National Geological Survey (NGS)

In 2021 the President Tokayev instructed the creation of the National Geological Survey (NGS). The NGS aims to digitise and centralise geological data, making archived records accessible to investors. By 2023, 40% of archives, ranging from Soviet-era surveys to contemporary data, had been digitised, with further efforts ongoing. This initiative represents a commitment to utilising modern technology to unlock historical and recent geological insights, potentially driving new exploration ventures and aiding in resource estimation.

Challenges and Concerns in Legislative Reforms

Legislative changes are often adopted without extensive discussions and analyses, potentially affecting inclusivity. This is particularly relevant to restrictive or limiting regulations, which are frequently implemented on an expedited basis. Such practices may result in a regulatory environment characterised by unpredictability.

While reforms aim to modernise and enhance transparency, recent legislative developments have raised concerns among industry stakeholders. A working group in the Lower Chamber of Parliament recently conducted a contentious review of amendments to a draft law on transparency and competition in subsoil access. Despite official recommendations to ensure thorough regulatory impact analysis and government feedback, key provisions on clarifying the first-

come, first-served mechanism and functions of the NGS were rejected by the working group.

The same working group of the Parliament, within two weeks, voted on amendments reintroducing the government's authority to review compliance with principles of rational and complex subsoil use. In practice, this means approving mechanisms of annual production volume, methods used and other performance parameters of mining operations.

Additionally, the government has declared its intent to require mining companies to procure more local goods, works and services, with the threat of substantial fines for non-compliance. It has also proposed restoring the previously abolished priority right of the state-owned National Mining Company Tau-Ken-Samruk JSC to gain exploration and mining licences by bypassing competition mechanisms such as first-come, first-served principles or auctions.

These measures, if adopted by Parliament, could undermine progress achieved under the SSU Code and may deter international investment by increasing bureaucratic oversight and legal risks.

In addition, legislative changes are often adopted without extensive discussions and analyses, potentially affecting inclusivity. This is particularly relevant to restrictive or limiting regulations, which are frequently implemented on an expedited basis. Such practices may result in a regulatory environment characterised by unpredictability.

Resource Classification Standards

Discussions at the Parliament about repealing CRIRSCO resource and reserves reporting standards in favour of Soviet-era reserves classification systems could undermine the government's and the President's policy of attracting more investments to the mining sector after the significant progress made since the 2018 reforms. The adoption of CRIRSCO standards was a pivotal step in aligning Kazakhstan with international best practices, and reversing this could create uncertainty for investors accustomed to globally recognised frameworks.

Fiscal and Local Content Challenges

Increased subsoil use tax rates and stricter local content requirements further add complexity for operators and investors. While these measures aim to boost domestic manufacturing and development of the local business community, they could elevate costs and reduce the competitiveness of Kazakhstan's mining sector on the global stage. Striking a balance between robust oversight and market-driven principles will be critical for sustaining the sector's growth and appeal. Also, Kazakhstan plans to introduce a new Tax Code to be in force from 1 January 2026.

Environmental Considerations and the Water Code

Water scarcity and mining operations

The proposed Water Code reflects growing concerns about water scarcity in Central Asia. Restrictive measures on mining activities near water bodies could increase operational costs and complicate project implementation. As mining is a water-intensive industry, balancing operational needs with environmental sustainability will be crucial. Companies may need to adopt innovative water management solutions, such as recycling technologies, to mitigate the impact of these restrictions.

Stricter environmental policies

Environmental policies are becoming more stringent, with a focus on reducing the ecological

footprint of mining operations. These changes signal a broader trend towards sustainable development. Mining companies operating in Kazakhstan will need to align with these policies, which may involve additional investments in environmental management systems, emissions-reduction technologies, and biodiversity conservation programmes.

Uranium Mining and National Interests

Kazakhstan is the world's leading producer of uranium, and the sector remains a strategic priority. It is discussed that all uranium prospective areas and unmined deposits should be reserved exclusively for the National Atomic Company Kazatomprom JSC. This policy aligns with the government's broader strategy to retain control over strategic resources and ensure their sustainable development.

Kazatomprom's monopoly ensures centralised oversight and maximised state benefits. However, this exclusivity may limit opportunities for private investors to participate in the uranium sector, potentially slowing innovation and technological advancement in the field.

Technological Innovations in Mining

Modernisation of exploration techniques

Technological advancements are transforming Kazakhstan's mining sector. The adoption of geospatial data, remote sensing technologies, and AI-driven analytics has enhanced resource estimation and exploration efficiency. These tools enable operators to identify promising deposits more quickly and accurately, reducing exploration costs and timelines.

Automation and digitalisation in extraction

The introduction of automated equipment and digital monitoring systems is modernising extraction processes. Technologies such as autonomous vehicles, drone inspections, and real-time data analytics are being implemented to improve safety, reduce costs, and enhance productivity. These innovations also contribute to environmental sustainability by optimising resource use and minimising waste.

Renewable energy integration

As part of a broader commitment to sustainability, some mining operations are incorporating renewable energy sources into their activities. Solar and wind power projects are being developed to supply energy to remote mining sites, reducing reliance on fossil fuels and lowering carbon emissions.

Foreign investment trends

Kazakhstan's mining sector continues to attract international investors, driven by its abundant mineral resources and ongoing reforms. Key investors include companies from China, Russia, Canada and Australia, reflecting the global appeal of Kazakhstan's resource potential. Joint ventures and strategic partnerships are becoming increasingly common, enabling knowledge transfer and the introduction of best practices.

However, regulatory uncertainty and increased taxation may impact future investment inflows. Maintaining a stable and predictable legal environment will be essential to sustaining investor confidence and ensuring the sector's long-term growth.

Community Engagement and Social Responsibility

Mining companies in Kazakhstan are placing greater emphasis on corporate social responsibility (CSR) initiatives. These efforts include:

- supporting local communities through infrastructure development, education, and healthcare projects;
- creating employment opportunities and prioritising local hires; and
- minimising environmental impact and engaging in land rehabilitation efforts post-mining.

Such initiatives not only enhance the industry's reputation but also foster positive relationships with local stakeholders, reducing the risk of conflicts and project delays.

Conclusion

Kazakhstan's mining sector is undergoing significant changes, balancing modernisation efforts with evolving regulatory frameworks and policies aimed at enhancing resource management and national interests. Attempts on digitalisation and transparency in allocation of licences, save for enhancing monopoly or priority position of state-owned national companies, represent promising developments, but the reintroduction of once-abolished regulatory unpredictability could hinder progress.

To sustain growth and attract international investment, maintaining stability, clarity, and a balance between governmental oversight and market-driven principles will be essential. The sector's future success will depend on its ability to adapt to evolving regulatory, environmental and technological landscapes while leveraging its vast resource potential. With continued commitment to reform and innovation, Kazakhstan's mining industry can remain a cornerstone of the national economy and a key player on the global stage.

MADAGASCAR

Law and Practice

Contributed by:
Herisoa Raharimamonjy and Mialy Solofohery
John W Ffooks & Co

Contents

John W Ffooks & Co is a leading corporate and commercial law firm providing local counsel advice across French-speaking Africa. The firm's bilingual team of 11 partners and 40 lawyers uniquely combines Napoleonic legal expertise with a common law approach, making it the preferred choice for international transactions in the region. John W Ffooks & Co specialises in supporting inward investors, bridging the gap between Anglo-Saxon business practices and local legal systems derived from the Napoleonic Code. Trusted by global corporations, financial institutions, private equity firms, and government bodies, the firm offers tailored legal solutions, advising on a wide range of commercial legal issues in countries including Benin, Burkina Faso, Cameroon, Chad, Ivory Coast, Mali, Niger, Senegal and Togo. With senior colleagues in every jurisdiction, the firm's partner-led services ensure high-quality advice across all sectors. Leveraging firm-wide expertise, John W Ffooks & Co manages complex transactions efficiently, saving clients time and costs while delivering exceptional legal solutions tailored to their needs.

Authors

Herisoa Raharimamonjy specialises in mining and natural resources, advising on corporate, commercial and regulatory matters in Madagascar and Francophone West Africa. With years of experience as a corporate lawyer, Herisoa provides strategic counsel on mining operations and resource management, ensuring compliance with local regulations. Her expertise includes employment matters and local debt recovery, making her a trusted advisor for complex transactions and operations in the region. Based in John W Ffooks & Co's Antananarivo office, Herisoa leverages her deep understanding of the legal landscape to assist clients across various sectors. Fluent in English, French and Malagasy, she bridges linguistic and legal gaps effectively.

Mialy Solofohery is a dynamic legal professional with expertise in mining law and natural resources in Madagascar and Francophone West Africa. With a Master's in Business Law from the University of Antananarivo, she combines her academic excellence with practical leadership experience, having advised and led English-speaking clubs and contributed to legal publications like Tribune d'Juristes. Her active involvement in regional youth platforms and international initiatives underscores her commitment to addressing cross-border legal challenges. Mialy's skills in project management and multilingual fluency (Malagasy, French and English) enable her to provide strategic counsel to clients navigating the complex mining landscape.

John W Ffooks & Co

1st Floor
Ivandry Antananarivo 101
Madagascar

Tel: +261 202 243 247
Email: Contact@JWFLegal.com
Web: www.jwflegal.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The major features of the mining industry in Madagascar are as follows.

- Ownership and licensing: Mining rights and licences are regulated to ensure transparency and equitable access. These include exploration licences, mining permits and small-scale mining permits. Licences are granted following a competitive process to enhance fairness and investment opportunities.
- Environmental and social obligations: Mining projects are required to prepare and implement environmental and social impact assessments.
- Operators must contribute to local community development and respect the rights of affected populations.
- Royalties and taxes: Mining operators are subject to the specific royalties and tax rates detailed in the Mining Code to ensure that state and local communities benefit from mining activities. A portion of the royalties is allocated to local development funds.
- Foreign investment and partnerships: The Mining Code promotes foreign investment but includes provisions to ensure collaboration with local entities. This includes requirements for local input in procurement and employment.
- Sustainability and transparency: Madagascar adheres to the Extractive Industries Transparency Initiative (EITI), ensuring all mining-related financial transactions are transparent.
- Operators are either small groups or individuals using artisanal methods or mining companies.
- The main mining activities are gold mining and quarrying fossils and rare deposits.

1.2 Legal System and Sources of Mining Law

The legal system in Madagascar is civil law. The main sources of mining legislation in Madagascar are:

- Law No 2023-007, dated 27 July 2024 and revising the Mining Code, which determines the main rules for mining activities, the regulations for mining licences and the obligations and rights of licence holders and others relevant parties that might be engaged in mining activities;
- Law No 2023-002, dated 27 July 2023, relating to investment in Madagascar;
- Law No 2015-005, dated 26 February 2015, recasting the Protected Areas Management Code;

- Law No 2005-022, dated 2 August 2005, amending certain provisions of Law No 2001-031, dated 8 October 2002, establishing a special regime for major investments in the Malagasy mining sector (the Law on Large Mining Investments (LGIM)) – the LGIM is currently being reformed to align with the revised Mining Code;
- Law No 2001-031, dated 8 October 2002, establishing a special regime for major investments in the Malagasy mining sector (LGIM);
- Decree No 2024-1464, dated 23 July 2024, relating to mining, fossils and quarrying permit regulations – implements the new mining code and provides details regarding permit/licence regulations;
- Decree No 2017-415, dated 30 May 2017, setting the terms and conditions for the application of Law No 2015-005 of 26 February 2015, overhauling the Protected Areas Management Code;
- Decree No 99-954, dated 15 December 1999, amended by Decree No 2004-167 of 3 February 2004 on the environmental compatibility of investments (the Decree on the Compatibility of Investments with the Environment (the MECIE Decree));
- Decree No 97-740, dated 23 June 1997, relating to mining permits for the exploration, exploitation and transportation of hydrocarbons; and
- Interministerial Order No 12032/2000 relating to environmental protection regulations in the mining sector – governs rules and requirements in order to balance mining activities with the impact on the environment.

1.3 Ownership of Mineral Resources

Mineral resources are the property of the nation (Article 5, Law No 2023-007, dated 27 July 2024, revising the Mining Code).

With that said, the Ministry of Mines, as a representative of the state, along with other relevant ministries, such as the Ministry of Environment, solve any conflicts. Such conflicts may concern, for instance:

- incompatibility regarding protected areas with respect to Chapter VIII, Articles 126 to 149 of Law No 2023-007, dated 27 July 2024, revising the Mining Code; and
- disagreement with landowners regarding already-owned or -occupied lands, pursuant to the provision of Licence VII, Article 298 and following Law No 2023-007, dated 27 July 2024, revising the Mining Code.

1.4 Role of the State in Mining Law and Regulations

In Madagascar, the state plays dual roles in the mining sector, as follows:

- grantor-regulator – the state, represented by entities such as *Bureau du Cadastre Minier de Madagascar* (BCMM – the mining registry) and the Ministry of Mines, oversees mining activities by granting mining rights, enforcing regulations and ensuring compliance; and
- owner-operator: the state may directly engage in mining operations through contracts with private companies, typically via specialised government bodies or state-owned companies.

There is no mandatory national or government joint venture, contracting or participation in mining activities in Madagascar.

1.5 Nature of Mineral Rights

Mineral rights do not have any constitutional basis in Madagascar. They derive from the mining laws, government authorisation (ie, mining permits) or conventions with landowners (if any).

Mineral rights have the status as property in the form of a mining licence.

The transmission of or any action relating to a mining licence are regulated by Law No 2023-007, dated 27 July 2024, revising the Mining Code. Sales of strategic mining substances extracted from the land are also governed by the previous key provision.

1.6 Granting of Mineral Rights

The granting authorities in Madagascar are national authorities: the Ministry of Mines and the BCMM. The BCMM is represented all over the jurisdiction by its twelve offices, which are in Antananarivo, Antsiranana, Sambava, Mahajanga, Maevatanana, Ambatondrazaka, Toamasina, Antsirabe, Fianarantsoa, Manakara, Toliara and Taolagnaro.

There are no overlaps of jurisdiction between the two authorities. The Ministry of Mines represents the government in administrative and governance matters, while the BCMM regulates all matters regarding mining licences and activities.

Mineral rights are granted through a mining licence under an order of the Ministry of Mines, delivered via the BCMM.

1.7 Mining: Security of Tenure

The guarantee of security of tenure in Madagascar's mining sector is based on the principle that any mining licence or mineral rights not formally recognised and registered by the BCMM cannot be enforced.

Any mining licence holder is entitled to request a stability guarantee from the Ministry of Mines.

The length of a mining licence can vary from one to 25 years according to the category of activity (ie, the mining licence/authorisation). The terms of renewal also depend on the type of mining licence but are always reduced compared to the term and land area of the initial mining licence.

The holder of an exploration licence is entitled, at any time, to transform it into a mining licence.

The holder of a mining licence is entitled to cancel, at any time, part or all the land object of his or her mining licence.

Mining licences are modifiable and transferable, with any change related to said licence being registered with the BCMM.

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

2.1 Environmental Protection and Licensing of Mining Projects

The regulations for environmental protection and the licencing of mining projects in Madagascar are:

- Law No 2015-003, dated 20 January 2015, updating the Malagasy Environment Charter;
- Law No 2023-007, dated 27 July 2024, revising the Mining Code;
- Decree No 99-954, dated 15 December 1999 and amended by Decree No 2004-167 of 3 February 2004 on the environmental compatibility of investments (the MECIE Decree); and
- Interministerial Order No 12032/2000, relating to environmental protection regulations in the mining sector.

Exploration and mining project licensing are subject to environmental processes, as follows:

- compliance with environment protection regulations by mining licence holders;
- the obtainment of an environmental authorisation or licence prior to the commencement of any mining activity;
- the submission of an environmental impact assessment document (*étude d'impact environnemental* (EIE)) approved by the relevant environmental authority (ie, *Office National pour l'Environnement* (ONE)) to the relevant environmental body of the Ministry of Mines; and
- approval from the Environmental Commitment Programme (*Program d'Engagement Environnemental* (PEE)), the relevant environmental body of the Ministry of Mines.

The relevant bodies in charge of the approval of documents and the granting of environmental licences or authorisations are the Ministry of Environment (a national body) and the provincial director of the Ministry of Mines (a provincial authority).

In the event of breach of any environmental requirement, the environmental authority is entitled to make a request to the Ministry of Mines/ Provincial Director of the Ministry of Mines for the suspension of activities.

2.2 Impact of Environmentally Protected Areas on Mining

Environmentally protected areas in Madagascar are regulated by:

- Law No 2015-005, dated 26 February 2015, recasting the Protected Areas Management Code;
- Decree No 2017-415, dated 30 May 2017, setting the terms and conditions for the application of Law No 2015-005 of 26 February 2015, overhauling the Protected Areas Management Code; and
- Law No 2023-007, dated 27 July 2024, revising the Mining Code.

These key provisions provide mining licence holders and operators with protection while performing their mining activities in three domains: protected areas, reserved areas and prohibited areas.

2.3 Impact of Community Relations on Mining Projects

The Mining Code addresses potential community issues arising from mining projects. It requires that relationships with landowners or occupants be governed by negotiations, written agreements and fair compensation for damages. In cases where an amicable agreement cannot be reached, disputes are resolved through a process starting with conciliation and, if necessary, moving to amicable settlement or litigation procedures with juridical bodies.

2.4 Prior and Informed Consultation on Mining Projects

In Madagascar, prior and informed consultation is mandatory for mining projects, particularly when they involve local communities. This process is typically led by the investor but must comply with legal frameworks that ensure the consultation is transparent and inclusive. The objective is to ensure that communities affected by the mining project are informed about potential impacts, and that their consent is sought.

The consultation involves the participation of local populations, affected parties and, where applicable, governmental bodies. The investor is responsible for initiating the consultation process, which should include environmental and

social assessments as well as compensation plans.

2.5 Impact of Specially Protected Communities on Mining Projects

Certain categories of communities benefit from protection regarding mining projects. For example, Law No 66-025, dated 19 December 1966 and ensuring the cultivation of agricultural land, protects farmers against immediate relocation regardless of their licence of occupation.

2.6 Community Development Agreement for Mining Projects

In Madagascar, community development agreements are typically mandatory for mining projects, as outlined by the Mining Code. These agreements are part of the broader corporate social responsibility (CSR) framework for mining companies and are tied to specific legal obligations.

Key provisions of the Mining Code include:

- local content requirements ensuring that mining companies contribute to the local economy through job creation, training and the use of local goods and services; and
- contribution to the Mining Social and Community Investment Fund (FMISC), which is intended to support local community development and environmental management projects.

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

The main ESG guidelines/regulations applicable in Madagascar are:

- Decree No 99-954, dated 15 December 1999 and amended by Decree No 2004-167 of 3 February 2004, on the environmental compatibility of investments; and
- Interministerial Order No 12032/2000, relating to environmental protection regulations in the mining sector.

The mining regulations also establish the ESG guidelines, requiring specification of the CSR plans of mining licence holders.

2.8 Illegal Mining

Illegal mining activities are regulated and sanctioned by the mining laws of Madagascar. Therefore, illegal mining is an issue in Madagascar; it constitutes a breach of the laws and undermines the insecurity of the Malagasy mining industry.

The Malagasy government has taken various steps to combat illegal mining. According to the Mining Code, Madagascar aims to formalise artisanal mining by providing legal frameworks for small-scale mining operations. This would allow informal miners to be integrated into the formal economy under regulated conditions, including in relation to licensing and oversight.

Enforcement measures include restrictions on illegal mining camps, seizures of equipment and penalties for those involved in illicit activities. The BCMM plays a key role in regulating and overseeing mining activities.

Mining companies often co-operate with government agencies to address illegal mining. This can include sharing intelligence, helping to monitor mining activities and supporting initiatives to promote responsible artisanal mining practices.

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

The following list provides good examples of environmental and community relations/consultation around mining projects in Madagascar:

- establishment of a written agreement entered into between the mining licence holders and landowners/occupants regarding their respective rights and obligations;
- obtainment of explicit authorisation, from the landowner by the mining licence holder, against adequate compensation, with respect to wood-cutting works within the mining perimeter; and
- settling disputes through non-litigious procedures prior to any referral to the relevant courts.

Bad examples of environmental and community relations/consultation around mining projects include the following:

- the mining licence holder fails to inform the landowner of the rights of the licence holder to occupy the plots covered by its mining licence;
- the mining licence holder proceeds with relocation prior to completing the payment of compensation to landowners/occupants subject to forced relocation; and
- the mining licence holder fails to repair damage to private or public areas, as well as to the environment, caused by its activities.

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

3.1 Climate Change Effects

The Malagasy legislation approaches climate change from the standpoint of environmental protection. Initiatives affecting the mining industry in Madagascar, which must comply with environmental protection measures, include the following:

- mining licence holders are required to comply with environmental protection regulations;
- mining licence delivery is subject to the obtainment of an environmental licence/authorisation;
- eventually, new research requiring an exploration licence will also require an EIE; and
- the approval of the PEE will be required for the granting of research and mining licences.

3.2 Climate Change Legislation and Proposals Related to Mining

The authors are not aware of any specific key provisions focusing solely on climate change in Madagascar.

3.3 Sustainable Development Initiatives Related to Mining

Law No 2015-003, dated 20 January 2015 and updating the Malagasy Environment Charter, mainly establishes sustainable development initiatives. Sustainable development initiatives focus on:

- socio-economic development;
- sustainable management of the environment; and
- good environmental governance.

3.4 Energy-Transition Minerals

There are currently no Malagasy government or legislative initiatives regarding the increasing demand for the so-called energy-transition minerals, such as lithium, cobalt, rare earths and copper.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The tax system for the mining industry in Madagascar includes three main tax obligations:

- income tax;
- VAT (mandatory or voluntary); and
- specific taxes on mining activities – 5% of the value of the exporting mines (2% mining rebate and 3% mining royalties).

4.2 Tax Incentives for Mining Investors and Projects

Several waivers are allowed for mining investors and projects. For example, equipment and tools necessary for exploration and development that are not available in Madagascar are exempted from VAT payment.

Tax stabilisation agreements are available in Madagascar. Mining companies can enter into agreements with the government to stabilise taxes and other fiscal obligations for a specified period, typically between five and ten years.

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

Where transfer/capital gains tax on the transfer/sale of a mining project takes the form of indirect transfer of the shares of a company that is a mining licence holder, income tax shall be applicable to the transfer or sale.

These tax levies remain applicable even if the transfer occurs through corporate structures outside the jurisdiction.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The key features in Madagascar that are attractive for mining investment include the following.

- Stable legal framework: The government has established a stable rule of law, with protections for foreign investments. Mining investments are guaranteed by clear legal structures that offer legal recourse and security. The recent overhaul of the Mining Code, along with its implementing regulations, aims to attract more investment in the mining sector. It is designed to foster a mutually beneficial partnership while ensuring social and environmental benefits. The process for acquiring mining rights is clear and well-regulated under the 2023 Mining Code. Investors must follow a transparent process to obtain mining permits.
- Mining rights and transfers: Investors can acquire mining rights, which are considered a form of property. These rights can be transferred, sold or mortgaged under the law, providing flexibility for investors.
- Support investment protection: The Malagasy government has moved to allay investor fears of any reneging of agreements by guaranteeing returns on their investments through guaranteed maintenance of the legal and regulatory regimes in force at the time of request. A “stability guarantee” is granted to any holder of a permit and is valid for a renewable

period of up to five years. Permit holders can request more favourable measures that would have come about after the date of exercising the stability option. Permit holders will not, however, be allowed to derive benefits from the stability guarantee if they fail to fulfil any of the obligations or terms outlined in their mining specifications.

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

In Madagascar, foreign investment in the mining sector is encouraged but subject to certain regulations. The Mining Code and Investment Code set the framework for foreign participation, with the following key points.

- Foreign investment approval: While Madagascar encourages foreign investment, the government screens foreign proposals, especially in critical sectors such as mining. The Ministry of Mines and Strategic Resources is involved in reviewing applications for mining permits and other rights, and the Ministry of Industry and Commerce evaluates broader investment proposals, especially those involving foreign ownership.
- National interest and security: The Investment Code specifies that investments that could potentially affect national security or strategic resources (such as critical minerals) will be subject to additional scrutiny. The government may review any significant transactions, particularly if they relate to the ownership or control of natural resources deemed vital for national development.
- Environmental and social impact: The Mining Code requires mining projects to obtain environmental and social approval before proceeding, ensuring that the exploration and extraction of resources are in line with sustainable development and responsible mining practices. Foreign investors must meet these criteria to proceed with their projects.

5.3 International Treaties Related to Exploration and Mining

Madagascar is a member of the Common Market for Eastern and Southern Africa (COMESA), with which the United States has an agreement to develop trade and investment relations. In 2017, Madagascar signed the Tripartite Free Trade Agreement (TFFA) in association with the East African Community (EAC), COMESA, and the Southern African Development Community (SADC). Madagascar is one of the signatories to the African Continental Free Trade Area (AfCFTA) but is one of the few countries that has still not ratified the agreement. The AfCFTA came into force on 1 January 2021, ratified by 36 countries.

According to the UN Conference on Trade and Development (UNCTAD), Madagascar has concluded nine bilateral investment treaties (BITs) – with the Belgium-Luxemburg-Economic Union, China, France, Germany, Mauritius, Norway, South Africa, Sweden and Switzerland – and five treaties with investment provisions (the COMESA EU Economic Partnership Agreement (EPA), the COMESA Investment Agreement, the COMESA US Trade and Investment Framework Agreement (TIFA), the Cotonou Agreement and the COMESA Treaty).

As a member of the African, Caribbean and Pacific Group of States (ACP), Madagascar signed the interim Economic Partnership Agreement (APEi) with the EU in January 2013 to ensure easy access to the EU market and obtain progressive tariff reductions. In reciprocation, European goods, except certain specified ones, are now entering Madagascar without payment of any duty.

5.4 Sources of Finance for Exploration, Development and Mining

The main sources of finance for exploration, development and mining in Madagascar include the following:

Private Investment

Domestic and foreign direct investment (FDI): Private investors and multinational mining companies are major sources of funding for exploration and mining activities. Madagascar's 2023 Mining Code and Investment Code encourage foreign investments by offering incentives such as tax reductions and guarantees against expropriation.

Mining Royalties and Partnerships

Public-private partnerships are commonly formed between the government and private entities for mining projects. Mining royalties contribute to the funding of exploration and development phases.

International Financial Institutions

Organisations like the World Bank, the African Development Bank (AfDB), and other development banks provide loans and grants for mining projects that promote sustainable development and environmental management. For example, Madagascar's involvement in the EITI supports transparency in resource management, increasing confidence among international lenders and investors.

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

Madagascar lacks a robust domestic securities market dedicated to mining finance, unlike countries with established mining exchanges like Australia and Canada. However, international securities markets play a critical role in financing exploration, development and mining activities in Madagascar.

5.6 Security over Mining Tenements and Related Assets

Under Madagascar's 2023 Mining Code, mining tenements and related assets can be used as collateral to secure financing for exploration, development and mining activities. The law explicitly allows the creation of security interests over mining rights to facilitate financing, provided such arrangements comply with the regulations issued by the BCMM, which administers mining permits.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The new Mining Code focuses on the improvement of investment and activities in mining rather than the environmental aspect. Therefore, initiatives towards energy-transition minerals or carbon net zero are not included in the Code.

With that said, the new Mining Code still dedicates an entire chapter to environment protection, detailing the requirements that mining licence holders must adhere to. In addition, Interministerial Order No 12032/2000, relating to environmental protection regulations in the mining sector, includes provisions regulating conflicts between the impact of mining projects and environmental protection.

As the current legislation regulating the mining sector (ie, the new Mining Code and its implementation decree) represents the latest legislation (updates in 2023 and 2024), there is no expectation of any imminent changes.

MALI

Law and Practice

Contributed by:
Fabiola Andriamalala and Felana Ranaivoson
John W Ffooks & Co

Contents

John W Ffooks & Co is a leading corporate and commercial law firm providing local counsel advice across French-speaking Africa. The firm's bilingual team of 11 partners and 40 lawyers uniquely combines Napoleonic legal expertise with a common law approach, making it the preferred choice for international transactions in the region. John W Ffooks & Co specialises in supporting inward investors, bridging the gap between Anglo-Saxon business practices and local legal systems derived from the Napoleonic Code. Trusted by global corporations, financial institutions, private equity firms, and government bodies, the firm offers tailored legal solutions, advising on a wide range of commercial legal issues in countries including Benin, Burkina Faso, Cameroon, Chad, Ivory Coast, Mali, Niger, Senegal and Togo. With senior colleagues in every jurisdiction, the firm's partner-led services ensure high-quality advice across all sectors. Leveraging firm-wide expertise, John W Ffooks & Co manages complex transactions efficiently, saving clients time and costs while delivering exceptional legal solutions tailored to their needs.

Authors

Fabiola Andriamalala advises local and international clients on natural resources (oil and gas, mining) and project finance, with expertise in commercial and regulatory matters under the OHADA legal system. She frequently supports partners on national and cross-border transactions. Notably, Fabiola assisted in a fund-raising transaction for an international oil and gas company, reviewing virtual data room documents and issuing legal opinions and a due diligence report on material assets and entities in Gabon and Ivory Coast. Her extensive experience ensures seamless navigation of complex projects. Fluent in French and English, Fabiola provides strategic counsel across diverse jurisdictions.

Felana Ranaivoson is a highly skilled legal professional with expertise in mining law and natural resources across OHADA jurisdictions, including Mali. Her academic background includes a Master's in Business Law, where she graduated as top of her class, and extensive training in advanced French and English proficiency. Felana's experience includes assisting in legal reforms at the Ministry of Justice, with a focus on business law and customs procedures, and collaborating with stakeholders on key regulatory matters. Her strong understanding of OHADA regulations, combined with her analytical and organisational skills, allows her to deliver expert legal solutions in the mining sector.

John W Ffooks & Co

Hamdallaye ACI 2000
Bamako
Place CAN
Mali

Tel: +22 133 825 8482
Email: Mali@JWFLegal.com
Web: www.jwflegal.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Mali is a vital part of the country's economy. Mali is Africa's third-largest gold producer, after South Africa and Ghana, and the 13th-largest in the world, with 65 tons of gold produced in 2023. The mining industry is diversifying with the development of lithium extraction, particularly via the Goulamina lithium project.

Legislative amendments, including the revised Mining Code of August 2023, allow the government to hold up to 10% equity in new projects, with the option to buy an additional 20% during the first two years of operation. A 5% stake can be ceded to locals, taking state and private Malian interests in new projects to 35%, up from 20% today, and certain tax exemptions have been abolished.

Mali is exploring strategies to align the mining industry with global carbon net-zero goals, which remain under development.

1.2 Legal System and Sources of Mining Law

The legal system in Mali is mainly influenced by French civil law. The latter is characterised by the codification of laws. In this regard, the mining legislation is written and incorporated in a code (ie, Law No 2023-040, dated 29 August 2023, relating to the Mining Code of the Republic of Mali and implemented by Decree No 2023-0401, dated 22 July 2023, and Law No 2023-041 relating to the local mining sector, together constituting the regulatory framework of the mining industry in Mali).

The main sources of mining legislation in Mali are:

- international treaties;
- the Transition Charter;
- the Investment Code;
- the Territorial Collectivity Code;
- local laws;
- the Labour Code;
- land and property law; and
- environmental laws and regulations.

1.3 Ownership of Mineral Resources

Mineral Resources: Property of the Nation

Malian mineral resources are the property of the nation. This principle is prescribed by the Mining Code, which states that natural deposits of mineral substances in the soil and subsoil of Mali automatically belong to the state. Consequently, the government holds exclusive rights to grant exploration and exploitation permits, ensuring that mineral wealth is utilised in the national interest. Landowners do not own the minerals beneath their land but may receive compensation if surface rights are affected by mining operations.

1.4 Role of the State in Mining Law and Regulations

The state plays a dual role in the mining sector as both grantor-regulator and, to a limited extent, owner-operator through mandatory government participation.

- Grantor-regulator: The government regulates mining activities, issuing permits or authorisations for exploration or exploitation. This process involves ensuring compliance with environmental, social and fiscal requirements as stipulated under the Mining Code.
- Owner-operator: The government has mandatory participation rights in mining projects. For instance, under the Mining Code of 2023, the state holds a free 10% share in all mining projects, with the option to purchase an additional 20% equity stake for a total potential shareholding of 30% in any project. Consequently, government participation in mining projects is mandatory in Mali. Granting an operating licence entitles the state to free participation of a minimum of 10% in the share capital of the mining company. State participation in the share capital of the mining company is thus the counterpart to the granting of such licence. Apart from this free participation, the state can increase its participation in a mining company by purchasing a complementary participation of 20%, called "cash participation". In the event of a capital increase, shares of the state and national investors cannot be diluted since they are priority shares.

There is no mandatory national or government joint venture, contracting, or participation in mining activities in Mali.

1.5 Nature of Mineral Rights

Mineral rights do not have any constitutional basis in Mali. The mining code states that natural deposits of mineral substances in the soil and subsoil of Mali automatically belong to the state. Thus, mineral rights have the status of property under mining permits or authorisations. Holders of mining permits or authorisations have specific rights to use the resources, but these are conditional and subject to compliance with legal requirements.

1.6 Granting of Mineral Rights

Mineral rights in Mali are granted by the ministry in charge of mines, which is the national-level authority responsible for managing the mining industry. There are no overlapping jurisdictions.

Mineral rights are granted through an administrative act, typically in the form of permits or authorisations depending on the activity.

1.7 Mining: Security of Tenure

A mining agreement entitled the "establishment agreement" is firstly concluded between the Malian state and the mining licence holder in order to set out the rights and obligations of the parties. The Mining Code of 2023 provides for two types of establishment agreements:

- an establishment agreement for the research phase; and
- an establishment agreement for the operation phase.

The duration of each agreement varies according to the phase of the mining activity and cannot exceed the duration of the phase concerned. For instance, the duration of the establishment agreement for the research phase cannot exceed that of the research permit, which is nine years including renewal periods.

Whilst the duration of the establishment agreement for the operation phase is 12 years, said agreement can be renewed for a period not exceeding ten years.

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

2.1 Environmental Protection and Licensing of Mining Projects

Environmental Laws and Regulations in Mali

The environment in Mali is mainly governed by Law No 91-47/AN-RM, relating to environmental and living environment protection, and Law No 2021-032, dated 24 May 2021, relating to pollution and nuisance. These laws regulate, among other things, water pollution, air pollution and noise emission. The Mining Code of 2023 also contains environmental provisions. In fact, an applicant for a mining licence should, prior to the commencement of its activities, carry out an environmental impact assessment (EIA). In addition, the mining licence holder should comply with environmental regulation during mining activity.

Main Features of the Environmental Licensing Process for an Exploration and Mining Project

Prior to the commencement of mining activity, the applicant for a mining licence should:

- carry out an EIA – the applicant contributes to the EIA's cost;
- implement an environmental and social management plan in order to mitigate or manage environmental impacts and rehabilitation of the site affected by mining activity; and
- obtain approval for the EIA from the Ministry of Environment.

The environmental licensing process is conducted at the national level.

Strength and Efficiency of Environmental Authorities

Environmental authorities play a key role in mining projects. For instance, the Ministry of Environment should approve the environmental and social impact notice, which briefly describes the project, the potential environmental impacts and measures to reduce or eliminate negative impacts. This approval is a prior condition for the commencement of exploration.

Furthermore, the mining administration collaborates with the Ministry of Environment in monitoring the site and surrounding area in relation to mining activity.

2.2 Impact of Environmentally Protected Areas on Mining

Mali has environmentally protected areas that can be classified into natural integral reserves, national parks, faunal reserve, etc, according to Law No 95-31 dated 20 March 1995, which sets out the management conditions for wildlife and habitat. All categories of protected areas are

generally managed by the Malian state. However, some categories could potentially be created and co-managed with decentralised actors.

Mining activity in environmentally protected areas can be subject to conditions or prohibited on the grounds of public interest. For instance, mining exploitation is strictly prohibited in protected areas, such as natural integral reserves and national parks.

Mining activity threatens biodiversity in protected areas in the absence of control. Indeed, waste from mining industries is discharged into the watershed and leads to habitat degradation.

2.3 Impact of Community Relations on Mining Projects

Mining projects should consider the development of communities by taking economic and social actions to improve the living conditions of the local population. For instance, mining industries may build infrastructures, such as schools and health centres, for the benefit of local population. In addition, mining industries should give priority to nationals, national enterprises and locally produced materials in the execution of their activities.

2.4 Prior and Informed Consultation on Mining Projects

Prior and informed consultation is mandatory. Indeed, exploration or exploitation by mining projects is subject to the consent of the owners of the land or rights holders. In the absence of consent, the mining permit holder should indemnify the owners of the land and can carry out the activity accordingly. Consultations are primarily carried out by the investor.

2.5 Impact of Specially Protected Communities on Mining Projects

Traditional people are among the specially protected communities in Mali. Indeed, consent from the owners of the land is required before exercising the rights arising from the mining permit. According to the Mining Code of 2023, "owners of the land" refers to persons or institutions registered in the land register as the holder or beneficiary of a land title on a specified piece of land, including customary rights holders. The latter are recognised and protected by the law in the Republic of Mali.

2.6 Community Development Agreement for Mining Projects

Community development agreements are known in Mali as "community development plans", which are documents prepared by applicants – in consultation with local and regional communities and authorities – indicating the projects to be carried out for the benefit of communities.

An applicant for a mining licence should present such document together with an EIA. The community development plan should cover priority sectors such as the construction and development of roads and bridges and the construction of health centres and schools.

The technical committee monitoring the community development plan is in charge of controlling the plan's implementation.

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

The Mining Code of 2023, supplemented by its implementation decree of 2024, increases state control, including via measures aimed at improving local participation and environmental protections, leading to a focus on enhancing environ-

mental, social, and governance (ESG) standards within the mining sector.

2.8 Illegal Mining

Illegal mining is a significant issue in Mali and poses challenges to the formal mining industry.

The main issues in case of illegal mining are:

- unregulated competition;
- environmental damage;
- high unemployment; and
- economic damage and safety risks.

Illegal mining can take many forms, including mining activity in the absence of a mining licence and obtaining a licence by fraudulent means. The latter is punishable by a fine and imprisonment, and even cancellation of the licence. In the event of mining activity in the absence of a mining licence, materials used in the activity are seized and brought to court.

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

In Mali, there are examples of both good and bad environmental and community relations surrounding mining projects.

Good examples include:

- the Diba Gold Project, where Altus Strategies implemented a long-term community development programme focused on health and education;
- some mining operations that have funded vocational training centres equipping local residents with skills relevant to mining and related industries, creating better employment opportunities; and
- partnerships with international organisations and NGOs that have supported infrastructure projects focusing on road construction, corridors and energy access.

Bad examples include:

- artisanal gold mining, which has been practiced for centuries and is a way of life for communities and an integral part of the socio-economic system of the region in question, but nonetheless leads to severe environmental degradation due to a lack environmental safeguards; and
- certain mining projects that lead to tension between the community and operators due to inadequate environmental safeguards, in turn leading to environmental degradation such as land and water contamination.

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

3.1 Climate Change Effects

Climate initiatives affect Mali's mining sector through stricter requirements. Mali integrates strategic environmental assessments (*evaluation environnementale stratégique* (EES)) into its mining policies and land use planning. This approach can enhance the mining sector's contribution to sustainable development. In this regard, mining companies are adopting cleaner technologies and enhanced environmental standards.

3.2 Climate Change Legislation and Proposals Related to Mining

No specific climate change legislation related to mining has been passed in Mali but discussions and initiatives are ongoing, particularly to align the sector with global sustainability goals. The

Mining Code of 2023 includes provisions that emphasise environmental protection and the need for mining projects to integrate climate-related strategies.

3.3 Sustainable Development Initiatives Related to Mining

Mali has adopted a new vision that integrates mining activities into a sustainable development framework. This includes social, economic and environmental dimensions, with a focus on mining communities and regions. Mining is now seen as an integral part of the national economy. The Decennial Programming Law (2018–28) will define a clear policy for the development of the mining and petroleum sectors, outlining stakeholders' responsibilities.

3.4 Energy-Transition Minerals

In Mali, there is currently no specific legislation targeting energy-transition minerals like lithium, cobalt, rare earths or copper. However, the government is exploring policies to promote their exploration and exploitation due to rising global demand. Initiatives include developing untapped mineral resources and attracting foreign investments in these energy-transition minerals. These efforts are part of a strategy to diversify the mining economy beyond gold.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Research permit holders must pay an annual surface fee. They are exempt from all value added tax.

Companies engaging in exploration and mining are subject to the following taxes, inter alia:

- housing tax;
- social security contributions and charges payable by employees;
- tax on insurance contracts;
- registration fees;
- contribution to the import verification programme; and
- stamp duty in case of intention to export mining products.

Furthermore, a mining company with an operating licence that produces more than 30% of the quantity specified in the feasibility study production schedule must pay an overproduction fee. Mineral products are subject to a special tax on certain products (*impôt spécial sur certains produits)* and ad valorem tax. The taxable base of special tax on certain products is tax-free turnover whereas that of the ad valorem tax is the valued production.

4.2 Tax Incentives for Mining Investors and Projects

Operating licence holders benefit from a reduction in the rate of tax on industrial and commercial profits tax, or corporate tax, to 25% over a period of three years, starting from the date of first commercial production.

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

The transfer or sale of a mining project is subject to capital gains in Mali.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Mali provides attractive fiscal incentives, including exemptions during exploration phases:

- the Mining Code ensures fiscal and customs stability for investors; and
- the developing mining infrastructure (eg, construction of a road corridor between Bamako and Dakar in the south (completed), San-Pédro and Bamako (in progress) and Bamako and Zantiebougou (in progress), and partnerships with institutions like the World Bank (eg, *Programme de Gouvernance du Secteur Minier* (PGSM)) enhance its appeal.

The government also emphasises transparency and legal security to reassure investors, including via *Initiative pour la Transparence dans les Industries Extractives* (ITIE).

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

There are no restrictions on foreign investment in the exploration and mining sectors in Mali.

However, Mali has specific rules for foreign investment in the mining sector. Mining activity relating to substances subject to the mining regime is authorised by virtue of a mining title.

The mining titles provided for in the Mining Code include:

- exploration authorisation;
- exploration permits;
- artisanal mining permits;
- small-scale mining permits; and
- large-scale mining permits.

While the sector is open to foreign investment, there are some legal requirements, such as compliance with environmental requirements and contributions to local development. The initial legal requirements include compliance with environmental standards, such as conducting an EIA before any exploration or mining project. Mining companies must also develop a site rehabilitation plan after mining activities. Also, mining companies must partner with local entities or support the training of the Malian workforce. Regarding local development, investors are required to fund community projects, such as building infrastructure or supporting education and healthcare. Finally, they are often required to prioritise the hiring of local workers and provide technical training.

5.3 International Treaties Related to Exploration and Mining

Mali participates in multilateral treaties that specifically favour and protect investments in exploration and mining, including:

- the Convention Establishing the Multilateral Investment Guarantee Agency, concluded in Seoul on 11 October 1985;
- The OHADA Treaty (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*); and
- The Economic Community of West African States (ECOWAS) Mining Directive.

Furthermore, Mali has signed bilateral investment treaties with many countries, including Canada, China and Germany, some of which have already entered into force in Mali.

5.4 Sources of Finance for Exploration, Development and Mining

One of the main sources of finance for exploration, development and mining in Mali is foreign direct investment, primarily from international mining companies.

For instance, the mining giant Barrick Gold, the world's second-largest gold producer, has made significant investments in the Loulo-Gounkoto

mine. The World Bank, which funds projects such as the PGSM to improve resource management, and *Banque Africaine de Développement* (BAD), which supports initiatives to develop infrastructure critical to the sector, play a key role by funding specific projects.

In addition, local mining companies and Malian private investors, such as *Société d'Exploitation des Mines d'Or de Sadiola* (SEMOS), provide limited but growing support. Lastly, public-private partnerships (PPPs) are used for infrastructure projects supporting the mining industry.

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

The mining companies operating in Mali, such as Barrick Gold, raise funds by issuing shares or bonds on international exchanges. Barrick Gold lists its shares on the New York Stock Exchange under the symbol GOLD, and on the Toronto Stock Exchange under the symbol ABX. These international securities markets help to mobilise significant capital to finance exploration and development in Mali. In addition, though limited, local mining companies can access regional financial markets, such as the West African Regional Stock Exchange (Bourse *Régionale des Valeurs Mobilières* (BRVM)) based in Abidjan. These markets help channel local investments into the mining sector.

5.6 Security over Mining Tenements and Related Assets

The Malian Mining Code does not prohibit the following (pledges, mortgages, etc) from being used as security in connection with mining exploration, development and financing:

- mining permits and authorisations; and
- tangible assets such as mining equipment and infrastructure.

In this regard, securities should be registered with the relevant authorities, and the transfer or assignment of securities should be subject to conditions.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The mining sector will undergo a significant transformation over the next few years, driven by its focus on energy transition minerals (eg, cobalt, copper, lithium, graphite).

The government has taken a proactive approach by securing a 35% stake in Goulamina (ie, in the Goulamina lithium project), the country's second largest lithium mine, underscoring its intention to capitalise on the rising demand for clean energy materials. Legislative amendments, including the revised Mining Code of 2023, allows the government to hold up to 10% equity in new projects, with the option to buy an additional 20% during the first two years of operation. A 5% stake can be ceded to locals, taking state and private Malian interests in new projects to 35%, up from 20% today, and certain tax exemptions have been abolished. Additionally, Mali is exploring strategies to align its mining industry with global carbon net-zero goals, which remain under development.

These changes reflect a balance between exploiting mineral wealth, particularly lithium, and resolving the problems of environmental and economic sustainability in Mali.

MEXICO

Law and Practice

Contributed by:
Fernando Todd, Jorge Garcia, Silvia Alanis and Ana Lilia Solano
Todd

Contents

Todd is a highly specialised law firm with extensive experience in multiple practice areas, including corporate and transactional law (mergers and acquisitions), natural resources (mining, energy, oil), banking, finance and capital markets, foreign investment, corporate governance, and litigation, among others. The firm is a recognised leader in the Mexican mining sector, with longstanding expertise in advising companies on the sale, financing, negotiation, development, construction, and operation of mining projects. In addition, the team represents both national and international mining companies and investment funds, handling transactional matters as well as regulatory issues specific to the mining industry. The firm's lawyers possess a deep understanding of the regulatory frameworks and legal requirements governing mining operations in Mexico, including licensing, permitting, compliance, and cross-border considerations relevant to foreign investors in the mining sector.

Authors

Fernando Todd is the principal and managing partner at Todd, bringing years of experience to his practice, which focuses on corporate law, mergers and acquisitions, mining law, foreign investment, cross-border transactions, banking and finance, and strategic corporate litigation. Throughout his career, he has successfully represented and advised legally recognised national and multinational corporations across various industries, including mining, financial services, funds, manufacturing, and technology. His comprehensive knowledge of Mexico's legal and regulatory framework, coupled with a deep understanding of international business practices, has established him as a trusted adviser for clients navigating complex legal challenges.

Jorge Garcia is a senior associate at Todd with more than 15 years of experience. His practice focuses on corporate law, mergers and acquisitions, mining law, foreign investment and cross-border transactions. Throughout his professional career, he has represented and advised legally recognised national and multinational companies in the sector, supporting their daily corporate operations both in Mexico and abroad. He has also facilitated interactions between these companies and the relevant regulatory authorities, leveraging his extensive expertise in this area.

Silvia Alanis is an associate at Todd. Her practice focuses on public and administrative law, particularly the co-ordination of legal ordinances to implement public policy. During her professional career, she has worked in the Mexican government on the Digital Strategy Coordination, as an adviser in the transition team of President-elect Enrique Peña Nieto, in the Technical Secretariat of the National Security Council, and in the Coordination of Advisors to the Secretary of the Interior. In addition, she has experience in administrative litigation in industrial property matters, mainly pharmaceutical patents and industrial secrets.

Ana Lilia Solano is an associate at Todd. Her practice focuses on commercial law, corporate law, compliance and corporate governance, real estate law, notarial law, and legal tech. Throughout her professional career, Ana has been actively involved in the closing of significant corporate transactions. Her experience includes the review and evaluation of corporate by-laws, amendments, meetings, corporate records, share certificates, resolutions, and agreements of shareholders, partners, and boards of directors. She ensures compliance with the successive chain of ownership in shareholder and company compositions, as well as the proper integration and powers of boards of directors.

Todd

Artz Pedregal – Tower 1 – 6th Floor
Blvd. Adolfo Ruiz Cortines #3720
Jardines del Pedregal
Álvaro Obregón. C.P. 01900
Mexico City

Tel: +52 - (55) 5203 6333
Email: info@todd.com.mx
Web: www.todd.com.mx

Todd.

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Mexico has long been a cornerstone of the country's economy and continues to play a pivotal role in its development. Mexico boasts a remarkable diversity of mineral resources spread across its national territory, including silver, gold, copper, zinc, lead, fluorite, manganese, barite, and more. This vast array of resources significantly strengthens the industry.

Mexico's potential for mining is rooted in its rich and diverse geology, which has resulted in extensive mineral deposits. The country is also home to a skilled and dedicated workforce, further bolstering its position as a mining powerhouse.

With a heritage dating back to pre-Hispanic times and a major boom during the 16th century, Mexico has established itself as the world's leading producer of silver. In the 21st century, the sector has experienced unprecedented levels of investment, leading to the emergence of numerous new companies and projects. This growth has driven the adoption of a new governance model emphasising social responsibility, transparency, and collaboration among stakeholders.

According to the Ministry of Economy, Mexico remains the world's leading producer of silver and ranks among the top producers of metals such as gold, copper, and lead. Mining production has been an integral part of the Mexican economy for generations. Specifically, the mining-metallurgical sector contributes 2.05% of the GDP, as reported by the National Institute of Statistics and Geography, generating substantial income and employment across various regions.

Mexico's mining industry continues to attract significant foreign investment, with global mining companies establishing operations to capitalise on the country's abundant mineral reserves and favourable business opportunities. This influx of investment has driven the sector's continued development, creating jobs and strengthening production chains.

An essential aspect of this growth is the evolving relationship between mining companies and local communities. Recent legal reforms have notably impacted these dynamics, particularly through the requirement for public consultations before granting new mining concessions. These measures aim to ensure greater community involvement and transparency in the mining process.

1.2 Legal System and Sources of Mining Law

Mexico's legal system is based on civil law, and the primary sources of Mexican mining legislation are outlined below.

Constitution of the United Mexican States

Mining activities in Mexico are regulated under Article 27 of the Mexican Constitution, which declares that all natural resources, including minerals, are the property of the Nation. Private entities may conduct mining activities, under specific conditions and regulations established by law, primarily through a system of mining concessions.

The government retains exclusive rights over certain activities, including the exploration and exploitation of oil, radioactive minerals, lithium, and solid, liquid, or gaseous hydrocarbons. These resources are not subject to concessions, as their management remains under strict government control.

Mining Law

Recent amendments to Mexico's mining legislation

In May 2023, significant amendments were made to the Mining Law, National Waters Law, and related environmental legislation, introducing stricter regulations to enhance environmental protection and promote sustainable resource management. These reforms, however, have sparked numerous amparo lawsuits (constitutional appeals) from companies and individuals in the sector. Plaintiffs argue that the amendments infringe upon acquired rights, the principles of legality, and the right to legal certainty. The resulting uncertainty has disrupted the sector, creating economic and labour risks.

In response to the numerous constitutional lawsuits and initial contradictory judgments thereto, the Supreme Court of Justice of the Nation (SCJN) issued General Agreement No 3/2024, instructing courts to delay rulings on amparo lawsuits and appeals related to the reforms. The SCJN will ultimately decide the constitutionality of these amendments, though a ruling is still pending.

Key provisions of the New Mining Law

The Mining Law establishes the framework for the exploration, exploitation, and management of mineral resources, including the process for granting mining concessions. Key elements are described below.

Exploration activities

Exploration and prospecting activities in new concession zones are exclusively managed by the Mexican Geological Survey (*Servicio Geológico Mexicano*). These activities are initiated through exploration orders published in the Mexican Official Gazette.

Private entities may request the Ministry of Economy to authorise exploration in a specific area where they possess information on potential mineral deposits. In such cases, the Mexican Geological Survey may enter into collaboration agreements with the requesting party to conduct exploration activities.

The requesting party has the right to be granted the new mining concession once the public bidding process is completed, provided that (i) they meet the requirements to qualify as a mining concession holder under the new Mining Law, and (ii) their economic proposal in favour of the Mexican State is at least 90% of the highest bid submitted during the process.

Concessions and public bidding

Concessions are awarded through public bidding to ensure the Mexican state secures the best economic consideration. Holders of existing concessions may receive preferential rights over adjacent areas if they match the highest economic proposal.

New mining concessions term

Under the new Mining Law, the term of mining concessions has been reduced from 50 years to 30 years. These concessions are extendable for an additional 25 years. Following this extension, a second 25-year renewal may be granted, but only through a public bidding process. In such cases, the original concessionaire will have a preferential right to match the highest bid.

The first five years of a new mining concession are designated exclusively for pre-operative activities, and this period cannot be extended.

Social and environmental requirements

Concession holders must fulfil several obligations:

- conduct social impact studies and implement restoration, closure, and post-closure plans;
- provide financial guarantees (eg, deposits or trusts) to support mitigation and compensation measures;
- obtain and report federal authorisations, including environmental, labour, and energy permits; and
- conduct prior, free, and informed consultations with indigenous and Afro-Mexican communities in affected areas.

Community rights and benefits

Indigenous and Afro-Mexican communities residing on concession land, where applicable, are given priority to match the most competitive economic proposal for concessions. Additionally, concession recipients must:

- sign agreements for land-use permits; and
- pay at least 5% of mining profits to the affected communities, a requirement now codified by law.

Water availability

Mining concessions are contingent on obtaining national water concessions for mining purposes.

Public consultations

Public consultations must align with environmental impact authorisations and include information from social impact studies. These consultations are simultaneous but occur after concession awards, with applicants covering their costs in advance.

Legal challenges and uncertainty

Despite the new Mining Law's current validity, it faces ongoing appeals in the SCJN. If the court rules against the reforms, the previous Mining Law will be reinstated, further contributing to the uncertainty affecting the sector.

It is important to note that concessions granted prior to the implementation of the new Mining Law will, in the first instance, remain unaffected by its changes.

Regulations to the Mining Law

The Regulation of the Mining Law provides detailed guidance on the implementation of the Mining Law. It specifies the procedures for applying for concessions, conducting exploration and exploitation activities, fulfilling concession holders' obligations, and defining the authorities' roles and responsibilities, among other operational and administrative matters.

Following the enactment of the new Mining Law, new Regulations consistent with its provisions are expected to be issued. However, as of the date hereof, the new Regulations have not yet been enacted, and the previous Regulations, aligned with the former Mining Law, remain in force.

The General Law of Ecological Balance and Environmental Protection

This law contains provisions that affect the mining industry, especially with respect to environmental impact assessment and waste management.

Agrarian Law

In Mexico we have private property and "ejido" land. "Ejido" land refers to a system of communal land ownership, established as part of agrarian reforms after the Mexican Revolution. Ejido land is owned collectively by a group of people, typically farmers or indigenous communities, and is primarily used for agriculture. While individuals or families have the right to work specific plots, the land cannot be sold or transferred without community and government approval.

The system aims to ensure equitable access to land and promote sustainable farming practices.

The Agrarian Law regulates legal relations related to land ownership and possession of "Ejido" land, as well as agreements with local communities to obtain and/operate concessions.

Foreign Investment Law

This law establishes the conditions under which foreign investors may participate in the mining sector.

Specific Environmental Regulations for the Mining Industry

There are specific regulations issued by the Ministry of Environment and Natural Resources that regulate environmental aspects of mining activities, such as waste management, pollution prevention and restoration of affected areas.

1.3 Ownership of Mineral Resources

In Mexico, all natural resources, including minerals, are constitutionally owned by the Mexican Nation and managed by the State. To facilitate their extraction and use, the government employs a concession system, which grants legal entities or individuals the right to conduct mining activities. These concessions come with specific legal obligations and regulatory frameworks.

Key Points about Mining Concessions

- Exploitation rights: concessions provide the right to exploit underground resources such as minerals, but they do not automatically grant ownership of the land itself.
- Surface v subsurface rights:
  (a) Mining concessions govern subsurface rights, focusing on the extraction of minerals.
  (b) Surface rights refer to the ownership or use of the land at ground level. These must be negotiated with the landowners, whether they are private individuals, ejido communities, or other entities.
  (c) Mining concessions are issued, maintained, and transferred independently of surface rights. This means concession holders must secure separate agreements to access and use the surface land for their mining operations.

1.4 Role of the State in Mining Law and Regulations

Under Mexican law, mineral resources are the property of the nation, and the state has exclusive control over their use. Mining activities by private parties are permitted only through mining concessions issued by the federal executive, via the Ministry of Economy, in accordance with the Mexican Mining Law and its regulations. This framework ensures that the state acts as both a grantor and regulator of mining rights.

Key Aspects of the Mexican Mining Legal Framework

Scope of mining concessions

- Concessions grant rights to exploit and extract mineral resources but do not convey ownership or surface land rights.
- Surface rights must be negotiated separately with landowners or communities.

Exclusions

- Certain resources, including oil, hydrocarbons, lithium, radioactive minerals, and liquid or gaseous substances, are excluded from concessions and remain strictly under state control.

Regulatory administration

- The Ministry of Economy, through the Mining Authority, oversees the issuance, administration, and enforcement of mining concessions.
- Other governmental entities regulate related aspects of mining activities:
  (a) Ministry of Environment and Natural Resources (SEMARNAT): Environmental permits and regulations;
  (b) National Water Commission (CONAGUA): Water usage and rights;
  (c) Ministry of National Defence (SEDENA): Use of explosives and related security measures;
  (d) Ministry of Labour and Social Security (STPS): Labour conditions and worker safety; and
  (e) Ministry of Agrarian, Territorial, and Urban Development (SEDATU): Land use and territorial planning.

1.5 Nature of Mineral Rights

Under Mexican law, mineral resources belong to the nation, and mining concessions grant private parties the right to exploit these resources but not ownership or rights over the surface land where the concessions are located.

Legal Framework and Regulations

Constitutional basis

- Article 27 of the Political Constitution of the United Mexican States establishes that all land, waters, and minerals within Mexican territory belong to the state. Their use by private entities is allowed only through concessions granted by the Federal Executive via the Ministry of Economy, in accordance with the Mexican Mining Law and its regulations.
- Certain resources, such as oil, hydrocarbons, lithium, liquid or gaseous minerals, and radioactive materials, are excluded from private concessions and remain exclusively managed by the state.

Mining concessions

- Scope: Concessions allow the exploitation of underground mineral resources and are distinct from surface land rights, which must be negotiated separately.
- Transferability: Mining concessions can be transferred or encumbered under the Mining Law, subject to regulatory approval.
- Prior Approval for Transfer:
  (a) The Ministry of Economy must approve any transfer of mining concessions.
  (b) The acquirer must demonstrate compliance with legal requirements to qualify as a mining concession holder.
- Security Interests: Concession holders may use their mining rights as collateral for securing obligations, provided:
- the concession pertains to an operating mine; and
- the beneficiary of the lien or security interest agrees to comply with the requirements to hold a mining concession within six months after enforcing the lien or transfers the rights to a qualified holder.

1.6 Granting of Mineral Rights

Under Article 27 of the Political Constitution of the United Mexican States, all lands, waters, and natural resources in Mexico, including minerals, are the property of the Mexican state. Private parties may only use and exploit these resources through mining concessions granted by the federal executive, via the Ministry of Economy, in accordance with the Mexican Mining Law and its regulations.

It is important to note that the rights of a mining concession come from an administrative act issued by the competent federal authority, which

must observe the Mining Law that establishes the requirements, procedures and conditions to obtain, operate and maintain mining concessions.

In addition to federal mining concessions, mining companies must secure state and municipal permits for operational aspects of the mining project, such as construction and land issues and, in some cases, environmental local policies.

1.7 Mining: Security of Tenure

Mining Concessions in Mexico

In Mexico, mining concessions are governed by a robust legal framework that establishes conditions for their acquisition and maintenance. The Mining Authority, operating under the Ministry of Economy, administers these concessions. The Mining Law outlines the principles and processes for the exploration, exploitation, and management of mineral resources.

Role of the Mining Authority

The Mining Authority is tasked with ensuring legal security for the mining industry by enforcing regulations and monitoring compliance. Its overarching goal is to encourage investment in the sector to drive economic development while balancing the interests of all stakeholders.

Granting Mining Concessions

Mining concessions are awarded through a public bidding process designed to ensure the Mexican state receives the best possible consideration. The process is governed by specific conditions, including:

- Technical, legal, and financial requirements: applicants must demonstrate technical, legal, economic, and administrative capacity.
- Social and environmental obligations:
  - (a) conduct a social impact study and implement a programme of restoration, closure, and post-closure of mines;
  - (b) provide financial guarantees (eg, deposits, insurance, or trusts) to address the social impact study's recommendations;
  - (c) obtain environmental, labour, energy, social, and other federal authorisations, which must be reported to the Mining Authority;
  - (d) conduct prior, free, and informed consultations with indigenous and Afro-Mexican communities in the area; and
  - (e) specify the minerals or substances to be exploited.

Concession Duration and Renewal

- Initial term: concessions are granted for 30 years.
- First extension: a 25-year extension is available.
- Second extension: an additional 25-year period may be granted through a public bidding process, where the original concessionaire holds a preferential right to match the highest bid.
- Pre-operative period: the first five years of a new concession are designated for pre-operative activities, with no possibility of extension.

Maintenance of Mining Concessions

To maintain concessions, holders must:

- submit annual reports detailing activities and discovered resources;
- pay fees to the state for holding the concession; and
- conduct works and activities on the concession and file assessment work reports.

Concessionaires may request that the Mining Authority suspend activities once, for up to three years, if they provide evidence that work was impossible due to technical, economic, employment, judicial, or force majeure reasons. The Ministry must be notified within ten working days of the suspension.

Transfer of Mining Concessions

Transferring a mining concession requires prior approval from the Ministry of Economy. Approval is granted if the acquiring party demonstrates compliance with the requirements for being a concession holder.

Concession holders may grant liens or security interests over their mining rights to secure obligations, provided the concession relates to an operating mine. Additionally, within six months of enforcing the lien, the beneficiary of the lien or security interest must either meet the requirements to hold a mining concession or transfer the rights to a qualified holder.

Causes for Cancellation

Concessions may be cancelled generally due to:

- not making timely payments of the corresponding contributions for two consecutive fiscal years;
- not submitting the reports required by the Mining Law and its Regulations for two consecutive years or five non-consecutive years;
- not starting the corresponding work within one year from the concession's effective date or failing to carry out the activities covered by the concession for two consecutive years;
- not submitting the Mine Closure Plan to the Ministry of Economy within two years and up to one year before the closure of operations;
- not having a valid water concession for industrial use in mining; or
- the presence of an imminent risk of ecological imbalance, irreversible damage or deterioration to natural resources, cases of contamination with hazardous repercussions for ecosystems, their components, surface or underground hydrological systems, or public health, in accordance with applicable provisions in the field.

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

2.1 Environmental Protection and Licensing of Mining Projects

Environmental Framework for the Mining Industry in Mexico

The General Law of Ecological Balance and Environmental Protection serves as the cornerstone of environmental legislation affecting the mining industry in Mexico. This law establishes general principles and norms, guiding the issuance of state-specific environmental regulations. It addresses critical topics such as environmental impact assessments, waste management, biodiversity protection, and citizen participation in environmental matters.

Additionally, the Environmental Impact Law and its regulations govern the environmental impact assessment process for projects with potential environmental effects. These laws detail the procedures for obtaining environmental authorisations, which include presenting and reviewing environmental impact studies.

Mexican Official Standards (NOMs) further establish mandatory technical regulations across various environmental domains, including air quality, water, soil, noise, and waste management.

Environmental Authorisation Process for Mining Projects

To obtain environmental authorisation for a mining project, the following steps must be completed:

Submission of an Environmental Impact Study

The project proponent must submit this study to the Ministry of Environment and Natural Resources (SEMARNAT). The study evaluates the potential environmental impacts of the proposed activities and includes proposed mitigation measures.

Public consultation

A public consultation process is conducted to allow citizen participation in evaluating the project.

Evaluation and resolution

SEMARNAT reviews the study and consultation feedback, issuing a resolution based on the procedures established in the law.

Monitoring and compliance

Once authorised, the project is subject to continuous monitoring to ensure compliance with the conditions outlined in the environmental authorisation.

Environmental authorisations are conducted at the federal level through SEMARNAT, making the process uniform across Mexico, and, on a case-by-case basis, state environmental authorities are involved.

Recent Legislative Reforms

Recent reforms have introduced significant changes to environmental laws, particularly affecting the mining sector.

Mining Law Reforms (8 May 2023)

These reforms imposed stricter environmental controls on mining projects, which resulted in a bill targeting open-pit mining, which has not yet been passed.

General Law on Climate Change Reforms (15 November 2023)

These amendments focus on addressing climate challenges, including greenhouse gas emissions, sustainability, energy efficiency, and natural resource management, such as water.

These reforms aim to address critical environmental challenges but have sparked numerous amparo lawsuits from companies and individuals in the mining sector. The lawsuits argue that the reforms infringe on acquired rights, the principles of legality, and the right to legal certainty, creating legal and operational uncertainty in the industry.

2.2 Impact of Environmentally Protected Areas on Mining

In Mexico, several areas are designated as protected and/or reserved zones to conserve biodiversity and ecosystems. These areas include nature reserves, national parks, biospheres, and other conservation categories, and the protection of these areas is regulated by Mexican environmental legislation. In protected areas, mining activity may be restricted or even prohibited, especially if it is considered that it could have significant negative impacts on the environment.

The environmental impact study requested for mining concessions must include an analysis that evaluates the potential environmental effects of the proposed activities and proposes mitigation measures, and in the case of a protected area, this must be noted and respected as a limit to mining operations. Mining companies operating

near protected areas are often subject to stricter requirements regarding sustainable practices and corporate social responsibility.

Also, a recent legislative proposal that has not been approved has introduced significant restrictions on mining activities, particularly targeting open-pit mining. These measures are aimed at mitigating the environmental and social impacts associated with this extraction method, which has been criticised for its detrimental effects on ecosystems and surrounding communities. The bill effectively prohibit open-pit mining operations, emphasising the need to transition to more sustainable and less invasive extraction techniques.

Additionally, the new legal framework prioritises the protection and sustainable use of water resources in mining activities. These reforms represent a paradigm shift in Mexico's approach to mining governance, prioritising ecological preservation and the protection of human rights.

2.3 Impact of Community Relations on Mining Projects

In Mexico, the issue of community relations in mining projects is of great importance and is subject to specific regulations and an increasing focus on corporate social responsibility. The issue is even developed at the constitutional level and criteria have been defined by the Supreme Court of Justice.

Article 6° of the Mining Law contemplates the obligation to carry out a prior, free and informed consultation process with indigenous and Afro-Mexican people or communities in the area of the mining concessions. Some considerations of the consultation are:

- The consultation will be carried out under the direction of the Ministry.
- The consultation must adhere to the principles of being prior, free, informed, adequate, and conducted in good faith, and be simultaneous and supplementary to that required for obtaining the environmental impact statement, which must include information on the social impact study; however, said study will only be submitted after the mining concession bid has been awarded.
- The cost will be covered in advance by the applicant for the mining concession.

The recipient of a new concession in an area with existing indigenous or Afro-Mexican peoples or communities must sign an agreement to obtain the land use permit as well as to pay a consideration of at least 5% of the profits from the mining activity to the affected community, so the agreements signed with the communities for granting a new concession will have a fixed legal basis rather than being subject to discretionary criteria.

Additionally, the new legal framework prioritises the protection and sustainable use of water resources in mining activities. Concessions and permits are now subject to stricter conditions to ensure that mining operations do not compromise water availability, quality, or equitable access for communities.

2.4 Prior and Informed Consultation on Mining Projects

A prior and informed consultation is mandatory in Mexico. Article 6° of the Mining Law contemplates the obligation to carry out a prior, free and informed consultation process with indigenous and Afro-Mexican people or communities in the area of the mining concessions. Some considerations of the consultation are:

- The consultation will be carried out under the direction of the Ministry.
- The consultation must adhere to the principles of being prior, free, informed, adequate, and conducted in good faith, and be simultaneous and supplementary to that required for obtaining the environmental impact statement, which must include information on the social impact study; however, said study will only be submitted after the mining concession bid has been awarded.
- The cost will be covered in advance by the applicant for the mining concession.

The mining company should collaborate by providing detailed information about the project, participating in the identification of possible impacts and seeking agreements with the communities.

Additionally, the new legal framework prioritises the protection and sustainable use of water resources in mining activities. Concessions and permits are now subject to stricter conditions to ensure that mining operations do not compromise water availability, quality, or equitable access for communities.

2.5 Impact of Specially Protected Communities on Mining Projects

In Mexico, there are specially protected communities such as indigenous and Afro-Mexican people or communities.

Article 2, paragraph B, of the Mexican Constitution establishes the specific rights of indigenous peoples, including the right to self-determination, the right to consultation and participation, the right to maintain and develop their forms of social organisation, and the right to land and territory.

There is also a General Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities, the purpose of which is to protect, safeguard, and develop cultural heritage and collective intellectual property.

Particularly, in mining matters, Article 6 of the Mining Law contemplates the obligation to carry out a prior, free, informed, culturally appropriate, and good-faith consultation prior to the granting of the mining concession title in the case of lots located in the territories of indigenous or Afro-Mexican peoples or communities.

2.6 Community Development Agreement for Mining Projects

The Mexican Constitution, international conventions and specific laws are mandatory in our country. As a result, mining companies must comply with these legal frameworks, particularly by respecting the rights of indigenous and Afro-Mexican peoples. This includes conducting citizen consultations before a mining concession is granted. The implementation of community consultations facilitates engagement and the establishment of agreements with communities affected by mining projects. Through these consultations, communities can voice their concerns and negotiate conditions they deem fair for the project's development.

Particularly in Mexico, many mining companies enter into community development agreements as part of their corporate social responsibility activities and to gain the support of communities affected by mining projects. These agreements can address a variety of issues, including local employment, infrastructure, social services, educational and environmental programmes, among others.

According to Article 13 of the mining law, the recipient of a new concession in an area with existing indigenous or Afro-Mexican peoples or communities must sign an agreement to obtain the land use permit as well as to pay a consideration of at least 5% of the profits from the mining activity to the affected community, so the agreements signed with the communities for granting a new concession will have a fixed legal basis rather than being subject to discretionary criteria.

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

Mexico has a comprehensive legal framework that encompasses ESG regulations for the mining sector. These regulations seek to balance the development of the mining industry with the protection of the environment, the rights of communities and the promotion of ethical business practices. The effective implementation and enforcement of our legal system are fundamental to ensure the environmental and social sustainability of the mining industry in the country.

Also, the Mexican Constitution provides the fundamental principles for all legal regulations, particularly through the Mining Law, which governs mining activity in Mexico and must be in accordance with the general environmental and social obligations established in the General Law of Ecological Balance and Environmental Protection and the Federal Environmental Liability Law, as well as in the Law of Sustainable Rural Development.

In addition, there are several particular regulations whose mission is to protect the environment in the mineral industry, such as:

- NOM-023-STPS-2012, underground mines and open-pit mines – occupational health and safety conditions;
- NOM-032-STPS-2008, safety conditions for underground coal mines;
- NOM-120-SEMARNAT-2020, environmental protection in mining exploration;
- NOM-141-SEMARNAT-2003, specifications for tailings deposits;
- NOM-147-SEMARNAT/SSA1-2004, soil remediation concentrations;
- NOM-155-SEMARNAT-2007, environmental protection for gold and silver leaching;
- NOM-157-SEMARNAT-2009, mining waste management plans; and
- NOM-159-SEMARNAT-2011, environmental protection for copper leaching.

On the other hand, it is essential to mention that Mexico is part of the International Mining Convention. Its objectives are to consolidate socially responsible mining activity and reduce the environmental impact in the regions where mining is actively operating.

Mexico continues to evaluate the law regarding ESG. The country is also participating in broader ecological policies to mitigate its impact on climate change.

2.8 Illegal Mining

Illegal mining is a widespread issue that poses significant challenges globally, and Mexico is no exception. This illicit activity undermines the legal mining industry, disrupting operations and prompting co-ordinated responses from both the government and private sector. Illegal mining often occurs in rural or indigenous areas, creating tensions over the control and use of land and natural resources. These operations are frequently linked to labour exploitation and the forced displacement of local communities from

their territories. Furthermore, in many regions, illegal mining has deep connections with organised crime, intensifying violence and insecurity in nearby communities and exacerbating social instability.

In response to these challenges, the Mexican government has implemented several measures:

- In May 2023, significant amendments were made to the Mining Law, National Waters Law, and related environmental legislation to tighten regulations in the mining industry. These reforms aim to enhance environmental protection and ensure sustainable resource management.
- A bill to ban open-pit mining and hydraulic fracturing (fracking) has been submitted, reflecting a commitment to mitigating environmental impacts and addressing community concerns.
- Security operations have been undertaken to combat illegal mining and its links to organised crime.

Industry actions:

- Formal mining companies are implementing social responsibility programmes to strengthen relations with communities and reduce the attractiveness of illegal mining.
- Companies are working alongside government agencies to report and combat illegal activities.

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

With the recent mining reforms, public consultations have made it possible to ensure legal certainty. Consultation must be free, carried out in good faith and in a manner appropriate to the circumstances. Its purpose is to obtain the consent of indigenous and Afro-Mexican peoples and communities, as well as to establish agreements between them and the mining companies.

As the reform is still recent, the implementation of citizen consultations under the Mining Law in Mexico is in its early stages, with only a limited number of cases currently in progress. By enshrining the right to consultation for indigenous and Afro-Mexican communities in the Mining Law, the aim is to guide the sector towards operations that align with best practices in respecting fundamental rights and promoting sustainable mining.

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

3.1 Climate Change Effects

Mexico is committed to addressing climate change, and has recently implemented several reforms, particularly in the mining sector. Reforms were made to the Mining Law on 8 May 2023, and the General Law on Climate Change was also reformed on 15 November 2023. These initiatives seek to address environmental challenges related to greenhouse gas emissions, sustainability, energy efficiency, and the management of natural resources such as water.

A new requirement for obtaining a mining concession is securing authorisation from the Ministry of Environment and Natural Resources for the Programme of Restoration, Closure, and Post-Closure of Mines. Moreover, as part of these reforms, the relevant authorities may, if they deem it necessary, request to remove deposits or sites used for the final disposal of deposits, tailings dams, or dross that are located within

protected natural areas, wetlands, bodies of water, watercourses, federal zones, or in locations where, due to the waste's dispersal path in the event of a breach, they affect, or could potentially affect, population centres, productive zones, or ecosystems.

Holders of existing concessions for the use of national waters who undertake mineral exploration, exploitation, or processing activities must apply to the National Water Commission to change the designated use of these concessions from industrial to mining use.

In recent developments, the Mexican government has initiated a voluntary programme, inviting companies from various industries, including mining, to return unused portions of their water concessions to the federal authorities. The objective is to reallocate these surplus water volumes to regions facing water scarcity, thereby addressing critical water needs across the country.

3.2 Climate Change Legislation and Proposals Related to Mining

Recently, several reforms have been implemented, particularly in the mining sector. Reforms were made to the Mining Law on 8 May 2023, and the General Law on Climate Change was also reformed on 15 November 2023. These initiatives seek to address environmental challenges related to greenhouse gas emissions, sustainability, energy efficiency, and the management of natural resources such as water.

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3.3 Sustainable Development Initiatives Related to Mining

In Mexico, every six years the government issues its policies and strategies through the National Development Programme, which has among its objectives economic, social, and sustainable development, as well as specific actions for the mitigation of climate change and the promotion of renewable energies. Also, the Mexican government has a Special Climate Change Programme issued by the Mexican government, which includes objectives, strategies, actions, and goals to address the negative impact of climate change.

And in international matters, Mexico has ratified its commitment to the United Nations 2030 Agenda for Sustainable Development.

On the other hand, the main task of the Federal Environmental Protection Agency is to increase the levels of compliance with environmental regulations, to contribute to sustainable development and enforce environmental laws.

3.4 Energy-Transition Minerals

With the recent legal reforms in the mining sector, the exploration, extraction, processing, and use of lithium are now exclusively controlled by the Mexican state. These activities will be carried out by the decentralised public agency Lithium for Mexico.

Given the growing global demand for lithium, particularly for automotive batteries, Mexico stands to benefit from its lithium reserves, such as those located in Sonora. However, the country does not yet have any lithium mines in operation. Currently, there are three lithium deposits in the exploration stage, situated in the states of Sonora, San Luis Potosí, Zacatecas, and Baja California.

Copper is a crucial metal in Mexico, significantly impacting the mining industry and economy. Major production areas include Sonora, Zacatecas, San Luis Potosí, Chihuahua, and Durango. Mexico is a leading global copper producer, with output driven by large-scale industrial and small-scale artisanal operations. Copper is a key export, primarily sent to the USA and China.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The Ministry of Finance and Public Credit is responsible for collecting taxes, improvement contributions, duties, products, federal benefits, and associated charges, and for administering the Income Tax Law.

With respect to exploration and exploitation, holders of mining concessions must pay fees for the extraction of minerals according to the hectares exploited, the value of the minerals extracted, and the rates established by the executive. Additionally, mining companies must declare and pay taxes on the profits obtained from mining exploration and exploitation.

In addition, Mexico has the Mining Special Tax and Extraordinary Mining Duty:

- The Mining Special Tax is a 7.5% tax levied on income from the sale of minerals, ensuring mining companies contribute to public revenues.
- The Extraordinary Mining Duty is a 0.5% tax on the annual income from gold, silver, and platinum sales, designed to capture additional value from precious metals.

In 2024, the government proposed raising royalties from 7.5% to 8.5% and from 0.5% to 1.0%, sparking industry concerns about deterring investment.

These measures aim to balance government revenue with sustainable investment in the mining sector.

Mexico has double taxation treaties with several countries, which may affect the taxation of foreign investors. These treaties seek to avoid double taxation and usually include specific provisions for the mining sector.

4.2 Tax Incentives for Mining Investors and Projects

With respect to mining tax incentives, exploration and development expenditures in mining projects may be tax deductible in some particular cases, helping to reduce the tax burden for mining companies.

Mexico has signed double taxation treaties with several countries, which can help investors avoid paying taxes on the same income in two different jurisdictions.

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

In Mexico, the transfer or sale of a mining project is subject to taxation, specifically income tax. The tax is mainly levied on gains on the dis-

posal of assets – ie, when a mining project is sold or transferred, any resulting capital gain is subject to income tax. Certain deductions and adjustments may be allowed in the calculation of capital gains that may influence the tax base.

Foreign investors may be subject to specific tax rules, and the existence of treaties to avoid double taxation between Mexico and the investor's home country may be relevant. These treaties may provide certain protections and impact the taxation of capital gains.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The presence of high-quality deposits improves project profitability and represents an excellent investment opportunity. Mexico ranks in the top 10 worldwide for 16 different minerals. Notably, it is the world's leading producer of silver, second in fluorite production, and third in sodium sulphate.

One of the key advantages of mining in Mexico is the enhanced efficiency of productivity and costs. This is largely due to lower prices for supplies and labour compared to many other countries.

Furthermore, Mexico has developed a robust supporting sector comprising suppliers with a significant capacity to efficiently provide the diverse goods and services required for mining operations.

In 2023, the estimated investment in the Mexican mining sector reached USD5.211 billion.

According to the Mexican Social Security Institute, as of December 2022, the mining and metallurgical sector employed 417,380 workers.

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

In Mexico, mining concessions may be granted only to Mexican nationals, Mexican companies, ejidos (land granted by the government to individuals for agricultural and ranching purposes), agrarian communities, townships and indigenous or Afro-Mexican peoples or communities. In the case of companies, they must be domiciled in Mexico, and their by-laws shall cover the exploration or exploitation of minerals and substances subject to the Mining Law. Foreign participation in the ownership of such companies must comply with the Foreign Investment Law provisions, which currently do not impose any limitations on mining.

5.3 International Treaties Related to Exploration and Mining

Mexico is committed to the development of the mining sector both nationally and internationally, recognising the impact of its participation in key multilateral and bilateral treaties in this field. These include:

- The North American Free Trade Agreement: this was superseded by the United States-Mexico-Canada Agreement (USMCA, known as T-MEC in Mexico) in 2020.
- The United Nations Framework Convention on Climate Change: Mexico is a signatory to this agreement, which addresses climate change issues – mining activities are therefore subject to regulations arising from international efforts to mitigate greenhouse gas emissions.

Mexico also maintains international co-operation agreements on mining matters with the following countries: Canada, Italy, Guatemala, South Korea, Chile, Australia, China, and Cuba.

5.4 Sources of Finance for Exploration, Development and Mining

The mining sector can face significant challenges in attracting investment for project development. The industry's constant need for capital, coupled with the high risks involved for investors at various stages, presents a hurdle. Factors such as commodity price volatility, rising production costs, and investor risk aversion have driven mining companies to seek alternative financing options.

Previously, the principal sources of investment used to be through traditional mechanisms for raising equity and/or debt, either by placing capital with the investing public (for example, through the Toronto Stock Exchange), financial institutions, programme funds from the government sector or private companies with some important role in the world of mining. However, during the exploration and exploitation stages, mining projects require a lot of money and have high investment return risks. Therefore, mining royalties and streaming agreements arose as an alternative financing mechanism for mining projects and operations through royalties and streaming companies focused on the industry.

The source of financing for a mining project can include a variety of options, and companies often turn to different sources depending on their specific needs and the stage of the project.

The main financing mechanisms include:

- the purchase of shares in mining companies;
- the listing on the national or international stock exchange;
- loans from financial institutions;
- royalty and metal streaming agreements; and
- government programmes.

The Canadian market has had a significant presence in the Mexican mining industry. While there are also mining projects owned by Mexican capital, these projects often require further resources to progress their development.

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

In Mexico, domestic and international stock markets play a crucial role in the mining sector, as they offer mining companies the possibility of raising capital to finance projects and operations through the issuance of financial securities. In addition, the markets impact the valuation of mining companies, investor perception, and the ability of companies to carry out exploration and development projects.

Thanks to the stock market, both in Mexico and abroad, mining companies can access local investors and domestic capital through various financial instruments, diversifying their sources of financing and reducing dependence on bank loans or other forms of funding.

Listing on the stock exchange allows mining companies to be valued by the market based on the supply and demand for their shares. Market capitalisation reflects the market's perception of the company's value.

Because stock market listings necessitate financial transparency, mining projects developed in Mexico, along with their progress, become vis-

ible to the public. This increased visibility can either encourage or discourage investment.

5.6 Security over Mining Tenements and Related Assets

Security Interests Over Mining Concessions

Holders of mining concessions in Mexico may grant security interests or liens over their concession rights to secure obligations with third parties, provided the concessions are part of an operating mine. The beneficiary of such a security must notify the Mining Authority and acknowledge that within a six-month period following the enforcement of the guarantee or lien, they must either comply with the legal requirements to become a concession holder or transfer their rights over the concession.

Common Legal Instruments for Securing Mining Concessions

- mortgage over mining concessions;
- non-possessory pledge; and
- security trust, which can be established with a financial or authorised institution that provides trust services.

All security interests over mining concessions must be registered with the Public Registry of Mines to be enforceable against third parties.

Security Interests Over Related Assets

For related assets such as real estate, inventory, personal or movable property, the applicable legal framework depends on the asset's nature:

- Real estate is secured through mortgages and registered in the Public Property Registry.
- Inventory and movable property are secured through non-possessory pledges and registered in the Security Interests Registry for Movable Property.
- Shares or corporate rights are secured through share pledges.

Mexico's robust registration system ensures the validity and enforceability of security interests, with appropriate registries depending on the type of asset involved, such as the Public Registry of Commerce or other specialised registries.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The Future of the Mining Industry in Mexico

The mining industry in Mexico is expected to continue evolving toward more sustainable and socially responsible practices. Governmental agencies are increasingly focusing on energy efficiency, water management, and the mitigation of environmental impacts.

The growing demand for key minerals essential to the energy transition, such as lithium, cobalt, and nickel, presents a significant opportunity for the Mexican mining industry. Simultaneously, the global push to reduce greenhouse gas emissions has led many companies and governments to commit to net-zero carbon goals, and Mexico is anticipated to follow this trend.

Recent Legal Reforms and Challenges

In line with global sustainability efforts, Mexico has undertaken significant legal reforms shaped by contributions from civil society organisations focused on environmental issues. Key reforms include:

- Mining Law Amendments (8 May 2023); and
- General Law on Climate Change Reforms (15 November 2023).

These reforms aim to address pressing environmental challenges, including greenhouse gas emissions, sustainability, energy efficiency, and the management of critical natural resources such as water. Specific provisions target waste management, land restoration, and water resource protection in the mining sector.

However, these legislative changes have sparked significant controversy. A large number of amparo lawsuits have been filed by companies and individuals in the mining sector, arguing that the reforms infringe upon acquired rights, principles of legality, and the right to legal certainty. This has created economic and labour risks, destabilising the industry.

To address these legal challenges, the Supreme Court of Justice of the Nation (SCJN) issued General Agreement No 3/2024, instructing courts to delay rulings on amparo lawsuits and appeals related to the 2023 reforms. The SCJN will ultimately determine the constitutionality of these reforms, a decision that remains pending.

The resolution of the Supreme Court on the validity of the New Mining Law or the restatement of the former is a key aspect to consider for the future of the mining industry in Mexico and, in case the New Mining Law is confirmed, the strict application or softening by the Mexican government of the same will play a decisive role in shaping the regulatory environment and future prospects of Mexico's mining sector.

Trends and Developments

Contributed by:
Fernando Todd, Jorge Garcia, Silvia Alanis and Ana Lilia Solano
Todd

Todd is a highly specialised law firm with extensive experience in multiple practice areas, including corporate and transactional law (mergers and acquisitions), natural resources (mining, energy, oil), banking, finance and capital markets, foreign investment, corporate governance, and litigation, among others. The firm is a recognised leader in the Mexican mining sector, with longstanding expertise in advising companies on the sale, financing, negotiation, development, construction, and operation of mining projects. In addition, the team represents both national and international mining companies and investment funds, handling transactional matters as well as regulatory issues specific to the mining industry. The firm's lawyers possess a deep understanding of the regulatory frameworks and legal requirements governing mining operations in Mexico, including licensing, permitting, compliance, and cross-border considerations relevant to foreign investors in the mining sector.

Authors

Fernando Todd is the principal and managing partner at Todd, bringing years of experience to his practice, which focuses on corporate law, mergers and acquisitions, mining law, foreign investment, cross-border transactions, banking and finance, and strategic corporate litigation. Throughout his career, he has successfully represented and advised legally recognised national and multinational corporations across various industries, including mining, financial services, funds, manufacturing, and technology. His comprehensive knowledge of Mexico's legal and regulatory framework, coupled with a deep understanding of international business practices, has established him as a trusted adviser for clients navigating complex legal challenges.

Jorge Garcia is a senior associate at Todd with more than 15 years of experience. His practice focuses on corporate law, mergers and acquisitions, mining law, foreign investment and cross-border transactions. Throughout his professional career, he has represented and advised legally recognised national and multinational companies in the sector, supporting their daily corporate operations both in Mexico and abroad. He has also facilitated interactions between these companies and the relevant regulatory authorities, leveraging his extensive expertise in this area.

Silvia Alanis is an associate at Todd. Her practice focuses on public and administrative law, particularly the co-ordination of legal ordinances to implement public policy. During her professional career, she has worked in the Mexican government on the Digital Strategy Coordination, as an adviser in the transition team of President-elect Enrique Peña Nieto, in the Technical Secretariat of the National Security Council, and in the Coordination of Advisors to the Secretary of the Interior. In addition, she has experience in administrative litigation in industrial property matters, mainly pharmaceutical patents and industrial secrets.

Ana Lilia Solano is an associate at Todd. Her practice focuses on commercial law, corporate law, compliance and corporate governance, real estate law, notarial law, and legal tech. Throughout her professional career, Ana has been actively involved in the closing of significant corporate transactions. Her experience includes the review and evaluation of corporate by-laws, amendments, meetings, corporate records, share certificates, resolutions, and agreements of shareholders, partners, and boards of directors. She ensures compliance with the successive chain of ownership in shareholder and company compositions, as well as the proper integration and powers of boards of directors.

Todd

Artz Pedregal – Tower 1 – 6th Floor
Blvd. Adolfo Ruiz Cortines #3720
Jardines del Pedregal
Álvaro Obregón. C.P. 01900
Mexico City

Tel: +52 - (55) 5203 6333
Email: info@todd.com.mx
Web: www.todd.com.mx

Todd.

The mining industry in Mexico has been, and continues to be, a crucial sector for the country's economy. Mexico possesses a diverse range of mineral resources spread throughout its territory, including a wide variety of metals and minerals such as silver, gold, copper, zinc, lead, fluorite, manganese, barite, and others. This resource diversity contributes significantly to the industry's strength. Mexico's mining potential is rooted in its rich and varied geology, which has facilitated the formation of extensive mineral deposits. Furthermore, the country boasts a skilled and dedicated mining workforce.

The presence of high-quality deposits improves project profitability and represents an excellent investment opportunity. Mexico ranks in the top 10 worldwide for 16 different minerals. Notably, it is the world's leading producer of silver, second in fluorite production, and third in sodium sulphate.

One of the key advantages of mining in Mexico is the enhanced efficiency of productivity and costs. This is largely due to lower prices for supplies and labour compared to many other countries.

Furthermore, Mexico has developed a robust supporting sector comprising suppliers with a significant capacity to efficiently provide the diverse goods and services required for mining operations.

Regarding the annual report published by the Mexican Mining Chamber (CAMIMEX), the mining sector's contribution to Mexico's national Gross Domestic Product (GDP) declined from 2.89% in 2022 to 2.75% in 2023, while its share of industrial GDP dropped from 9.09% to 8.63% over the same period. Additionally, the value of national mining and metallurgical production experienced a significant contraction, totalling MXN261.61 billion – a 17.6% decrease compared to the previous year. This decline reflects not only reduced production value but also a lack of policies aimed at fostering the sector's growth.

Investment in the sector reached USD4.96 billion, primarily allocated to previously planned projects. However, this figure represents a 5.8% reduction compared to the prior year, underscoring the industry's challenges in attracting new capital and maintaining growth momentum.

According to the Ministry of Economy, Mexico is the world's leading producer of silver and is among the main producers of other metals such as gold, copper, and lead. Mining production has been an essential part of the Mexican economy for a long time. Mexico's mining industry has become a magnet for foreign investment, with global mining companies establishing operations to leverage the country's abundant mineral reserves and business opportunities. This influx has driven the sector's continued development, fostered job creation, and strengthened production chains.

Legal Framework

A key development in the mining sector is the recent wave of legal reforms enacted in May 2023, introducing significant amendments to the Mining Law, National Waters Law, and related environmental legislation and a bill that prohibits open-pit mining and fracking (that has not been approved). These changes are designed to strengthen environmental protections and promote sustainable resource management. It is worth noting that these reforms stem from the review of several legal initiatives, as well as those presented by the Federal Executive on 5 February 2024, and the government's commitments to

avoiding negative impacts on the population due to practices in the mining sector that, from their point of view, directly affect the rights to water, health protection, and a healthy environment. However, they have sparked a considerable number of amparo lawsuits from companies and individuals within the industry, citing violations of acquired rights, principles of legality, and legal certainty. This has created substantial instability in the sector, posing economic and labour risks for Mexico's mining industry.

In response to these challenges, the Supreme Court of Justice of the Nation (SCJN) intervened to address the legal disputes and ensure a resolution on the constitutionality of these reforms through General Agreement No 3/2024, instructing courts to delay rulings on amparo lawsuits and appeals against the 2023 reforms. The unconstitutionality action currently pending before the SCJN to resolve the validity of these reforms represents a critical moment for the Mexican legal framework. This appeal has the potential to establish binding precedents for the interpretation and application of these provisions, impacting not only actors in the mining sector but also other sectors that depend on environmental concessions, permits, or regulations.

However, a determining factor in this resolution is the imminent change in the composition of the SCJN, since, on 5 February 2024, the federal executive presented a bill to amend the Political Constitution of the United Mexican States concerning the reform of the judiciary, which was ratified and published on 15 September 2024, even amid protests and a judicial strike. This reform introduced significant changes to the federal judiciary, shifting from an appointment-based system, largely dependent on qualifications, to one where people elect judges with fewer requirements for candidacy. In general terms, the election of the judges will now be by direct vote of the citizens, with the President, Congress, and the Supreme Court each proposing an equal number of candidates for each judicial position. Given its landslide victory in the 2 June general elections, Morena will select most candidates. It has been strongly criticised by both opposition sectors and legal experts, who warn that judicial independence could be compromised by aligning judges with political and popular interests, instead of guaranteeing impartial justice.

In view of the above, the mining sector is in a situation of uncertainty due to the arrival of new ministers, which could lead to shifts in the interpretative criteria of the Supreme Court, substantially modifying the judicial perspective on the constitutionality of the reforms. This introduces uncertainty both for the regulated sectors and for national and international investors, who require a stable legal environment in which to plan and operate.

Therefore, the impact of these reforms cannot be considered in isolation, as their final resolution will depend not only on the legal arguments presented but also on the evolution of constitutional doctrine and the country's political-legal context. This situation demands a careful evaluation and a solid defence of constitutional principles to ensure a balance between environmental protection and sustainable economic development in Mexico.

Political and Legal Context

The current political landscape in Mexico, marked by Claudia Sheinbaum's recent inauguration as president, presents a scenario with profound implications for the mining sector. These implications are further shaped by

recent reforms to the Mining Law, the National Waters Law, and environmental legislation, as well as changes to the judiciary. Together, these developments create a regulatory and political transformation requiring strategic attention due to their potential impact on Mexico's economy and international relations.

The initial decisions of the new administration, particularly regarding the mining sector, will reveal the direction of its economic policy and its commitment to sustainable development. While the incoming government has expressed a focus on protecting natural resources and strengthening environmental regulation, it must also balance these goals with fostering domestic and foreign investment, which are essential for the sector's competitiveness.

National Water Plan

On 21 November 2024, President Claudia Sheinbaum presented the National Water Plan 2024-2030, which is based on four fundamental pillars:

- water policy and national sovereignty;
- justice and access to water;
- mitigation of environmental impact and climate change adaptation; and
- comprehensive and transparent management.

These actions define the current administration's stance on strengthening the conservation and sustainable use of water resources, particularly in high-demand sectors such as mining.

These changes reinforce the vision of protecting and reusing water by requiring mining companies to accurately report the volumes used, as well as any surplus not essential to their operations, so that it can be returned to the nation or reassigned to other priority uses, such as public supply or agricultural activities.

From a legal perspective, this regulation is based on the National Waters Law, which enshrines water as a strategic national resource and establishes its management under principles of sustainability and social justice. The obligation to report surpluses introduces greater transparency in water management, aligning with international principles of water governance. However, it also imposes a significant administrative burden on mining companies, which must implement advanced monitoring and reporting systems to ensure compliance with these provisions.

While these measures aim to ensure a fairer and more efficient distribution of water, they present operational challenges for the mining sector. Companies must redesign their internal processes to identify surpluses, implement technologies to improve consumption efficiency and develop strategies to reintegrate surplus water under conditions that allow its reuse or reassignment to other sectors.

United States-Mexico-Canada Agreement

Furthermore, the upcoming renegotiation of the United States-Mexico-Canada Agreement adds an international dimension to this challenge. The mining sector, as a key supplier of strategic inputs for North American value chains, will be a focal point for negotiators. The recent legal reforms and their perceived impact on legal certainty and Mexico's competitiveness could influence the stances of the United States and Canada, particularly on issues related to compliance with environmental and labour standards. As a key supplier of strategic minerals used in various industries, from manufacturing to technology and clean energy, Mexico plays a central role in North America's value chains.

Both Canada and the United States are the main investors in Mexico's mining sector, meaning any

changes in domestic policies or treaty provisions directly affect the sector's stability and competitiveness. Mexico's mining sector heavily relies on foreign direct investment, particularly from Canadian companies, which hold the majority of active mining concessions in the country, and from US corporations interested in securing supplies of critical minerals such as lithium, copper, and zinc.

Recent reforms that strengthen environmental regulations and the bill to restrict activities such as open-pit mining create uncertainty for these investors, who may view the new measures as increasing operational costs and regulatory risks. This agreement includes stringent provisions on labour and environmental standards aimed at ensuring sustainable and responsible practices throughout the region. Canada and the United States could use these clauses to pressure Mexico if they perceive the legal reforms as non-compliant with the established standards or as a setback to legal certainty. This could lead to consultations, dispute panels, or even trade sanctions in cases of non-compliance. The upcoming agreement renegotiation represents both an opportunity and a challenge for Mexico. On the one hand, the country can leverage its mineral wealth to negotiate better market access and attract greater investment in the sector. On the other hand, it must address its trading partners' concerns over recent legal reforms and ensure the legal stability required to maintain a steady flow of foreign investment.

Mexico competes globally for investment in the mining sector against countries with fewer regulatory barriers and greater legal certainty. The perception of regulatory risk stemming from the reforms and potential changes in the Supreme Court's criteria could impact Mexico's competitiveness. If legal tensions are not adequately resolved, investors might relocate their projects to other jurisdictions, reducing the economic and social benefits that the sector generates in Mexico. Therefore, this Agreement is a critical instrument for the development of Mexico's mining sector, but it also introduces challenges related to legal reforms and the demands of its trading partners. A comprehensive strategy combining regulatory compliance, investment incentives, and a robust negotiating position will be essential to maximise the treaty's benefits and safeguard the competitiveness of Mexico's mining sector within the regional context.

In this context, the leadership of the executive branch will be critical. President Sheinbaum's decisions must consider not only domestic demands for sustainable development and social justice but also international pressure to maintain Mexico's position as a reliable partner under the agreement framework. A balanced approach could strengthen Mexico's position during renegotiations while ensuring a favourable environment for investment and innovation in the mining sector.

Thus, any analysis of the impact of Mexico's legal and judicial reforms must adopt a broader political and diplomatic perspective, taking into account the presidential transition, the agreement priorities, and the mining sector's role as an economic and strategic driver of both national and international development.

Conclusions

The mining sector in Mexico is at a turning point, influenced by recent legal, political, economic and social changes that are about to reshape its trajectory. The recent amendments to the Mining Law, the National Waters Law, and key environmental legislation signal a significant shift towards a more rigorous framework emphasis-

ing sustainability and the protection of natural resources. While these changes aim to address pressing calls for environmental stewardship and social equity, they have also introduced a layer of legal uncertainty for investors. This uncertainty is further compounded as the reforms undergo constitutional scrutiny, with their fate resting on a Supreme Court undergoing structural reorganisation and evolving jurisprudence.

The political landscape further intensifies this scenario with the recent appointment of President Claudia Sheinbaum, who has taken a firm stance on issues such as water equity, environmental sustainability, and social development, exemplified by the 2024–2030 National Water Plan. This plan underscores a commitment to redefining water management in Mexico, placing particular emphasis on sectors with high demand, like mining. However, achieving a delicate balance between these progressive objectives and the necessity of fostering both domestic and international investment will be pivotal for the mining industry to remain competitive on the global stage.

Adding to this complexity is the upcoming renegotiation of the United States-Mexico-Canada Agreement, which introduces an international dimension to the challenges faced by the sector. Canada and the United States, Mexico's largest trade partners and primary investors in mining, are likely to scrutinise compliance with stringent environmental and labour standards embedded within the agreement. Any perceived deviations could trigger disputes or even economic consequences, potentially altering the dynamics of trilateral relations and placing additional pressure on the sector.

Beyond regulatory and political challenges, the mining industry faces its own difficulties. Operating in socially sensitive regions often stirs local tensions, while dependence on reliable infrastructure and fierce competition for global investment capital add to the operational obstacles. Addressing these multifaceted challenges requires mining companies to adopt a forward-thinking approach: leveraging advanced, cleaner technologies, streamlining their operational processes for efficiency, and building genuine, transparent relationships with both local communities and government authorities.

Despite these challenges, Mexico stands at a unique juncture to redefine its mining sector by promoting a model that emphasises responsibility, innovation, and sustainability, the country can position itself as a leader in attracting investment and contributing to global economic and environmental goals. Striking a harmonious balance between economic growth, community rights, and environmental preservation will be essential not only for the sector's long-term viability but also for its pivotal role in Mexico's national and international development strategy in the decades to come.

MOZAMBIQUE

Law and Practice

Contributed by:
João Afonso Fialho, Guilherme Daniel and Helna Vitoldás
VdA

Contents

VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading professional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in all Portuguese-speaking African countries, as well as Timor-Leste.

Authors

João Afonso Fialho joined VdA in 2015. He is a partner and head of the oil and gas and natural resources practice. In the last 25 years, João has been involved in a variety of natural resources projects and transactions in jurisdictions such as Mozambique, Angola, Sao Tome and Principe, Portugal, Republic of Congo, the DRC, Guinea Bissau and Timor-Leste. In the mining sector, João has advised foreign investors in the negotiation of exploration and mining agreements, JV agreements, legal due diligences, farm-in and farm-out agreements, royalties and streaming agreements, etc. João has also advised state entities and international mining companies in the drafting and discussion of legal statutes and ancillary regulations.

Guilherme Daniel founded GDA Advogados, an exclusive member of VdA Legal Partners in Mozambique, in 2016. In his capacity as founder, he is actively involved in matters relating to corporate, energy and natural resources, and infrastructure. He has worked with the State Holdings Management Institute on several corporate and corporate governance matters. He also holds several national and international training certificates in the areas of natural resources, law and management.

Helna Vitoldás joined GDA Advogados, an exclusive member of VdA Legal Partners in Mozambique, as an associate in 2018. Since then, Helna has worked on several groundbreaking projects in Mozambique, including in infrastructure, energy, natural resources and water industries, as well as in project finance operations.

Contributed by: João Afonso Fialho, Guilherme Daniel and Helna Vitoldás, **VdA**

VdA

Rua Dom Luís I 28
1200-151
Lisboa
Portugal

Tel: +351 21 311 3400
Email: vieiradealmeida@vda.pt
Web: www.vda.pt/en

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Mozambique has been in the spotlight for its mineral wealth, which encourages investment in the mining industry. This is one of the country's most rapidly growing industries and one of the principal drivers of its economy. Mozambique's large and diverse mineral deposits, which include coal (high-quality coking coal and thermal coal), graphite, iron ore, titanium, apatite, marble, bentonite, bauxite, kaolin, copper, gold, rubies and tantalum, have considerable growth potential and present several opportunities in the energy transition era.

The country's journey to achieving success is intertwined with the production of heavy sand (geared towards minerals used in a wide range of industrial applications, such as zirconium, ilmenite and titanium) and coal, which continues to be the most-extracted mineral, making Mozambique a key player in the global coal markets. Despite the downward trend in the production of graphite in 2024, Mozambique's graphite deposits are expected to continue playing a pivotal role in the electric vehicles industry, which reaches new heights every year. Ruby mining also plays a huge role in the Mozambican economy, with Mozambique producing prolific quantities of rubies of all grades.

In the first nine months of 2024, Mozambique produced 3,145,391 carats of rubies, exceeding the annual forecast of 3,080,895 carats. This significant result illustrates Mozambique's growing role in the global gemstone market where there is strong demand for high-quality rubies. Since 2014, the country's ruby auctions have generated a total of USD1.12 billion in revenue, reflecting the robustness and economic impact of the sector. Exceeding the targets in 2024 reinforces the importance of this resource for the economy and consolidates Mozambique as one of the main global suppliers of rubies.

Mozambique's economic growth and integration are largely driven by its strategic location in southern Africa. With direct access to the Indian Ocean and borders with landlocked countries such as Zimbabwe and Malawi, Mozambique serves as an important trade route for the region. This privileged position offers significant opportunities for the development of transport and logistics infrastructure, facilitating trade and strengthening economic relations with its neighbouring countries. In addition, Mozambique's ports are key connection points, allowing the

country to attract investment and consolidate itself as a crucial logistical and commercial centre for regional integration.

1.2 Legal System and Sources of Mining Law

Mozambique's legal system is civil law based. The key legal framework for mining activities in Mozambique is the Mining Law (Law 20/2014, of 18 August 2014, as amended), which establishes the general principles governing the award and exercise of mineral rights, and the Mining Law Regulations (Decree 31/2015, of 31 December 2015, as amended), which establish the rules for prospecting and exploration operations, development, processing and mining, as well as geological mapping, geological mining, and metallurgical and scientific studies.

In addition to the above, the mining sector is also governed by:

- the Constitution of the Republic of Mozambique of 2004, as revised and republished;
- the Regulations on the Marketing of Mineral Products (Decree 20/2011, of 1 July 2011, as amended);
- the Regulations on the Marketing of Diamonds, Precious Metals and Gems (Decree 63/2021, of 1 September 2021);
- the Regulations on the Inspection Activity of Mineral Resources and Energy (Decree 34/2019, of 2 May 2019);
- the Mining Labour Regulations (Decree 13/2015, of 3 July 2015);
- the Regulations on the Employment of Foreign Citizens for the Petroleum and Mining Sector (Decree 63/2011, of 7 December 2011);
- the Technical Safety and Health Regulations for Geological and Mineral Activity (Decree 61/2006, of 26 December 2006, as amended);
- the Regulations on the National Salvage and Rescue System for the Extractive Industry of Mineral Resources (Decree 32/2019, of 29 April 2019);
- the Environmental Regulations for Mineral Activities (Decree 26/2004, of 20 August 2004);
- the Basic Rules on Environmental Management for Mineral Activities (Ministerial Order 189/2006, of 14 December 2006);
- the Regulation on the Environmental Audit Process (Decree-Law 45/2024 of 26 June 2024);
- the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Law 15/2011, of 10 August 2011);
- the Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Decree 16/2012, of 4 June 2012);
- the Taxation and Fiscal Benefits Regime of Mineral Operations (Law 28/2014, of 23 September 2014, as amended and republished) and its Regulations (Decree 28/2015, of 28 December 2015, as amended);
- model declarations necessary for compliance with tax obligations under the Regulations of Taxation and Fiscal Benefits Regime of Mineral Operations (Ministerial Order 37/2020, of 30 July 2020);
- the VAT Refund Regulations (Decree 78/2017, of 28 December 2017, as amended) which provide for a special value-added tax regime for petroleum and mining companies in the production stage; and
- Ministerial Order 155/2023 of 29 December, which establishes the obligation to possess, calibrate, test, verify and inspect all measuring instruments, materialised and measuring systems used to obtain exact quantities of mining products, and consequently for the

determination of taxes specific to mining activity.

1.3 Ownership of Mineral Resources

According to the Mozambican Constitution, all mineral resources found in the soil, subsoil, inland waters, continental shelf and exclusive economic zone are the sole property of the state. This principle also emerges from the Mining Law and the Mining Law Regulations, which establish the rules for the award of, access to and exercise of mineral rights by private entities.

1.4 Role of the State in Mining Law and Regulations

The Mozambican State, as the original owner of mineral resources, acts as a grantor-regulator of mineral rights and is responsible for promoting the evaluation of existing mining potential, awarding mineral rights and overseeing the conducting of mineral activities.

State participation is not expressly established in the Mining Law, which only sets forth that the state should progressively increase its participation in mining projects. However, according to the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions and relevant regulations, which apply to large-scale mining projects, the state reserves the right to negotiate a free carried participation of no less than 5%.

1.5 Nature of Mineral Rights

The Mozambican Constitution establishes that all mineral resources found in the soil, subsoil, inland waters, continental shelf and exclusive economic zone belong to the state. Mineral rights (for exploration, mining, marketing and beneficiation of minerals) are awarded by the state by means of a licence or contract under the terms and requirements set out in the Mining Law and the Mining Law Regulations. The awarding of mineral rights does not include land rights over the concession area.

1.6 Granting of Mineral Rights

Mineral rights are awarded by the Ministry of Mineral Resources and Energy or the provincial governor, depending on the nature of the operations, by means of a licence or contract.

According to the Mining Law and the Mining Law Regulations, mineral rights may be granted by means of any of the following mineral titles:

- a prospecting and exploration licence;
- a mining concession;
- a mining certificate;
- a mining pass;
- a mineral handling licence;
- a mineral processing licence; and
- a marketing licence.

The government may conclude a mining contract with the holder of a prospecting and exploration licence and a mining concession, taking into account the size of the project, the value of the investment and the strategic minerals.

Mineral rights can be awarded further to an application (on a first come, first served basis) or through a public tender procedure. The awarding of mineral rights is subject to publication in the Official Gazette.

1.7 Mining: Security of Tenure

Mineral Titles

Prospecting and exploration licence

Prospecting and exploration licences are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. These licences allow holders to carry out geo-scientific and geo-technical

activities to assess the potential of mineral resources, with the aim of discovering, identifying, and determining the characteristics and economic value of the respective minerals. Prospecting and exploration licences are granted for two years in the case of construction minerals (renewable for an additional two-year period) for an area not exceeding 198 hectares, and five years for other minerals (renewable for an additional three-year period) for an area not exceeding 19,998 hectares. Requests for extensions should be submitted at least 60 days prior to the due date of the licence (a fee is charged if the application is made less than 60 days prior to the due date).

Mining concession

A mining concession, which may or may not follow a prospecting and exploration licence, is awarded to a legal person with technical and financial capacity that is incorporated and registered in Mozambique. Mining concessions allow holders to carry out operations and works related to the development, extraction, treatment, processing, as well as disposal of mineral products. These are granted for 25 years (renewable for a further 25 years, not exceeding 50 years in total). Requests for extensions should be submitted at least 365 days prior to the due date of the concession (a fee is charged if the application is made less than 365 days prior to the due date).

Before commencing extraction activities in the awarded area, the holder of the mining concession is required to obtain:

- an environmental licence;
- the right to use and exploit the land (known as "DUAT"); and
- approval of a resettlement and compensation plan for the communities affected by the mining activities (if applicable).

Mining certificate

Mining certificates are issued for small-scale artisanal mining activities and are awarded to Mozambican nationals, whether natural or legal persons with proven technical and financial capacity, for a period of ten years (renewable for additional ten-year periods). Small-scale mining operations are considered to be those that:

- in the case of the extraction of mineral resources for construction purposes, do not exceed gross annual production of 100,000 tonnes;
- in the case of exploration for precious metals, do not exceed gross annual production of 12 kg;
- in the case of gems, do not exceed gross annual production of 250 kg; and
- do not have underground works of more than 20 m deep, or galleries of more than 50 m in length, and employ 15 workers or less on the production front.

Mining pass

Mining passes are also issued for small-scale artisanal mining activities and are awarded in designated areas to Mozambican nationals, whether natural or legal persons with proven technical and financial capacity, for a period of five years (renewable for additional five-year periods) for the direct benefit of the communities.

Mineral handling licence

Mineral handling licences allow activities to be carried out to recover useful constituents of ore in order to turn them into usable or profitable mineral products by physical processes, excluding industrial processing. These are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. They are awarded for a period

of 25 years (extendable once for an equivalent period, but not exceeding 50 years in total).

Mineral processing licence

Mineral processing consists of mining operations along the extractive industry chain to obtain the mining concentrate. These licences are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. They are awarded for a period of 25 years (extendable once for an equivalent period, but not exceeding 50 years in total).

Marketing licence

A marketing licence grants its holder the right to market the mineral products specified in the licence within the relevant area of operation. These are valid for a period of five years (extendable for an equivalent period). A marketing licence is only required where the entity selling or exporting the minerals is not the same as the producer.

Transfer of Mineral Titles

According to the Mining Law Regulations, mineral titles may be transferred under the following terms:

- a prospecting and exploration licence, mining concession, mineral handling licence and mineral processing licence are only transferable between legal persons incorporated and registered in accordance with Mozambican legislation;
- a mining certificate is only transferable to a national natural or legal person domiciled in Mozambique; and
- a mining pass may only be transferred to a national natural person or legal person established between nationals.

The transfer of mineral titles or shares (whether direct or indirect) in a company holding mineral titles is subject to the prior approval of the Ministry of Mineral Resources and Energy and may only be requested two years after the start of the respective mineral activities. The application must be accompanied by a report on the activities carried out and a tax discharge certificate issued by the tax authority.

Revocation of Mineral Rights

According to the Mining Law and Mining Law Regulations, mineral titles can be revoked in the following situations, among others (specifically previewed for each type of mineral title):

- failure to pay specific taxes;
- failure to comply with any regulation or provision set out in the mining contract that foresees the revocation of the mining right;
- bankruptcy, agreement or composition with the creditors (except if a guarantee has been registered over the mining facilities);
- transformation or dissolution of the mining company without the government's prior approval; and
- indebtedness to the state.

Immediate revocation may occur in the following cases:

- failure to pay the surface or production tax, for more than 90 days past the due date;
- failure to carry out mining activities or to submit the respective annual works report within 24 months following the issuance of a prospecting and exploration licence; and
- failure to start mining production within 48 months following the award of a mining concession, or 24 months following the issuance of a mining certificate, as applicable.

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

2.1 Environmental Protection and Licensing of Mining Projects

The environmental laws applicable to mining activities are primarily regulated by the Environmental Law, the Environmental Regulations for Mining Activity and the Basic Rules on Environmental Management for Mining Activity. According to the Environmental Regulations for Mining Activity, mining operations are classified into three levels, as follows.

Level I Activities

These refer to small-scale mining operations, including prospecting and exploration using non-mechanised methods, and are subject to the Basic Rules on Environmental Management for Mineral Activities (Ministerial Order 189/2006 of 14 December) aimed at mitigating any environmental damage or socio-economic impacts possibly arising from mining activities by ensuring that these respect simple methods intended to prevent air, soil and water pollution, as well as damage to flora and fauna, and to protect human health.

Level II Activities

These refer to mining activities carried out in quarries or that involve the extraction and mining of other mineral resources for construction, exploration and mining activities involving mechanised equipment, as well as pilot projects. Mining operations falling under Level II activities must submit an environmental management plan and an emergency and risk situation control programme which may arise from the implementation of a specific project. The environmental management plan must be submitted together with the request for issuance of the mining title and must include:

- the location and basic description of the project;
- the methods and procedures of mining operations;
- main impacts on the environment and mitigation measures;
- a monitoring programme; and
- a programme for the rehabilitation of the affected area and/or closure of the mine.

Level III Activities

These are the mining operations involving mechanised methods, not classified as Level I and Level II activities. Mining operations falling under this level – typically mining concessions – require an environmental impact assessment (EIA) in order to obtain an environmental licence, which is issued by the Ministry of Land and Environment. The resulting EIA report, which contains the assessment findings, must also include an environment management programme, as well as an emergency and risk situation control programme. The environment management programme should contain an environment monitoring programme and a mine decommissioning and closure programme, and is required to cover a five-year period.

The Mining Law also generically classifies mining activities in three categories, each having environmental obligations as referred to under the Environmental Regulations for Mining Activity:

- Category A activities are those carried out under a mining concession and require an EIA;
- Category B activities are mining activities in quarries, prospecting and research activities

for pilot projects and mining certification, and these require a simplified EIA; and
- Category C activities are mining activities carried out under a mining pass or an exploration licence which do not involve mechanised methods, and require an environment management plan.

Although the Ministry for Land and Environment acts as the country's environmental regulator, the Inspectorate-General of Mineral Resources and Energy is responsible for monitoring and conducting inspections of mineral activities, as well as for controlling and supervising compliance with the legal provisions, regulations and standards applicable to mining operations, including the technical standards applicable to environmental protection.

Furthermore, according to the Environmental Regulations for Mining Activity, the Ministry of Mineral Resources and Energy may designate inspectors for a specific project, who will be responsible for ensuring compliance with the applicable environmental legislation, without prejudice to any inspection actions carried out by other ministries.

2.2 Impact of Environmentally Protected Areas on Mining

The Land Law defines fully protected areas and partially protected areas. Fully protected areas are reserved for nature conservation and state military activities. The following are partially protected areas:

- sea and river beds;
- the continental shelf;
- an area of 100 m from the coastline or river banks, or both;
- an area of 250 m bordering dams and man-made lakes, as well as railway infrastructure and an area of 50 m adjacent to it;
- highways and areas of 50 m adjacent to them;
- a 2 km-wide band along the country's borders;
- airports and an area of 100 m adjacent to them; and
- military facilities and an area of 100 m adjacent to them.

No rights can be awarded over fully or partially protected areas, but special licences may be obtained for specific and limited activities.

2.3 Impact of Community Relations on Mining Projects

The government has a duty to protect local communities where mining activities are authorised and to promote socio-economic development for their well-being.

Holders of mineral rights must respect the rights of local communities and contribute to the preservation of socio-cultural aspects of these communities. Where mining activities are to be carried out in a populated area, the local population should be resettled, for which a relocation plan must be prepared, and due compensation must be paid to those affected by the mining activities.

Holders of mineral rights are also incentivised to hire Mozambican workers residing in the areas surrounding their mines, to promote job creation and the transfer of know-how and capabilities to local communities.

There are also protective local content provisions in the Mining Law and the Mining Law Regulations aimed at protecting local entrepreneurs and promoting local businesses so that

they benefit from a statutory preferential right in procurement procedures for the provision of goods and services to the mining industry.

2.4 Prior and Informed Consultation on Mining Projects

Local communities must be informed before commencement of any exploration activity and/or temporary resettlement. Local communities also need to be consulted before the commencement of mining operations so as to safeguard local communities' rights and ensure their involvement in the mineral projects developed in their area of residence. Such consultation is also mandatory before the holder of mineral rights is granted the right to use and exploit the land for the purpose of mining activities (DUAT), under the Land Law and the Land Law Regulations.

2.5 Impact of Specially Protected Communities on Mining Projects

Mozambique has no established classifications of indigenous peoples or protected communities, hence no specific legislation regulating such matters has been approved.

2.6 Community Development Agreement for Mining Projects

Community development agreements are previewed under the Guide on the Implementation of the Corporate Social Responsibility Policy for the Extractive Mineral Resources Industry, a statute which applies to all actions and initiatives related to corporate social responsibility in the extractive industry of mineral resources, especially regarding social investment, to ensure that extractive companies contribute to local economic and sustainable development.

As part of corporate social responsibility actions, the holder of mineral rights must establish social investment plans which may take the form of a memorandum of understanding or local development agreement, depending on what stage the mining project is at and the size of the mining operation.

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

ESG policies are incorporated in various scattered legal statutes. The Mining Law and the Mining Law Regulations enshrine certain industry-specific ESG principles, but express ESG regulations are yet to be developed for the mining sector.

The "E"

Mining activities are by nature subject to stringent environmental rules. In Mozambique, in addition to the general environmental laws and regulations, holders of mineral rights are also subject to industry-specific environmental regulations until mine closure and rehabilitation.

At a national level, the government of Mozambique is invested in promoting green policies to support green programmes and projects by private and public entities that aim to contribute to the control and reduction of greenhouse gas (GHG) emissions. The government has also approved the Regulation for Programmes and Projects Inherent to the Reduction of Emissions from Deforestation and Forest Degradation Conservation and Increase of Carbon Reserves (based on the UN's REDD+ framework), which aims to define sustainability rules in the reduction of GHG emissions.

The "S"

The general principle of worker protection, both in the sense of privacy and in the guarantee of the protection required for specific work such as mining, is embodied in both general labour

legislation and in the legislation governing mining labour relations.

The various local content rules found in the Mining Law and the Mining Law Regulations also play a pivotal role in creating the best social practices for the development of mining activities in the country, to the benefit of local communities.

The "G"

Companies operating in Mozambique are increasingly adopting anti-corruption measures within their organisations, through the implementation of programmes and procedures that aim to make employees aware of situations conducive to corruption and the associated risks. Investment from foreign investors that is subject to strict anti-bribery and anti-corruption laws (eg, the FCPA and UK Anti-Bribery Act) has also contributed to a marked increase in the implementation of high standards of control of corruption.

It is also worth mentioning that Mozambique has recently made a number of amendments to domestic legislation on the prevention of money laundering and financing of terrorism, including in the mining sector. The purpose of the legislation is to remedy important gaps, deficiencies and inaccuracies, so as to enable compliance with international standards for combating money laundering and the financing of terrorism.

2.8 Illegal Mining

Illegal mining in remote areas, particulary in northern Mozambique, is a matter of concern and represents one of the country's main challenges. Such practice is mainly carried out by young miners, both Mozambican nationals and foreigners and also local communities, who engage in illegal mining hoping to earn large sums of money to guarantee their livelihoods. This practice affects legal industrial mineral production in several ways, as it leads to resource depletion, environmental degradation, the economic viability of mining operations resulting in a loss of revenue for the government, and safety concerns in view of accidents and fatalities, which in turn tarnish the reputation of the mining sector as a whole.

Government efforts to curtail illegal mining include increased supervision and inspection of the mining sector by ensuring co-ordination between national and local government bodies involved in the management and supervision of the mining sector, as well as enforcement of penalties on those involved in illegal mining. On the other hand, mining companies that have been suffering invasions are increasing security measures around their operations to prevent illegal miners from encroaching on their sites.

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

Positive developments in mining projects include the growing awareness of the potential risks that mining activities have on the environment, biodiversity and the climate, and a greater tendency for environmental issues to be an integral part of the strategy of mining projects, seeking to introduce mechanisms that minimise the environmental risks resulting from such activities.

However, there continues to be insufficient communication between the government/mining companies and resettled communities, as well as poor management of the resettlement process. As an example, local communities resettled due to coal operations in the past have reported that the resettlement resulted in significant and sustained disruptions to basic rights protected under the constitution, namely, access to food, water and work. Failure to address these con-

cerns has led to increased tensions and opposition from community members.

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

3.1 Climate Change Effects

Mozambique is still at an early stage in the creation of initiatives to combat climate change in the mining industry. One of the priorities of the government's Five-Year Programme for 2020–2024 was strengthening the sustainable management of natural resources and the environment. In this context, consideration was given to the adoption of appropriate technologies, to ensure that activities related to the exploitation of natural resources minimised the negative impact on the environment and communities. To guarantee the sustainable management and use of air, land, water and subsoil resources and the maintenance of biodiversity, in harmony with national development needs, the government has established the following strategic objectives:

- to improve planning and land-use planning and strengthen monitoring and enforcement in their implementation;
- to ensure the conservation of ecosystems, biodiversity and the sustainable use of natural resources;
- to strengthen the capacity for assessing and monitoring environmental quality, particularly in areas where development projects are implemented;
- to reduce the vulnerability of communities, the economy and infrastructure to climate risks and natural and anthropogenic disasters;
- to ensure the transparency and sustainability of mineral and hydrocarbon extraction; and
- to strengthen monitoring and inspection capacity in areas where mining activities occur.

3.2 Climate Change Legislation and Proposals Related to Mining

Climate change-related legislation is not yet being discussed in Mozambique specifically to address issues related to mining activities. However, it is worth mentioning that Mozambique has ratified several climate-related conventions, namely:

- the United Nations Convention on Climate Change, of June 1992;
- the Kyoto Protocol to the United Nations Framework Convention on Climate Change; and
- the Paris Agreement on Climate Change.

3.3 Sustainable Development Initiatives Related to Mining

One of the strategic objectives set out in the Government Five-Year Programme for 2020–2024 relates to ensuring the transparency and sustainability of the mining industry. Under this objective, the government will ensure (among other priorities):

- dissemination in several provinces of technologies and techniques that are environmentally safe and sustainable for artisanal mining;
- intensification of the tracing and controlling of mineral products, including combating trafficking and smuggling; and
- intensification of the control of exploitation of mineral resources, through inspection interventions in a systematic manner.

It is also worth noting that one of the pillars of the Mineral Resources Policy and Strategy contained in Resolution 89/2013, of 31 December

2013, is sustainability and environmental protection in the context of the mining industry.

3.4 Energy-Transition Minerals

Mozambique has not yet adopted specific legislative initiatives related to energy-transition minerals.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

According to the Mining Law and the Taxation and Fiscal Benefits Regime of Mineral Operations and their Regulations, holders of mineral rights are subject to the following industry-specific tax regime.

Corporate income tax, which is a profit-based tax, is payable at a rate of 32%.

Surface tax should be paid by holders of prospecting and exploration licences, mining concessions and mining certificates on an annual basis and is assessed based on the extension of the concession, as follows.

- Prospecting and exploration licences:
  (a) years 1 and 2 – MZN17.50/hectare;
  (b) year 3 – MZN43.75/hectare;
  (c) years 4 and 5 – MZN91/hectare;
  (d) year 6 – MZN105/hectare; and
  (e) years 7 and 8 – MZN210/hectare.
- Mining concessions:
  (a) years 1 to 5 – MZN30/hectare; and
  (b) from year 6 onwards – MZN60/hectare.
- Mining certificates:
  (a) years 1 to 5 – MZN30/hectare; and
  (b) from year 6 onwards – MZN50/hectare.

Production Tax should be paid by natural or legal persons developing mining activities, calculated based on the value of the mineral extracted, as follows:

- diamonds – 8%;
- precious metals, precious and semi-precious stones and heavy sand – 6%;
- sand and stones – 1.5%; and
- base minerals, coal, ornamental rocks and other mineral products – 3%.

Mining concessions or mining certificates with a pre-corporate income tax net return in excess of 18% are subject to a windfall profits tax levied on the accumulated net cash flow. The windfall profits tax is payable at a rate of 20%.

4.2 Tax Incentives for Mining Investors and Projects

Pursuant to the Taxation and Fiscal Benefits Regime of Mineral Operations, the following exemptions are granted to mining projects during first five fiscal years after the start of mining activities:

- customs duties payable on imported equipment (for the prospecting and exploration phase) classified under Class K in the Customs Schedule; and
- customs duties payable on imported equipment found in Annex II of the Taxation and Fiscal Benefits Regime of Mineral Operations, equivalent to the goods under Class K in the Customs Schedule.

A tax stabilisation regime may be negotiated between the government and the holders of mineral rights, with a maximum duration of ten years extendable until the term of the concession, in exchange for a 2% annual increase in the production tax rate.

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

Gains resulting from the direct or indirect transfer (onerous or free of charge) of mining rights in Mozambican territory or involving real estate mining assets situated in Mozambican territory, regardless of where the transaction takes place, are considered as capital gains subject to a 32% capital gains tax. The tax must be paid within 30 days from the date of the transaction.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

In addition to the huge potential of the mineral deposits found in Mozambique and the vast variety of minerals that exist in the country, investors are usually motivated to invest in the Mozambican mining sector by the simplified process of awarding mineral rights, security of tender, privileged geo-strategic location, protection of ownership and IP rights, the relaxed foreign exchange regulations, and the investor-friendly industry-specific tax regime.

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

Investment in the mining industry is governed by the Mining Law and Mining Law Regulations, where there is no distinction between foreign and national investment, apart from access to and exercise of mineral rights on a small and artisanal scale, which is reserved for national individuals/entities.

Without prejudice to the above, it is worth noting that projects subject to the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions are subject to foreign ownership restrictions – namely, it is mandatory that 5–20% of a mining project's capital must be reserved for national participants.

5.3 International Treaties Related to Exploration and Mining

Mozambique has entered into double taxation treaties and bilateral investment treaties establishing certain benefits that also apply to the mining industry. Double taxation treaties have been entered into with Vietnam, India, Portugal, Mauritius, Macao SAR (China), Italy, South Africa, the UAE and Botswana.

Bilateral investment treaties have been established with Algeria, Angola, Belgium, Brazil, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Luxembourg, Mauritius, the Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, the UAE, the United Kingdom, the United States, Vietnam and Zimbabwe.

A more targeted bilateral co-operation treaty for the mining sector was entered into between Mozambique and Angola in 2007, and later with Portugal in March 2014.

5.4 Sources of Finance for Exploration, Development and Mining

In Mozambique, financing for mining activities is mainly secured through private equity, shareholders' loans or direct loans from foreign banks. The implementation of streaming and royalty agreements is still significantly impaired by the existing foreign exchange and marketing regulations.

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

The Mozambican financial market remains underdeveloped and unable to cope with the investment amounts associated with large-scale

projects. Foreign investors usually raise funds overseas through private equity or in international securities markets.

5.6 Security over Mining Tenements and Related Assets

According to the Mining Law Regulations, infrastructures, installations and other assets allocated to mining operations may be mortgaged, pledged or used as collateral to secure loans for the financing of mining operations, subject to the prior approval of the Ministry of Mineral Resources and Energy. Furthermore, according to Law 19/2018 of 28 December 2018 (which approves the legal framework for securities over movables and creates the Central Registry for Security Over Movables), holders of mining rights may create security interests over mineral resources already extracted or to be extracted, the latter being limited to the purpose of funding the relevant exploration or extraction.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The 2024 State Budget Economic and Social Plan (PESOE)

The Mozambican mining sector has proved very attractive in recent times, with the predominance of a variety of minerals of high commercial value contributing to making the country a highly attractive investment destination. According to the 2024 State Budget Economic and Social Plan (PESOE), the international market continues to be favourable to trade in mineral resources, and companies in the mining sector continue to have stable production after adapting to global conditions. The PESOE also highlights a continued increase in the production of gold, heavy sands, rubies and mineral coal, demonstrating the sector's growth and the strengthening of the national economy.

ESG Considerations

ESG considerations are becoming increasingly important in the mining sector. Companies operating in Mozambique will need to adhere to higher standards of environmental protection and social responsibility. This trend will shape investment decisions and operational practices.

Political Disruption

While Mozambique has made strides in improving economic stability, political risk is currently at the top of the country's main concerns. The announcement of the general elections results on 9 October 2024 was marred by allegations of irregularities and fraud, which led to widespread protests against the electoral process. There has been widespread disruption across Mozambique, which has had an effect on the country's overall economic performance and an impact on its mining operations.

Development of Supporting Industries

The under-developed manufacturing industry in Mozambique still presents challenges to the mining industry and makes for a difficult operating environment. The development of Mozambique's roads, railways and ports infrastructure needs to keep pace with the demand for its natural resources, in order for the country to achieve its forecasted growth and maintain a high development rate for the sector. To this end, co-operation between private and public sector entities with global stakeholders is crucial to unlock the capital and technologies required for continued market growth.

NORWAY

Law and Practice

Contributed by:
Mona Søyland, Øystein Nore Nyhus, Halvor Klingenberg and Fredrik Haberer Anfinsen
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Simonsen Vogt Wiig is one of the largest law firms in Norway with 185 lawyers. The firm has a strong international focus, advising leading national and global companies for decades from its offices in Norway and Singapore. Its services within the mining sector contain a complete range of assistance from setting up a business in Norway, regulatory advice and governmental relations, M&A, ECM/DCM, joint ventures, environmental law, litigation, ESG and compliance, landowner agreements, offtake agreements, construction and infrastructure, automation and technology etc. With a passion for teamwork and the capability to always look forward, its lawyers have the skills and knowledge to solve the most challenging problems and the largest assignments.

Authors

Mona Søyland of Simonsen Vogt Wiig is a well-known Norwegian mineral lawyer with extensive experience in the mining industry. She has played a pivotal role in matters across all phases of mineral projects, assisting both early-stage and established companies. She was previously head of the Mineral Department in the Ministry of Industry and Energy and has also been a member of the Mineral Law Committee that preceded the current Minerals Act. She continues to focus on her areas of expertise, particularly the rapidly growing mineral industry in Norway with both transactional and regulatory advice including governmental relations.

Øystein Nore Nyhus of Simonsen Vogt Wiig is an experienced Norwegian mining lawyer. He has extensive knowledge of the regulatory framework for mineral projects in Norway, in particular the Minerals Act and the Planning and Building Act. He has advised on a wide range of mineral projects. In addition, he specialises in dispute resolution. He has considerable experience before the Norwegian courts, including litigating the Minerals Act before the Supreme Court.

Halvor Klingenberg of Simonsen Vogt Wiig has extensive experience in the mining industry. He possesses in-depth knowledge of the Minerals Act and has considerable experience with various types of mining-related transactions. Additionally, he specialises in banking and finance and regularly assists borrowers, lenders, investors, and arrangers with a wide range of financing transactions, including project financing and asset financing.

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Fredrik Haberer Anfinsen is a partner and head of the tax department at Simonsen Vogt Wiig, specialising in Norwegian and international taxation, company law, and transaction support. He holds a law degree from the University of Oslo and an executive MBA from BI Norwegian Business School. He has extensive experience advising on M&A transactions, corporate and investment structuring, and management incentive programmes, particularly within the renewable energy and mining sectors. His background includes roles in both the M&A and tax departments of a major European renewable energy company, enabling him to provide counsel that combines legal expertise with practical application.

Simonsen Vogt Wiig

Filipstad Brygge 1
Postboks 2043 Vika
0125 Oslo
Norway

Tel: +47 2195 5500
Email: post.oslo@svw.no
Web: svw.no/en

Contributed by: Mona Søyland, Øystein Nore Nyhus, Halvor Klingenberg and Fredrik Haberer Anfinsen, **Simonsen Vogt Wiig**

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Norway generated a turnover of NOK13,6 billion in 2022 and employed approximately 4,000 full-time equivalent (FTE) individuals. This includes activities within industrial minerals and metallic ore, construction materials and natural stone. Metallic ore mining has superior productivity (measured as value creation (revenue minus cost) per FTE, and is three times more productive than construction materials, industrial minerals and natural stone. Industrial minerals (eg, quartz, feldspar and limestone) and metallic ores have seen increasing demand which has been driven mainly by the green transition. Construction materials and natural stone have declined to some extent in the last few years due to fewer larger infrastructure projects and slowing construction markets.

There are a high number of extraction sites of construction materials and of natural stone in Norway. The active extractions have an in situ value of approximately NOK1,150 billion in construction materials and NOK180 billion in natural stone. Furthermore, it is estimated that the extractions have a total of 18 billion tonnes of practically usable resources in construction materials, while the corresponding figure for natural stone is uncertain. In terms of industrial minerals and metallic ores, the picture is different. There are only a few sites in operation, ie, 33 extractions of industrial minerals and just two extractions of metallic ores across the whole of Norway (however the third is due to open in 2025). Metallic ores have the highest in situ value of all minerals and therefore attract a lot of interest. The in situ value of metallic ores in Norway is estimated to be NOK3,700 billion.

1.2 Legal System and Sources of Mining Law

Norway's legal system is based on civil law. The main legislation regulating mining activities in mainland Norway is the Minerals Act, which came into effect on 1 January 2010. Separate legislation applies to Svalbard (the Arctic archipelago under Norwegian sovereignty). This includes the Regulation on Mineral Resources Management and the Svalbard Environmental Protection Act. Historically there have been several coal mines in Svalbard. Mine 7 is still in operation but a decision has been taken to close it during 2025.

The Minerals Act applies across the Norwegian mainland. It contains rules regarding the acquisition and extraction of minerals, as well as regulations concerning the searching and exploration of minerals. Furthermore, it regulates the operational phase, which requires an operating licence. In addition, it contains regulations concerning the duty to exercise caution, to implement safety measures and to clean up by the end of the operational phase.

Furthermore, it contains provisions regarding annual fees and supervision charges and sanctions. Following an Official Norwegian Report (NOU) 2022: 8 New Minerals Act, the Norwegian government is currently preparing a new Minerals Act. It is expected to be presented to the Norwegian Parliament in 2025.

1.3 Ownership of Mineral Resources

The Minerals Act distinguishes between minerals that belong to the State and minerals that belong to the landowner. Under the Minerals Act, state-owned minerals are metals with a specific gravity of five grams/cubic centimetres or higher, including chromium, manganese, molybdenum, niobium, vanadium, iron, nickel, copper, zinc, sil-

ver, gold, cobalt, lead, platinum, tin, zirconium, tungsten, uranium, cadmium and thorium, as well as the ores of these metals. However, alluvial gold is exempted. Additionally, titanium and arsenic, as well as their ores and pyrrhotite and pyrite are state-owned minerals.

All minerals not defined as state-owned minerals, are considered to be the landowner's. However, under the Minerals Act landowner minerals do not include petroleum.

1.4 Role of the State in Mining Law and Regulations

The role of the State in the mining sector is primarily to act as grantor-regulator. However, the Norwegian Geological Survey plays a central role in supporting the mining and mineral industry with mapping, analysing and disseminating geological information. This information is made available to public and private parties. The activities are funded by the Norwegian government.

1.5 Nature of Mineral Rights

Mineral rights do not have a constitutional basis in Norway, but are governed by statutory law, specifically the Minerals Act. The rights to state-owned minerals are derived from law and not from individual contracts, although contracts are used to regulate the specific terms and conditions under which mining operations are conducted once the rights have been granted by the State. When it comes to landowner's minerals the right to the minerals derives from an individual contract between the landowner and the extracting party.

1.6 Granting of Mineral Rights

In Norway, the granting authority for the state-owned minerals is the Norwegian Directorate of Mining with the Commissioner of Mines at Svalbard, usually called the Directorate of Mining (the "DMF"). The DMF assesses all applications for exploration permits, extraction permits and operation licences in Norway. The DMF is also responsible for ensuring compliance with the Minerals Act.

Rights to landowner's minerals are granted by contract by the landowner.

There are no overlaps in jurisdictions in terms of granting rights under the Minerals Act, as the authority is centralised at the national level.

1.7 Mining: Security of Tenure

According to the Minerals Act, anyone can carry out low impact activity, such as collecting surface materials and rock samples for landowner and state-owned minerals.

Individuals or companies with an interest in further exploration for state-owned minerals must apply for an exploration licence, which are only granted by the DMF to entities registered in the Norwegian Register of Business. There are no restrictions on foreign ownership. An exploration licence is initially granted for a seven-year term but may be extended.

The holder of the highest priority exploration licence may apply for an extraction licence under the Minerals Act. To obtain an extraction right, the application must provide documentation from explorations showing that there is a likely mineable deposit of state-owned minerals in the area, or that it could become mineable within a reasonable time. An extraction licence is initially granted for a ten-year term but may be extended.

An extraction licence expires if an operational licence is not granted within ten years from the date the extraction right was issued, if the extrac-

tion is under 10,000 cubic metres and more than ten years have passed since the extraction right was granted and operation has not commenced, if an extended deadline has expired, or one year after the operation licence has lapsed.

Applying for an extraction right for state-owned mineral costs NOK10,000 per area. If the application covers more than one contiguous area, an additional fee of NOK500 is charged for each subsequent area. To maintain the extraction right for state minerals, an annual fee of NOK100 is charged for each 10,000 square metres commenced, with a minimum annual fee of NOK1,000 per area, regardless of size. In addition, the right-holder will pay the landowner an annual fee of 0.5% of the sales value of the extracted materials.

An additional fee of 0.25% accrues in Finnmark county. If there are multiple landowners in the extraction area, the fee will be distributed among the landowners in proportion to the area each owns within the extraction area.

The extraction right itself does not grant the right to start mineral deposit operations. Extracting more than 10,000 cubic metres requires an operating licence from the DMF, in addition to other relevant permits being in place, such as a zoning plan according to the Planning and Building Act, permits from pollution authorities, etc.

An operational licence on state-owned minerals may only be granted to a party holding an extraction licence. An operational licence will entail a public hearing with a number of stakeholders, including the pollution authorities, the relevant municipalities, the county governor, the Norwegian waterfalls and energy authorities, potential affected reindeer herding districts, etc. If the project is situated in Finnmark county, the Sámi Parliament will be involved.

Public transparency and stakeholder participation are key features in Norway.

An operating licence can be time-limited, and the conditions set in the licence can be amended or changed every tenth year. If the mining activity has not commenced within five years of the issuance, the operating licence may become void if an extension is not granted.

The exploration and extraction of landowner's minerals are based on a contract entered into directly between the landowner and the interested party. Extractions exceeding 500 cubic metres must however be reported to the DMF, and those over 10,000 cubic metres will require an operating licence to be granted by the DMF.

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

2.1 Environmental Protection and Licensing of Mining Projects

The environmental licensing process for mining projects in Norway will consist of several different steps and permits depending on the project.

All pollution is prohibited by law, and before entering an operational phase, the right-holder must apply for the relevant emission and waste storage permits under the Pollution Control Act. Efforts to avoid and limit pollution and waste problems will be based on the technology that will give the best results in the light of an overall evaluation of current and future use of the environment and economic consequences.

The Norwegian Environmental Agency (the "NEA") may require that an environmental impact assessment is carried out for activities that may cause major pollution effects. However this will be co-ordinated with similar requirements in other legislation, eg, the Planning and Building Act. An application will be subject to public consultation, allowing stakeholders, including local communities and environmental organisations, to provide input. A permit will often include several conditions intended to prevent pollution from resulting in damage or nuisance and further conditions to ensure protection and clean-up measures. Monitoring and compliance checks are conducted to ensure adherence.

Environmental regulation and permitting in Norway are primarily managed at a national level by the NEA. The agency oversees the implementation of environmental laws, issues permits and monitors compliance. Some responsibilities are also delegated to municipal and county governments.

In addition to the Pollution Control Act the environment is protected by the Nature Diversity Act, which protects biodiversity and sustainable use of natural resources and aligns with the Convention on Biological Diversity. An environmental impact assessment is often required for mining projects to assess the potential environmental impacts. It is important to engage with the authorities at an early stage to determine whether the project requires an environmental impact assessment.

The environmental regulations also ensure sustainable mining.

2.2 Impact of Environmentally Protected Areas on Mining

Norway has several environmentally protected areas designed to conserve its natural heritage. These include national parks, nature reserves, protected landscapes and marine protected areas. The management and establishment of these protected areas are governed by the Nature Diversity Act and other relevant environmental legislation.

In environmentally protected areas, activities such as exploration, extraction and mining are heavily restricted. The primary goal of these restrictions is to preserve biodiversity, landscapes and natural habitats. In some of these areas, activities under the Minerals Act are completely prohibited as mining is not considered to be aligned with the purposes of the conservation.

2.3 Impact of Community Relations on Mining Projects

The Minerals Act and other relevant laws and regulations applicable to the mining sector are designed to ensure transparency and local involvement. These laws require hearing procedures and consultations with affected communities before a permit is granted. As a mining project requires a municipal land use plan, local acceptance is of great importance.

An environmental impact assessment will be processed for major projects where social and environmental consequences are considered before a decision is made. Mining projects in areas with a potential effect on the indigenous Sámi population are further subject to separate consultation procedures.

2.4 Prior and Informed Consultation on Mining Projects

Several pieces of legislation mandate reporting requirements for mining projects and grant the authorities the power to impose reporting obligations with an impact analysis of the planned activities. In general, an environmental impact assessment or other analysis must be provided by the investor.

One of the purposes of impact analyses is to provide a basis for discussing the pollution-related consequences with neighbours and others who may be affected by pollution from the planned activity. The reporting obligation itself aims to enable the pollution authority to decide whether to require an impact analysis.

Furthermore, the Planning and Building Act requires an impact analysis and public hearing when processing zoning proposals that allow for mining activities. This ensures that affected interests have an opportunity to influence the zoning proposal under consideration. Based on the consultation input, a zoning proposal may either be amended or proceed unchanged to political processing, where inputs and comments are considered and addressed.

The Sámi Act also obligates Norwegian authorities to consult the Sámi Parliament and other Sámi interests in matters that concern them, ie, mining activities' impact on reindeer herding. Chapter Four of the Sámi Act facilitates consultations between public authorities and the Sámi Parliament or other Sámi interests to be conducted in good faith with the aim of reaching an agreement.

Parties must share relevant information about the matter so that the Sámi party can make an informed decision about the proposed activity. If the parties do not reach an agreement, the Sámi party's position and assessments must be clearly presented in the documents submitted to the final decision-maker. The Minerals Act also contains rules in respect of certain areas in Norway such as Finnmark county where certain case handling rules apply due to indigenous people.

2.5 Impact of Specially Protected Communities on Mining Projects

The Sámi people are recognised as an indigenous community with specific protections under the Sámi Act, which mandates consultations with the Sámi Parliament and other Sámi interests, on development projects, including mining, which could impact their traditional territories. These consultations aim to ensure that Sámi cultural practices, such as reindeer herding and fishing, are not adversely affected by these developments.

Environmental and social impact assessments for mining projects are required to consider the effects on Sámi culture and livelihoods. This includes assessing impacts on culturally significant areas and resources essential for their traditional practices. The process involves public hearings where Sámi representatives can voice their concerns.

The Minerals Act includes special provisions that protect Sámi interests in mining activities in Finnmark county. These provisions encompass substantive rules emphasising the consideration of Sámi conditions and procedural rules about notification duties, permits, consultation processes, and the ability to escalate cases directly from the DMF to the Ministry of Industry and Trade. Some rules apply exclusively to state-owned minerals, while others also cover landowner's minerals.

Norwegian law, complemented by international conventions like the ILO 169 concerning Indigenous and Tribal Peoples, provides protections for the Sámi community's rights to use lands for traditional activities. These legal frameworks ensure that any mining activities undergo strict scrutiny to prevent or mitigate adverse impacts on Sámi rights and resources.

2.6 Community Development Agreement for Mining Projects

In Norway, community development agreements (CDAs) regarding mining projects are not mandatory under national law. CDAs are not common in Norway. However, some mining companies have entered into CDAs.

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

To enhance sustainability efforts, the Norwegian Mineral Industry Association promotes the "TSM – Sustainability in the Mining Industry" reporting programme. The TSM reporting programme is a well-established programme which is used in several countries worldwide. It helps ensure effective dialogue with stakeholders, local communities, and indigenous populations, implement enhanced environmental standards, and commits companies to improve safety for employees and neighbouring areas.

As part of the mining industry's strategy to bolster sustainability efforts, the TSM reporting programme is aligned with several of the UN's 17 sustainable development goals. The TSM reporting programme was established in Canada in 2004, and the Norwegian Mineral Industry Association adopted the reporting programme in March 2020. The main goal of the programme is to enable businesses within the mining industry to meet societal needs for minerals, metals and energy products in the most socially, economically, and environmentally responsible manner.

2.8 Illegal Mining

Illegal mining is not a significant issue in Norway.

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

See **1.1 Main Features of the Mining Industry**. Today, the mining industry in Norway mostly contains sites on construction minerals and natural stone. Industrial mineral and metallic ore production is limited and it doesn't seem fruitful to distinguish between them.

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

3.1 Climate Change Effects

Norway is committed to tackling climate change and has implemented initiatives to address this issue. These initiatives impact the mining industry in Norway and its development in several ways. At an overall level, the mineral industry must be expected to contribute to reducing emissions, for example by operating with fossil-free alternatives. At a more specific level, it will have to be assumed that initiatives to deal with climate change will affect the conditions under which the mineral industry can operate.

3.2 Climate Change Legislation and Proposals Related to Mining

Norway does not have any climate change legislation specifically aimed at mining, but the general climate change legislation is relevant and has significance for mineral activities.

However, the EU Corporate Sustainability Due Diligence Directive (the "CSDDD"), which entered into force on 25 July 2024, is of further relevance to the industry. The CSDDD obliges large companies to adopt and put into effect, through best efforts, a transition plan for climate change mitigation aligned with the 2050 climate neutrality objective of the Paris Agreement as well as intermediate targets under the European Climate Law (Regulation (EU) 2021/1119)).

The rules of the CSDDD will start to apply to the largest companies on 26 July 2027 and be further phased in to apply to smaller companies in 2028, before applying to all companies covered by the CSDDD on 26 July 2029.

3.3 Sustainable Development Initiatives Related to Mining

The government has stated in its Norwegian mineral strategy 2023 that the overriding ambition is to develop the world's most sustainable mineral industry. In the strategy the 2015 UN Sustainable Development Goals are referenced as a benchmark for the standards that should be applied to mineral operations. The focus on sustainability in the strategy addresses social, economic, and environmental aspects.

Additionally, the Norwegian Mining Industry Association emphasises sustainability in the mineral industry and since March 2020 has promoted the TSM reporting programme. The overall aim of the programme is for businesses to effectively manage their most important social and environmental risks and adhere to best practices in environmental management, safety and community engagement. The programme requires annual reporting and public disclosure of individual company results on the Norwegian Mining Industry Association's website.

3.4 Energy-Transition Minerals

See **3.3 Sustainable Development Initiatives Related to Mining** for discussion of the Norwegian mineral strategy of 2023.

The EU's Critical Raw Materials Act (the "CRMA"), which came into effect on 23 May 2024, is also relevant. Norway adopted its position on the proposal for the CRMA on 10 July 2023. The position paper assumes that Norway supports the EU's ambitions and measures for more efficient national application processes. At the same time, it emphasises that it is important that the processes adequately ensure the protection of the environment, safety, and the rights of indigenous peoples. The position paper does not include an assessment of whether the proposal should be incorporated into the European Economic Area (EEA) Agreement and does not anticipate any EEA-relevant adaptations.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Norway's tax system for mining and exploration activities is built upon a general framework applicable to all industries and Norway does not impose specific mining royalties.

Corporate Income Tax

Mining companies are subject to the standard corporate income tax rate, which is currently 22%. Profits are taxed based on income derived from mining operations, minus allowable deductions such as operational costs, depreciation of equipment, and exploration expenses.

Royalties
Unlike many jurisdictions, Norway does not impose royalties on mining operations (see **1.7 Mining: Security of Tenure** for landowner's fee).

Distinction Between National and Foreign Investors
Norway's tax legislation does not generally distinguish between national and foreign investors in terms of taxation. Foreign companies operating in Norway are taxed on income derived from their operations within the country. However, double taxation agreements (DTAs) between Norway and other countries may modify the tax treatment of foreign investors, especially regarding withholding taxes on dividends, interest, and royalties paid to foreign entities.

4.2 Tax Incentives for Mining Investors and Projects
Norway provides several tax incentives aimed at encouraging investments, but there are no specific tax incentives for the mining sector.

Tax Deductions and Depreciation
Investors can benefit from accelerated depreciation on mining equipment and infrastructure. The general depreciation rate for machinery used in mining is set at 20%, allowing companies to reduce taxable income during the early years of investment. Unutilised tax losses may be carried forward indefinitely.

R&D Tax Incentive Scheme
Norway offers a R&D tax incentive scheme through the SkatteFUNN programme, which also applies to eligible projects in the mining sector. Companies can claim up to 19% of qualifying R&D expenses, including innovative exploration technologies.

Regional Incentives
Mining projects in certain regions such as in northern Norway may benefit from reduced employer contributions, as the region qualifies for lower social security tax rates under government incentives to promote economic development.

Pre-Registration for VAT and VAT Deduction
In Norway, mature mining companies can apply for pre-registration for VAT, allowing them to reclaim input VAT on goods and services acquired for preparatory activities before reaching the VAT registration threshold of NOK50,000. This ensures that costs related to exploration, feasibility studies, and initial project set-up do not carry an irrecoverable VAT burden.

Pre-registration is contingent on certain criteria such as demonstrating a clear intent to engage in taxable mining activities and as a general rule there should be a clear probability that the business will start as planned. Once approved, businesses can deduct input VAT on eligible expenses incurred during this pre-operational phase. This system supports development investments by reducing upfront costs and promoting cash flow efficiency.

Tax Stabilisation Agreements
Unlike some jurisdictions, Norway does not offer tax stabilisation agreements in the mining sector.

4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects
Capital Gains Tax
Capital gains derived from the sale of mining projects are subject to the standard corporate income tax rate of 22%. Gains are calculated based on the difference between the sale price and the tax book value of the assets.

Sale of Shares in Norwegian Limited Liability Companies

The sale of shares in a Norwegian limited liability company (AS) is generally exempt from capital gains tax for both Norwegian and foreign corporate entities, provided the seller qualifies for the exemption method (*fritaksmetoden*). In addition, gains from the realisation of shares for foreign entities who are tax resident outside of Norway are not subject to tax in Norway unless the entity is holding the shares in connection with business activities carried out or managed from Norway.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The main features of attracting investment for mining are a favourable geology, a transparent regulatory framework and a stable political and economic environment.

Norway also has a considerable amount of renewable hydropower energy to support green mining and a well-established infrastructure, with ports and road facilities. The workforce is skilled with technical expertise and the Norwegian University of Science and Technology provides specialised training in mining science.

Norwegian bedrock contains mineral resources of relevance for the green transition and the in situ deposits of industrial and metallic ore are generally of interest for future explorations. See **1.1 Main Features of the Mining Industry** and **6.1 Two-Year Forecast for the Mining Sector**.

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

As a general rule, investments in Norway by foreign individuals are not regulated and do not require approval from the authorities. However, the General Act Relating to National Security (*Sikkerhetsloven*) is worth a mention. An investor may fall under the scope of the Act if it deals with, among other things, information or infrastructure crucial for fundamental national functions, or if it conducts activities of significant importance to fundamental national functions. Mining activity is currently not mentioned as an industry encompassed by the Act, but Norwegian authorities could nonetheless intervene on a general basis.

5.3 International Treaties Related to Exploration and Mining

Norway is not a party to any international treaties that specifically focus on protecting investments in exploration and mining. However, as a member of the European Free Trade Association (EFTA) and the EEA, Norway has access to the EU internal market and routinely incorporates EU legislation into its domestic laws. Through its EFTA membership, Norway is also a party to several multilateral free trade agreements.

Norway has additionally entered into numerous bilateral investment treaties. Many of these treaties specifically include concessions for searching for, extracting, or exploiting natural resources within their definitions of “investments”, thereby explicitly extending protections to these activities.

5.4 Sources of Finance for Exploration, Development and Mining

In Norway, the financing of exploration, development, and mining activities is sourced through a variety of channels, reflecting the diverse needs and stages of mining projects.

The primary source of financing for mining companies operating in Norway is Norwegian and

international equity capital markets. Traditional bank financing (including leasing and equipment financing), and bond financing may also be available, especially for more developed projects.

Royalty facilities and similar structures may be available, subject to, among other things, compliance with the Norwegian licence requirement for lending activities.

Classic project financing within the mining sector is still not common in the Norwegian market.

Governmental grants and support, including direct funding/financing and tax incentives may also be available. In addition to EU funding, this also includes funding/financing through Norwegian governmental agencies such as *Eksportkreditt Norge* (a member of the International Minerals Security Partnership (MSP) Finance Network) and *Innovasjon Norge*.

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

Domestic and international securities markets both play an important role in the financing of exploration, development and mining in Norway. Mining companies listed on the Oslo Stock Exchange (Euronext Oslo Børs) and Euronext Growth primarily raise capital in the equity capital markets. As Norway has a large and active high-yield bond market attracting capital from international investors, several international mining companies raise debt capital through the issuance of Norwegian high-yield bonds.

5.6 Security over Mining Tenements and Related Assets

A Norwegian company may grant security over all its operating assets from time to time (including machines, tools and other equipment) by registering a floating charge with the Norwegian Register of Mortgaged Movable Property (*Løsøreregisteret*). The floating charge will also include exploration rights granted under the Minerals Act.

With consent from the DMF with the Commissioner of Mines at Svalbard (*Direktoratet for mineralforvaltning med Bergmesteren for Svalbard*), it is also feasible to grant security over extraction rights under the Minerals Act by registering a mortgage with the Norwegian Land Register (*Grunnboken*).

Currently, granting security over an operating licence is not possible. However, the proposed new Minerals Act, has suggested permitting this.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Norway's mineral industry is expected to undergo major development in the coming years. There is a growing global demand for critical minerals due to the transition to renewable energy and electrification. Norway's mineral deposits are among the richest in Europe and include Europe's largest deposit of rare earth elements. For the first time in more than 40 years, in 2024/2025, Norway's first metal mine (Engebø Rutil and Garnet) started operating.

For the first time in many decades, there is now considerable political attention on Norwegian mineral extraction and a goal for Norway to contribute to securing Europe's mineral needs.

In 2023, the government adopted a new mineral strategy with the aim of developing a profitable and sustainable mineral industry. The strategy

emphasises Norway's potential for extraction of critical minerals. The government has highlighted five focus areas as follows.

- Norwegian mineral projects must be implemented faster.
- The Norwegian mineral industry must contribute to the circular economy.
- The Norwegian mineral industry must become more sustainable.
- Norwegian mineral projects need good access to private capital.
- Norway will be a stable supplier of raw materials for green value chains.

In addition, a new Minerals act is expected to be adopted in 2025.

The current mining policy is also driven by several EU and international strategies, such as the CRMA and the US-led Minerals Security Partnership. Additionally, the Norwegian Mineral Industry Association actively promotes the TSM reporting programme in Norway.

Both junior and major international mining companies have increased their investments in Norwegian mineral projects. The investments include exploration and survey projects, but also mature projects where operations can begin in the next couple of years.

In June 2024, the Norwegian mining company Rare Earths Norway announced a mineral resource estimate showing that the Fen Carbonatite Complex hosts continental Europe's largest deposit of rare earth elements. The Fen Complex is described as a very large deposit in a global context and is probably by far the largest in Europe. A conservative estimate suggests that the Fen field contains between 30 and 50 million tonnes of rare earth elements. In comparison, the Swedish rare earth complex in Kiruna is reported to contain 1.3 million tonnes.

Trends and Developments

Contributed by:
Mona Søyland and Øystein Nore Nyhus
Simonsen Vogt Wiig

Simonsen Vogt Wiig is one of the largest law firms in Norway with 185 lawyers. The firm has a strong international focus, advising leading national and global companies for decades from its offices in Norway and Singapore. Its services within the mining sector contain a complete range of assistance from setting up a business in Norway, regulatory advice and governmental relations, M&A, ECM/DCM, joint ventures, environmental law, litigation, ESG and compliance, landowner agreements, offtake agreements, construction and infrastructure, automation and technology etc. With a passion for teamwork and the capability to always look forward, its lawyers have the skills and knowledge to solve the most challenging problems and the largest assignments.

Authors

Mona Søyland of Simonsen Vogt Wiig is a well-known Norwegian mineral lawyer with extensive experience in the mining industry. She has played a pivotal role in matters across all phases of mineral projects, assisting both early-stage and established companies. She was previously head of the Mineral Department in the Ministry of Industry and Energy and has also been a member of the Mineral Law Committee that preceded the current Minerals Act. She continues to focus on her areas of expertise, particularly the rapidly growing mineral industry in Norway with both transactional and regulatory advice including governmental relations.

Øystein Nore Nyhus of Simonsen Vogt Wiig is an experienced Norwegian mining lawyer. He has extensive knowledge of the regulatory framework for mineral projects in Norway, in particular the Minerals Act and the Planning and Building Act. He has advised on a wide range of mineral projects. In addition, he specialises in dispute resolution. He has considerable experience before the Norwegian courts, including litigating the Minerals Act before the Supreme Court.

Contributed by: Mona Søyland and Øystein Nore Nyhus, **Simonsen Vogt Wiig**

Simonsen Vogt Wiig

Filipstad Brygge 1
Postboks 2043 Vika
0125 Oslo
Norway

Tel: +47 2195 5500
Email: post.oslo@svw.no
Web: www.svw.no/en

Introduction

Mining has played a critical role in Norway's economic development and industrialisation. From the exploitation of silver at Kongsberg and copper at Røros in the 17th century to the extraction of iron ore, nickel, and pyrite in the 19th and early 20th centuries, mining provided the raw materials necessary for industrial growth. In recent decades, however, the mining sector's relative importance has declined due to competition from global markets and the dominance of oil and gas from the Norwegian continental shelf.

Despite this, mining remains a significant industry with renewed interest due to the growing global demand for minerals and metals required for the green transition. For industrial minerals and metallic ores there are only a few sites in operation, ie, 33 extractions of industrial minerals and two extractions of metallic ores in all of Norway (however a third is due to open in 2025 and another is expected to open in 2026). Metallic ores have the highest in situ value of all minerals and therefore attract a lot of interest. The in situ value of metallic ores in Norway is estimated to be NOK3,700 billion.

Historical Context and Current Landscape

Norway's mining history is intertwined with its geological riches. The country's unique geological features, shaped by tectonic activity and glacial erosion, have resulted in deposits of a wide range of minerals. Historical key mining regions included Trøndelag, Telemark, Finnmark, and parts of western Norway, where minerals like cobber, nickel, zinc, iron, quartz, feldspar, graphite, titanium, limestone and olivine were extracted. However, only two metal ore mines (titanium and iron) are operating in Norway today.

In recent years, the focus has shifted to the so-called critical minerals, which are critical for technologies like electric vehicles, wind turbines, and batteries. Norway's untapped reserves of green transition minerals attract significant attention from both national and international stakeholders.

Norway has seen a significant increase in exploration activities in the last couple of years. Both junior and major international mining companies have showed interest in the country's mineral deposits. According to the Directorate of Mining with the Commissioner of Mines at Svalbard, usually named the Directorate of Mining (the "DMF"), the number of allocated explora-

tion rights (*undersøkelsesretter*) have increased from 400 to 1,200 from 2022 to 2024. Data from the DMF shows a threefold increase in exploration expenditures between 2020 and 2022. In addition, the number of extraction rights have increased, and last year 32 new extraction rights were granted, up from six in 2023.

Concession and Regulatory Framework

The Norwegian government maintains a concession system to manage and regulate mining activities. This framework is designed to balance economic development with environmental protection and the interests of local communities. Under current legislation, companies must obtain a concession to explore and extract minerals. Concessions are granted based on factors such as economic feasibility, the environmental impact, and local community benefits.

The regulatory framework also ensures public participation in decision-making processes. Local municipalities have substantial influence, and consent from affected communities is often a prerequisite for approval, as a mining project requires a municipal land use plan. Indigenous rights, particularly those of the Sámi people, are an essential consideration, especially in northern Norway, where mining projects often overlap with reindeer herding areas. Additionally, the framework incorporates strict requirements for environmental restoration and ongoing monitoring of mining operations to ensure compliance with sustainability goals.

Concessions are only granted to entities registered in the Norwegian Register of Business. There are no restrictions on foreign ownership.

Environmental Considerations

Sustainability and environmental stewardship are critical concerns in Norwegian mining. Modern mining operations must address challenges such as managing waste, reducing greenhouse gas emissions, and mitigating impacts on biodiversity.

Tailings and waste management is a significant issue. The disposal of mining waste in water and fjords has been a contentious topic, with environmental groups advocating for alternative solutions. However, there is no formal prohibition on disposing of mining waste in water and fjords.

Minerals for the Green Transition

Norway's mining sector is poised to play a pivotal role in the green transition. Minerals like cobalt, copper, nickel, and rare earth elements are essential for renewable energy technologies, electric vehicles, and energy storage systems. The government has identified mining as a strategic industry to support the global shift to sustainable energy sources.

The Fen Complex in Telemark is a prime example of this potential. This geological formation contains Europe's largest reserves of rare earth elements and is considered one of Europe's most promising sites for rare earth elements extraction. Exploration and development activities are currently underway, with the goal of establishing Norway as a key supplier of critical minerals to European markets.

The Norwegian Mineral Strategy of 2023

In 2023, the Norwegian government launched a new mineral strategy to position the country as a leader in sustainable mineral extraction. The strategy emphasises the importance of critical minerals for the green transition and outlines measures to enhance the competitiveness and environmental performance of the mining sector. Key initiatives include:

- streamlining the concession process;

- increasing funding for geological surveys; and
- promoting research and innovation in sustainable mining technologies.

The strategy also highlights the need for greater collaboration with local communities, indigenous groups, and international partners to ensure that mining activities align with societal and environmental values. Specific measures, such as increased financial support for developing sustainable mining practices and improving mineral mapping, aim to unlock untapped potential while preserving Norway's natural landscapes. By focusing on these priorities, the strategy aims to unlock the full potential of the country's mineral resources while maintaining high standards of environmental and social responsibility.

Challenges and Opportunities

Challenges

Environmental opposition

Mining projects often face resistance from environmental groups and indigenous reindeer herders, particularly in areas of high natural or cultural value.

Regulatory complexity

Navigating the concession process and meeting stringent environmental standards can be time-consuming and costly.

Infrastructure needs

Many potential mining sites are in remote areas, requiring significant investment in transportation and utilities.

Global competition

Competing with established mining economies demands technological innovation and market positioning.

Opportunities

Technological innovation

Advances in mining and processing technologies can reduce environmental impacts and improve resource efficiency.

Economic diversification

Expanding the mining sector can help Norway diversify its economy as oil and gas production declines.

Global demand

Increased global demand for critical minerals presents a significant opportunity for Norwegian mining companies.

Sustainable leadership

By prioritising environmentally friendly practices, Norway can position itself as a global leader in sustainable mining.

Indigenous Rights and Mining

Indigenous rights play a critical role in shaping mining activities in certain parts of Norway. The Sámi people have historically depended on reindeer herding, fishing, and traditional land use for their livelihoods. Mining projects in Sámi areas may overlap with reindeer grazing lands, leading to conflicts over land use and cultural preservation.

Norwegian law requires that the rights of indigenous peoples are respected in the planning and implementation of mining projects. Consultations with effected Sámi communities are mandatory, and projects must demonstrate that they will not disproportionately harm traditional practices. Recent legal rulings have reinforced these protections, emphasising the importance of upholding human rights of indigenous reindeer herders in the context of industrial development.

Efforts to improve dialogue and collaboration between mining companies and Sámi communities are ongoing. Innovative approaches, such as benefit-sharing agreements and participatory decision-making processes, can contribute to addressing conflicts and ensuring that indigenous perspectives are incorporated into mining projects.

Innovation and Technology in Norwegian Mining

Technological innovation is transforming the mining sector, and Norway is at the forefront of developing sustainable mining practices. Advances in automation, artificial intelligence, and data analytics are enhancing the efficiency and safety of mining operations. For example, autonomous vehicles and drones are being used to conduct surveys and transport materials, reducing the environmental footprint and improving worker safety. Processing technologies are also evolving to minimise waste and improve resource recovery rates.

Collaboration between industry, academia, and government is driving research and development in sustainable mining technologies. Initiatives such as public funding programmes support innovation and help position Norway as an innovative leader in the global mining industry.

Economic Impacts of Mining

The mining sector's contributions to the Norwegian economy today are limited. The sector provides jobs, revenue, and export opportunities. While the industry's share of GDP is small compared to that of oil and gas, it plays a vital role in regional development, particularly in rural and remote areas.

Employment in mining and related industries supports local communities and fosters economic diversification. As Norway transitions away from fossil fuels, mining is expected to become an increasingly important sector, providing the raw materials needed for emerging green industries such as battery production, renewable energy production and grid, and electric vehicles.

Norway's reputation for high-quality, responsibly sourced materials enhances its competitiveness in the global marketplace. The in situ value of metallic ores in Norway is estimated to be NOK3,700 billion. By leveraging its geological resources and commitment to sustainability, the country has the potential to significantly expand its mining exports and strengthen its position in the global economy.

Conclusion

Norway's mining sector is undergoing a transformation driven by the green transition and the growing demand for critical minerals. With a rich geological environment, a strong regulatory framework, and a commitment to sustainability, the country is well-positioned to further expand its mining industry significantly and contribute to a sustainable future.

The Norwegian mineral strategy of 2023 provides a clear vision for the industry's development, emphasising the importance of collaboration, innovation, and environmental stewardship. By addressing challenges such as regulatory complexity, environmental concerns, and indigenous rights, Norway can unlock the full potential of its mineral resources while maintaining high standards of social and environmental responsibility.

As global demand for critical minerals continues to rise, Norway has an opportunity to establish itself as a leader in European sustainable mining. By leveraging its expertise, embracing innovation, and prioritising stakeholder engagement, the country can ensure that its mining sector plays a central role in the green economy of the future.

PANAMA

Law and Practice

Contributed by:
Roy C Durling
Arias, Fábrega & Fábrega

Contents

Arias, Fábrega & Fábrega has more than 40 attorneys ready to assist clients in all areas of the law. The mining and environmental team is comprised of three attorneys who work closely with mining, environmental and other regulatory entities related to the mining sector. The firm has acted for major world mining players, such as advising Rio Tinto in the negotiations of the concession agreement for the Cerro Colorado copper mine. It has also represented Deutsche Bank in a prepaid forward gold purchase agreement and full security package over company assets in Panama, which involved the granting of a first priority mortgage over a fully operational mining concession in Panama.

Author

Roy C Durling is a partner at Arias, Fábrega & Fábrega, which he joined in 1991, after working for four years at a major law firm in New York City. He heads the mining, oil and gas group. He has represented several mining companies in their operations in Panama. Roy obtained his JD from Cornell University and his BA from Georgetown University.

Arias, Fábrega & Fábrega

ARIFA Building
10th Floor
West Boulevard
Santa Maria Business District
PO Box 0816-01098
Panama

Tel: +50 7205 7000
Fax: +50 7205 7001/02
Email: panama@arifa.com
Web: www.arifa.com

ARIFA
ARIAS, FABREGA & FABREGA

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Panama does not have a developed mining industry, even though geological surveys carried out in the early to mid-20th century suggest that it has large deposits of copper, gold, manganese, silver and other minerals. For the greater part of its history as an independent nation, mining activity in Panama has been practically restricted to the extraction of materials needed for the construction industry.

The above geological surveys indicated that some of the mineral deposits in Panama might be regarded as being world class. Since the late 1960s, international mining companies and other multinational organisations (such as the United Nations) have sponsored further geological surveys and exploration activities that have confirmed Panama's mining potential.

There are at least two significant copper deposits in Panama: Cerro Colorado and Cerro Petaquilla. Cerro Colorado is located on the western part of Panama (formerly part of the Chiriqui and Veraguas provinces, but now part of the Ngäbe-Buglé autonomous region) and is considered one of the largest copper deposits in the world. In the 1980s, Rio Tinto conducted significant exploration activities in Cerro Colorado, but opposition by local residents and environmental groups prevented the further development of the project, which remains unexploited.

Cerro Petaquilla (also known as "Cobre Panama") is another world-class copper deposit. In the past ten years, First Quantum Minerals Ltd., of Canada, through its Panamanian subsidiary Minera Panama, S.A., has invested more than USD6 billion in the construction of mining infrastructure for the exploitation of Cobre Panama, which started production in 2019 (the first exports of copper took place in June 2019). The Cobre Panama mine is one of the ten largest mining operations in the world.

Despite these developments, on 27 November 2023, the Panama Supreme Court unanimously held that the Cobre Panama concession was unconstitutional. With no legal basis to continue operations, Minera Panama, S.A. proceeded to halt mining activities, and the Cobre Panama site is now in care and maintenance.

Panama also has important gold deposits. In the 1990s, two gold mines were in operation in the Veraguas province: Mina Santa Rosa and Remance. Between 2010 and 2014, Petaquilla Gold (an affiliate of Petaquilla Minerals Ltd., of Canada) developed the Molejon gold deposit in Cerro Petaquilla (adjoining the copper deposit). There are other untapped gold deposits in Panama, such as the Cerro Quema gold deposit in the Azuero region.

Despite all the promising deposits in the country, as a result of the public clamour and protests against metal mining, the government of Panama approved Law 407 of 2023, which established a ban on new metal mining concessions. As a result of this law, except for some minor metal mining operations in Panama, no further metal mining concessions are to be issued.

1.2 Legal System and Sources of Mining Law

The legal system in Panama is based on European civil law. Spanish and French laws have had great influence in the development of the Panamanian legal system.

Legislation in Panama (including laws applicable to mining activities) is enacted by the National

Assembly (the legislative body of the government of Panama), sanctioned by the President and published in the Official Gazette.

The Code of Mineral Resources of Panama (adopted by means of Law Decree No 23 of 1963, as amended) (CMR) is the legal body governing most activities relating to Panama's mineral deposits (other than hydrocarbons). The CMR sets up a regime for the granting of concessions to private individuals for the exploration and/or extraction of mineral deposits. In the case of minerals used in the construction industry (sand, gravel, clay, etc), the CMR has been supplemented by Laws 55 and 109 of 1973, and Law 32 of 1996, to create a separate regime for the granting of concessions relating to those minerals.

Panama has resorted to enacting legislation creating a special legal regime for large-scale projects such as Cerro Petaquilla, depending on the particularities of the project and the investment required. For example, in 1997, the original concession contract between Minera Panama, S.A. (formerly known as Minera Petaquilla, S.A.) and the Republic of Panama, represented by the Minister of Commerce and Industries, was approved by the National Assembly of Panama by means of Law No 9 of 1997 (the "Original Petaquilla Law"). In December 2017, the Supreme Court of Panama declared the Original Petaquilla Law to be unconstitutional. A new concession contract for Cerro Petaquilla was entered into in 2023 (approved by Law 406 of 2023) to replace the Original Petaquilla Law, however, the Supreme Court of Panama, in a unanimous decision, held the law enacting such contract to be also unconstitutional. (See **6.1 Two-Year Forecast for the Mining Sector**).

The special regimes described above may include exceptions to the CMR and benefits that are supplementary to those included in the general law. However, the granting of mining concessions by means of special legislation is rare.

1.3 Ownership of Mineral Resources

Article 257 of the Political Constitution of Panama declares that all mineral deposits belong to the state. The CMR further develops and regulates the constitutional provision, and provides for the granting of concessions to private individuals for the purposes of exploring and/or extracting minerals. Before being extracted, such minerals belong to the state, but the concession holder will own them upon their extraction, subject to the terms of the concession.

Surface rights (ie, ownership of land) may be owned by private individuals or the state. However, the mineral riches underneath such lands belong to the state regardless of the ownership of the lands. In practice, the government awards concessions to explore or extract minerals from deposits located underneath lands owned by parties other than the concession holder.

The law grants holders of concessions reasonable rights of access to, and use of, water, timber and soil within the areas covered by their concessions, subject to permission from the owner of the surface lands and/or the Ministry of the Environment.

Holders of concessions will have unimpeded access to state lands, provided they are free from possessory claims. In the case of titled lands or lands that are subject to possessory rights, if the owner and the holder of the concession fail to come to an agreement, the CMR establishes a procedure for the expropriation of all lands necessary for mining or the creation of appropriate

easements necessary for the project, upon the payment of fair compensation and costs to the affected party. In such instances, title to all surface land so taken will vest in the government of Panama, with all necessary rights being granted to the concession holder. Such rights of use will terminate when the concession ends.

Concession holders are obviously free to purchase lands within and outside the areas of their concessions. These acquisitions will be made on the basis of privately negotiated agreements, without intervention from the government or the need to notify it. These lands will be owned outright by the concession holder.

1.4 Role of the State in Mining Law and Regulations

The Panamanian government has the role of grantor-regulator. In light of the economic policies followed by various governments during the past 25 years, the government is unlikely to assume a different role.

In the case of the Cerro Colorado deposit, until recently the state maintained the possibility of eventually becoming an owner-operator in association with an experienced mining company (which would manage the project). However, this position was abandoned in 2012 as a result of opposition to the project by local and environmental groups, which led to the enactment of legislation banning all types of mining within the Ngäbe-Buglé autonomous region, where Cerro Colorado is located.

1.5 Nature of Mineral Rights

According to the Panamanian Constitution, the state owns all mineral deposits in Panama. However, based on the Constitution and the CMR, the government may grant concessions to private individuals for the exploration and extraction of minerals. In effect, such concessions constitute mineral rights granted to private individuals.

The holders of such concessions acquire exclusive rights to explore and extract minerals within certain defined areas. The minerals extracted become the property of the concession holders, subject to the payment to the state of royalties, taxes and other duties, as stated in the concession agreements and the law.

1.6 Granting of Mineral Rights

The National Directorate of Mineral Resources (NDMR) is a directorate within the Ministry of Commerce and Industries and is the governmental entity in charge of overseeing mining activities throughout the Republic of Panama. According to the CMR, the NDMR handles the granting of mining concessions to private persons and certain governmental entities, and ensures that mining is carried out in accordance with the law. The actual granting of a mining concession is done pursuant to a concession contract entered into by the Minister of Commerce and Industries, in representation of the Republic of Panama, and the concession holder.

The granting, regulation and overseeing of mining activities in Panama is centralised, with the NDMR and the Ministry of the Environment regulating mining activities in all parts of the country. Even though the law does not seem to accord much weight to provincial and municipal authorities in the regulation of mining activities, in practice, the NDMR and the Ministry of the Environment consult them, and their voice and opinions significantly influence final decisions.

The CMR and related laws provide a general framework for the granting of mining concessions, which is applicable to all projects and investors. The vast majority of mining conces-

sions have been granted pursuant to the CMR and related legislation.

Mining concessions may be granted to private persons (regardless of their nationality) and local governmental entities (for example, the Ministry of Public Works). The CMR prohibits the granting of mining concessions to foreign governments and their dependencies, although these entities may own shares or participations in private companies that hold mining concessions. Most mining concessions are currently granted to private entities.

The NDMR receives and reviews applications for mineral concessions and recommends their acceptance or rejection. The application process for mining concessions involves the submission to the NDMR of information on the legal, financial and technical status of the applicant; maps; mining plans and budgets for at least four years; a nominal application fee; and environmental impact studies.

The type and scope of the environmental impact study will depend on the degree of intrusiveness of the intended mining activities. Applicants must present their plans to the Ministry of the Environment for their review. The Ministry will then decide on the type of environmental impact study required for the concession.

Since concessions are granted on an exclusive basis for a certain type of mineral in a particular area, applicants are prevented from applying for the same type of minerals and areas that are currently the subject of another concession.

Once the concession applications have been approved by the NDMR, the concession will be granted by means of a concession contract entered into by the concessionaire and the Minister of Commerce and Industries, representing the state of Panama. The applicant will have to submit performance bonds to the governmental authorities, which will secure the obligations of the applicant during the time of the concession. For a concession contract to be legally valid, it must be countersigned by the Office of the Comptroller General of the Republic and published in the Official Gazette of the Republic of Panama.

The Ministry of the Environment is the Panamanian government entity in charge of reviewing and approving environmental impact studies filed by applicants of mining concessions, and of overseeing concession holders' compliance with the approved studies and remediation plans.

Contract-Laws

In addition to mineral concessions granted pursuant to the CMR, some concessions have been granted by means of contracts between the concession holder and the state of Panama. Once signed by the concession holder and the Minister of Commerce and Industries in representation of the state of Panama, these contracts are presented to the Office of the Comptroller General of the Republic to be countersigned, and are subsequently presented to the National Assembly of Panama for approval by means of a special law. Concessions granted pursuant to this method are commonly referred to as contract-laws.

Concessions for some of the largest infrastructure projects in Panama have been granted pursuant to contract-laws or special legislation. For example, Texaco's former oil refinery (built in the early 1960s and refurbished in the early 1990s) and Northville's trans-Isthmian pipeline (built in the late 1970s and refurbished in the 1990s and at the start of the 21st century) were both

granted by means of contract-laws. In the case of mining, there are at least two examples of concessions granted pursuant to contract-laws: the Original Petaquilla Law and the Concession Contract between Vera Gold Corporation and the Ministry of Commerce and Industries, which was approved by means of Law 92 of 2013 (the concession corresponds to the Santa Rosa gold mine and adjoining deposits).

The Cerro Colorado concession was originally granted by means of a special law, Law 41 of 1975, to a government-owned company called Corporación De Desarrollo Minero Cerro Colorado (CODEMIN). Law 41 of 1975 was repealed by means of Law 11 of 2012. It is important to note that the indirect holder of the Cerro Colorado concession was the Republic of Panama.

Contract-laws provide for certain flexibility because, for example:

- the terms of the concession can be tailor-made to the project;
- investors may secure some tax relief;
- special protections can be provided to lenders and financiers (for example, allowing lenders to step in in certain circumstances); and
- there is greater certainty as to the enforcement of security arrangements.

Recent decisions by our Supreme Court in the case of the Petaquilla concession (decisions rendered in 2017 and 2023) have cast doubts on the use of contract-laws for mining projects and, in general, for other types of industries.

1.7 Mining: Security of Tenure

The CMR and related laws set forth two principal types of mining concessions: the exploration concession and the extraction concession. In addition, the CMR provides for the granting of prospecting permits and processing and transportation concessions.

Features of Concessions and Permits

Exploration concessions grant their holders three key rights:

- the right to engage in preliminary geological work (as would also be conferred by a prospecting permit);
- the exclusive right to engage in all necessary exploration and related activities with respect to specific types of minerals within the zone constituting the concession; and
- the exclusive right to be awarded an extraction concession over the relevant area if minerals in commercial quantities are discovered during exploration activities.

Exploration concessions are available for initial periods of four years, subject to two discretionary extension periods of two years each.

A holder of a valid exploration concession benefits from the exclusive right to apply for an extraction concession in the same area. The CMR also provides for the award of extraction concessions over minerals not currently subject to exploration activities. Extraction concessions are granted for:

- an initial period of 25 years and a maximum area of 5,000 hectares for base metals;
- an initial period of 20 years and a maximum area of 5,000 hectares for alluvial precious metals; and
- an initial period of ten years and a maximum area of 3,000 hectares for non-alluvial precious metals.

Extraction concessions may be extended, at the discretion of the NDMR, for three periods, the

first one of ten years and the last two of five years each. In the case of construction materials, such concessions are granted for an initial period of ten years and a maximum area of 500 hectares, and their term may be extended for an additional ten-year period.

Prospecting permits are granted to individuals (not companies), and allow their holders to engage in preliminary geological surveying on a non-exclusive basis for an initial period of six years.

Transportation and processing concessions enable the holders thereof to transport and process minerals on behalf of a mining operator legally entitled to extract those minerals. Each such concession may be granted for an initial period of 25 years, subject to three renewal periods, the first one of ten years and the last two of five years each. Holders of extraction concessions engaged in the ordinary course of extracting and selling mineral products are not required to obtain these supplemental concessions.

Issues During Concessions

Concessions may be cancelled if the holders thereof breach their obligations under their concession contracts or relevant legal provisions under the CMR and other applicable laws. A mineral concession may also be cancelled if the holder is declared bankrupt or insolvent. The concession contract may include concession-specific events of default that give rise to the cancellation of the contract.

The CMR allows a grace period of one year for payment defaults by concession holders, and provides that the concession will not be cancelled in the absence of repeated refusals or failures to submit required reports or comply with inspection requests from government officials. Moreover, a concession will be considered abandoned if mining operations cease for an entire year, in the absence of any force majeure event.

The cancellation of the concession will be decreed by the Minister of Commerce and Industries in an official document that will list the reasons for such cancellation.

By law, the government of Panama has the right to terminate a concession agreement for reasons of public interest (ie, without the existence of defaults) and upon the payment of fair compensation. This principle applies to all the concessions that may be granted to a mining company for the development of a mining project (mining, water, power, road building, etc). The details of what constitutes public interest and fair compensation depend on the type of concession. Typically, the reasons of public interest will be explained in the decree that declares the termination of the concession.

In the absence of special dispute resolution provisions in the applicable concession contracts, an affected holder may have to resort first to the Administrative Tribunal of Public Contracts and ultimately to the Third Chamber of the Supreme Court of Panama to challenge any unjustified termination of its rights. It may be possible to negotiate with the government for the inclusion of an arbitration clause in the concession contract to address the resolution of potential disputes, but generally the government is reticent about the inclusion of such clauses.

In addition, if any holder hails from any country that has entered into a bilateral investment treaty (BIT) with Panama, it may use the remedy and protection mechanisms provided in such treaty.

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

2.1 Environmental Protection and Licensing of Mining Projects

The protection of the environment and natural resources in Panama is overseen by the Ministry of the Environment, which has many responsibilities, such as evaluating environmental impact studies, including those related to mining activities. It is also the authority responsible for the conservation, protection and restoration of the environment. It is the designated authority that may impose sanctions and fines, and direct and supervise the execution of environmental policies.

The Ministry of the Environment may impose administrative fines for the following:

- violations of the environmental quality regulations;
- environmental management plans or resolutions;
- sustainability and environmental management programmes; and
- violations of laws or complementary regulations.

Such violations shall be sanctioned by the Ministry of the Environment by way of a written admonishment, or with a temporary or definitive suspension of the activities, and/or with a fine according to the situation and the severity of the violations. These fines are without prejudice to further principal and accessory fines that may be imposed on the infringing party according to the law and to its liability to third parties who have been affected by acts or omissions of the infringing party.

The fines imposed by the Ministry of the Environment will be proportionate to the severity of the risk and/or the environmental damage generated by the breach, regardless of the economic capacity of the infringing party and whether or not the damage is recurrent. The Ministry of the Environment may also order the infringing party to pay the cost of clean-up, mitigation or compensation for the environmental damage, without prejudice to any additional civil and criminal liabilities.

Environmental Impact Studies

Activities and projects – whether private or public – that may create environmental risks must undergo an environmental impact study prior to the start of the project (particularly mining activities). These studies are reviewed and approved by the Ministry of the Environment. The purpose of an environmental impact study is to ensure compliance with environmental regulations while also enabling continuous oversight by the Ministry of the Environment. As a result, any individual may report violations if a project is found to be operating in a manner inconsistent with its approved environmental impact study.

The Ministry of the Environment has issued an extensive list of activities that require an environmental impact study. The studies are divided into three categories, as follows:

- Category I – applicable to projects that do not generate significant negative environmental impact or do not carry a significant risk of environmental damage;
- Category II – applicable to projects that may cause significant environmental damage but where that damage can be eliminated or mitigated through well-known and easily applied means; and

- Category III – applicable to projects whose execution could cause large-scale environmental damage, and therefore require a more comprehensive analysis.

A project is considered to produce a significant, adverse environmental impact if it meets one or more of the following criteria:

- it poses a risk to public and environmental health;
- it may affect the quantity or quality of natural resources;
- it may cause significant changes to a protected area;
- it involves the disruption and resettlement of human populations; or
- it may cause changes to areas that have been declared to be of anthropological, archaeological, historical or cultural value.

Environmental impact studies must be carried out by qualified professionals, who may be either natural or legal persons, independent from the developer of the project, who are duly certified by the Ministry of the Environment for such work.

A resolution by the Ministry of the Environment approving an environmental impact study is valid for two years, and can be extended for justified reasons. The execution of the project must begin during this time; otherwise, a new filing must be made.

Environmental impact studies must also include environmental management plans. These plans are documents that establish in detail and in chronological order the activities that the company must carry out to prevent, mitigate, control and compensate for possible environmental damage, or increase the positive environmental impact of the activity. An environmental management plan must also include plans for follow-up and monitoring, and for contingencies. Companies are required to comply with these plans, and such compliance is monitored by the Ministry of the Environment. The resolution approving an environmental impact study also establishes the frequency with which periodic reports must be submitted to the Ministry of the Environment. These reports must be drawn up by certified environmental auditors.

In the case of mining concessions, applicants must contact the Ministry of the Environment and present their project plans. These plans are also included in the filings to be made with the NDMR for the granting of a concession. Depending on the activities, the Ministry of the Environment may request a certain type of environmental impact study. The approval process for an environmental impact study involves a process of consultation with the communities surrounding the mining concession.

2.2 Impact of Environmentally Protected Areas on Mining

There are environmentally protected areas in Panama, where, generally, no mining concessions may be granted. The law seems to provide for the possibility of granting mining concessions in such areas, subject to a process of public hearings and the performance of satisfactory technical and environmental analyses. However, from a practical point of view, it remains very challenging for mining concessions or other types of activities to be permitted in environmentally protected areas.

The law established a National System of Protected Areas (SINAP) under the oversight of the Ministry of the Environment and the Directorate of Protected Areas and Biodiversity.

The Republic of Panama has 104 protected areas that are under the custody of the Ministry of the Environment, which must develop a management plan for each protected area determining its purpose, usage, restrictions and management.

2.3 Impact of Community Relations on Mining Projects

Communities near a project may express their opinion as part of the review and approval process of environmental impact studies (Law 6 of 2002). Even though the CMR does not provide for a procedure for incorporating or listening to the comments from communities at the time of granting a mining concession, Law 6 of 2002 requires the government to consult the public regarding administrative acts that may impact their interests and rights.

Law 262 of 2021 requires companies that have been awarded governmental concessions to adopt and execute corporate social responsibility programmes (CSR). These companies must approve an annual budget allocated to CSR programmes. Before the enactment of Law 262 of 2021, mining companies in Panama had already adopted and implemented social responsibility projects and policies for communities located near their mining projects.

The Ministry of the Environment may convene public consultations on environmental problems or issues that might be important to, or affect, communities. These public hearings are generally part of the review and approval process of environmental impact studies. As part of these public hearings, officials from the Ministry of the Environment inform the community about projects that may have an adverse effect on the environment or communities in order to obtain the opinion of the public and suggestions regarding the planned activities and, in general, to get an idea of the effects of the proposed activity and the manner in which to mitigate any potentially adverse effects.

The National Environmental Advisory Committee was created by law to allow citizen participation in the review of national and inter-sectoral environmental issues, and to make observations, recommendations and proposals to the Ministry of the Environment. This committee is made up of 15 members, including citizens, government officials and representatives from the indigenous regions.

In addition, the law provides for the sharing between the central government and local communities of the amounts collected as surface taxes and royalties from companies engaged in exploration and extraction activities.

The CMR states that 20% of such amounts will be allocated to communities surrounding the mining project, 95% of which will correspond to the municipalities where the projects are located, while the remaining 5% will be delivered to the towns and communities adjoining such municipalities (even if no direct mining activity takes place in them). These funds must be used exclusively for development programmes in education, health and socio-environmental projects. Towns and communities adjoining the municipalities where the projects are located may also use these funds to fund electrification projects in their communities.

The CMR also states that, in the case of projects that pay 5% or more in royalties, 2% of the amounts collected by the government as royalties will be used in the construction of infrastructure and for social development programmes in the communities adjoining the mining project,

and 1% of such amounts will be delivered to the Social Security Administration to become part of the funds belonging to pension and retirement plans managed by such governmental institution.

2.4 Prior and Informed Consultation on Mining Projects

Law No 6 of 2002 requires the government to engage in a process of consultation with the public in the case of administrative actions that may affect rights and interests of citizens. Pursuant to this procedure, the government will provide general information on the terms of the concession to citizens and non-governmental organisations and request their "opinions, proposals or recommendations". Law No 6 of 2002 applies to any administrative action and, hence, it should apply to the granting of mineral concessions. It is not clear whether the government is applying this provision and, if it is applying it, in what instances: exploration, extraction, transport or beneficiation concessions.

In addition to the consultations provided for by Law No 6 of 2002, public consultations are part of the process for reviewing and approving environmental impact studies, and are carried out by the Ministry of the Environment.

2.5 Impact of Specially Protected Communities on Mining Projects

There are indeed specially protected communities made up of indigenous peoples, some of whom have their own autonomous regions with their own government bodies.

The main autonomous regions are the Guna Yala and the Ngäbe-Buglé autonomous regions. In the Ngäbe-Buglé autonomous region, the law (Law No 11 of 2012) prohibits the granting of mining concessions within the region (except for concessions relating to construction materials to be used in social projects for the benefit of the autonomous region).

It is important to mention that the Cerro Colorado copper deposit is located within the area of the Ngäbe-Buglé autonomous region. Therefore, because of Law No 11 of 2012, no mining concession of any nature may be granted with respect to the Cerro Colorado copper deposit. In effect, by means of the enactment of Law No 11 of 2012, the Cerro Colorado concession (approved by means of Law 41 of 1975) was repealed.

Indigenous communities have the right and obligation to assist the Ministry of the Environment in the conservation and protection of their territories, seeking sustainable use, management and exploitation of natural resources.

2.6 Community Development Agreement for Mining Projects

Law 262 of 2021 requires companies that have been awarded governmental concessions to adopt and execute CSRs.

Law 262 of 2021 promotes the establishment of CSR programmes by companies that have been granted governmental concessions (which includes mineral concessions). Concession contracts must stipulate the obligation on the part of the concessionaire to present to the government what its social responsibility programme will be. Concessionaires will have to present their plans within the 30 working days after they start operations. Such plans must include the amount that will be invested and the works/activities that will benefit the communities where the concessions are located. Concessionaires are required to submit each December an annual report on

their activities and will be fined if they breach their obligations.

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

ESG guidelines are not new in Panama. The financial sector has been following them for some years already. In the case of mining, Minera Panama, S.A. has adhered to the guidelines of its holding company, First Quantum Minerals Ltd.

2.8 Illegal Mining

Illegal mining has become a problem in the last few years. Panamanian newspapers have reported that, as of August 2024, there had been 250 instances of illegal mining. In 2023, 60 cases had been reported. Most of the reported cases are in the area surrounding Cobre Panama.

The majority of the instances are in the form of rudimentary placer gold mining in the rivers surrounding the Cobre Panama area and others that flow into the Caribbean Sea. These illegal activities are affecting national parks and sources of water.

Our environmental authorities and police are trying to prevent illegal mining. Our law provides for the possibility of criminal sanctions if the illegal mining causes harm to the environment. In addition, the CMR punishes these activities with fines of up to USD250,000.

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

Until recently, the Cobre Panama project had been regarded as a success story in terms of its environmental and community relations, as well as its consultation efforts. However, as a result of the Supreme Court of Panama's ruling that the Cobre Panama concession was unconstitutional, Cobre Panama had to close its operations. It is important to emphasise that this outcome was not due to poor community relations.

Minera Panama, S.A. (the holder of the Petaquilla copper concession, also known as Cobre Panama) entered into agreements with the communities surrounding its project providing for investment in facilities and infrastructure. According to information posted on its website, Minera Panama, S.A. had invested at least USD44 million over the past ten years in infrastructure projects benefitting 22 communities surrounding the Cobre Panama mine. Due to the termination of its operations in Panama, it is anticipated that CSR efforts on the part of Minera Panama, S.A. will end.

On the other side of the spectrum, the Cerro Colorado project was not successful in its community relations. Until 2012, the state held title to the concession to the Cerro Colorado deposit, when a law (Law No 11 of 2012) was passed cancelling the concession and prohibiting further mining activities in the area.

From the 1970s, the government sought the cooperation of international mining companies for the purpose of conducting exploration activities in Cerro Colorado. In the 1980s, the project faced opposition from environmentalists and local indigenous communities. The opposition did not abate even though the mining activities in the area ceased or were reduced. The government continued to seek the assistance of international mining companies in the 1990s and into the early years of the 21st century, but the opposition from local indigenous communities continued until 2012, when the government had to adopt Law No 11 of 2012, which effectively

banned all mining activities within the Ngäbe-Buglé autonomous region, where the Cerro Colorado project is located.

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

3.1 Climate Change Effects

Climate change initiatives have had a limited effect on the mining industry in Panama.

Currently, Panama has a limited number of initiatives aimed at addressing climate change, and the few in place have little bearing on mining activities.

However, the Ministry of the Environment has been specifically empowered by Law No 8 of 2015 to foster initiatives to address and counter climate change in Panama, which may include the adoption of rules applicable to the mining sector.

3.2 Climate Change Legislation and Proposals Related to Mining

Thus far, no climate change legislation specifically related to mining has been passed or is being discussed. However, the Ministry of the Environment has been entrusted with the fostering of initiatives aimed at countering climate change, and it is likely that the future may see legislation and regulations applicable to the mining sector as part of a comprehensive effort by the state to address this global problem.

3.3 Sustainable Development Initiatives Related to Mining

There are sustainable development initiatives in Panama. In 2016, the government made the decision to bring together all social and political forces to work towards a plan for sustainable development, entitled "Panama 2030". The stated aim is for Panama to reach the goals of sustainable development provided by the United Nations by 2030.

3.4 Energy-Transition Minerals

There are no direct initiatives toward increasing demand for so-called energy transition minerals; however, the Panamanian government is adopting regulations and legislation aimed at incentivising the use of electric vehicles, which use batteries that depend on lithium and nickel.

The government enacted Law No 295 of 2022, which provides tax incentives for the purchase of electric automobiles and means of transportation (electric vehicles will be exempted from import taxes until 2030). The government's aim is for 10% of government vehicles to be electric by 2025, rising to at least 40% by 2030. For public transport, the target is for at least 33% of vehicles to be electric by 2030. In addition, Law No 295 establishes the framework for the establishment of power charging stations for electric vehicles in both residential and commercial buildings.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Foreign and national investors are treated equally under the laws of Panama. Therefore, there are no distinctions in the taxing of foreign and national investors with respect to their mining operations or otherwise.

Since the enactment of the CMR in 1963, concessionaires have been expected to contribute the following to the government:

- a fixed annual duty for the area comprising mining concessions; and
- royalties for the product extracted.

Law 13 of 2012 introduced a set of amendments to the CMR, which, inter alia, included a new regime regarding duties and royalties applicable to mining concessions.

- In the case of exploration concessions, there is a fixed annual surface tax, ranging from USD1 to USD3 per hectare, with the amount increasing progressively during the term of the concession.
- In the case of extraction concessions, the surface tax and royalties will depend on the type of mineral – the surface tax will range from USD1.50 to USD8 per hectare, and the royalties will range from 4% to 8%. Royalties are calculated as percentages of the "gross negotiable production", which is defined as follows:
  (a) if royalties are to be paid in kind, the gross mineral production minus production losses and other minerals extracted that have no commercial value, etc; or
  (b) in the case of royalties paid in cash, the gross sales receipts minus transportation and other expenses, calculated in accordance with the International Financial Reporting Standards.

Holders of concessions are also required to post performance bonds. The 2012 amendments to the CMR state that these bonds would range from USD0.10 per hectare for exploration concessions to USD0.25 per hectare for extraction concessions.

Performance bonds may be posted in cash or through the delivery of bonds issued by the government of Panama or surety bonds issued by insurance companies qualified to do business in Panama.

Any payments to the government may be made in US dollars.

Failure to pay the government the amounts due under the concession contracts and the law will trigger defaults under the concession contracts, and will give the government the right to terminate concessions. The CMR allows a grace period of one year for payment defaults. In practice, third parties (such as creditors) may step in and pay the duties owed to the government.

4.2 Tax Incentives for Mining Investors and Projects

In general terms, mining investors do not enjoy tax incentives or benefits that are not otherwise available to investors in other economic activities. However, the CMR exempts equipment and vehicles used in mining operations from import duties.

Mining companies that have invested USD2 million or more may apply for a legal and tax stability regime pursuant to Law 54 of 1998. The stability regime has a ten-year duration.

In the case of large and complex projects, it may be worth considering requesting the government to grant the mining concession by means of special legislation (ie, by means of a contract-law). As explained in **1.6 Granting of Mineral Rights**, the advantages of such special legislation include the following:

- the terms of the concession can be tailored to the project;

- there is tax relief from some taxes (withholding and stamp taxes and registration duties for mortgages and other security arrangements); and
- there is specific recognition of lenders' rights to step in, greater certainty regarding the enforcement of security arrangements, etc.

However, past government administrations have not been sympathetic to the concept of contract-laws and recent Supreme Court decisions have cast doubts on the power of the government to enter into these agreements.

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

Mining concessions may be transferred, but the assignment or transfer requires government approval, to ensure that the assignee or transferee has the same technical and financial capacity as the holder or transferor.

In order to process the transfer approval, the parties will have to pay a USD100 duty to the NDMR. Once approved, the transfer will have to be entered into the mining registry, which is also kept by the NDMR.

Any income generated from the transfer of a mining concession is subject to income taxes, which will be calculated at the income tax rates of general application (which, in the case of companies, are currently set at a flat rate of 25% of net taxable income). There is no special capital gains tax regime for mining concessions.

At present, there are no transfer taxes on the transfer of mining concessions. The transfer or sales agreement relating to the transfer may be subject to the payment of stamp taxes (which are calculated at the rate of USD1 per each USD1,000 or fraction thereof of the face value expressed in the agreement – ie, the sales price).

Transfers by Shares

Another way of transferring mining concessions is by transferring the shares of the company that holds the concession. Even though the law does not seem to formally require such transfers to be notified to, or approved by, the NDMR, in practice such transfers have been notified to the NDMR.

The capital gains generated from a transfer or sale of shares in Panama are subject to income tax at a rate of 10%. The law obligates the purchaser to withhold 5% of the total consideration payable to the seller, and to tender such amount to the tax authorities within ten business days of the transfer, as an advance on the seller's capital gains tax. The seller has the option to consider the amount so withheld by the purchaser as its definitive capital gains tax. Alternatively, if the amount exceeds 10% of the capital gain actually realised on the sale, the seller has the option to file, within the same fiscal year in which the transaction occurred, a sworn declaration with the tax authorities claiming either a non-assignable tax credit for the amounts paid in excess, or the return of the amounts.

If the transfer takes place through transfers or sales of shares of corporate structures located outside of Panama, capital gains taxes will also apply. In such cases, the capital gains tax will apply to the portion of the total sales price that corresponds to the value of the Panama operation in the foreign corporate structure. In other words, if the shares of a mining company with operations in several countries (including Panama) are transferred, capital gains taxes will apply to the portion of the price that corresponds to the Panama operation. The percentage of the

sales price applicable to the Panama operation will be the higher of:

- the percentage corresponding to the value of patrimony of the Panamanian operation as part of the total patrimony of the entire foreign structure to be sold; or
- the percentage of the value of the assets of the Panamanian operation as part of the value of all of the assets of the entire foreign structure.

There are no transfer taxes on the transfer of shares of concession holders. The transfer or sales agreement relating to the transfer of shares may be subject to the payment of stamp taxes (which are calculated at the rate of USD1 per each USD1,000 or fraction thereof of the face value expressed in the agreement – ie, the sales price).

Double Taxation Treaties

Panama has entered into a number of treaties aimed at preventing double taxation, which, depending on the nationalities/domiciles of the parties involved and the terms of the treaties, may provide for more favourable results than the ones described above.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The CMR contains the general investment regime applicable to mining companies, which applies equally to foreign and local companies, without differentiating between Panamanian and non-Panamanian nationals. However, the CMR prohibits foreign governments, nations or entities from holding mineral concessions.

The official currency of Panama is the balboa, which exists only in coins. Since 1904, in accordance with the laws of Panama and diplomatic agreements with the United States, the US dollar is on a par with the balboa and, in practice, has been the currency used for all commercial and financial transactions. The US dollar is legal tender for all transactions, including the payment of obligations owing to the Panamanian government. Since there are no balboa banknotes, in practice US dollar banknotes and coins circulate freely and are the accepted medium of exchange. Businesses in Panama may keep their financial books and records in US dollars.

There are no exchange controls of any kind in Panama. Consequently, funds of any denomination and in any amounts may move freely in and out of the country at any time, may be deposited in local or foreign banks, and may be held by any domestic or foreign natural or legal person. It is also lawful to hold funds in any currencies.

There are no export limits on mineral products currently in effect. By law, the government may compel mining companies to deliver a portion of their production for internal use in Panama. The government will have to pay for such product, with the price to be set at production prices (which are deemed to be the prices that a third party in Panama pays for the mineral). Thus far, the government has not made use of this right.

The above investment regime has been in place in Panama for several decades. As explained above, companies wishing to obtain further assurances may seek to register under Law 54 of 1998, which provides for a legal and tax stability regime for companies investing USD2 million or more in Panama. The stability regime has a ten-year duration.

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

As discussed in **5.1 Attracting Investment for Mining**, the rules applicable to investments in mining ventures in Panama apply equally to foreign and local companies, without restrictions on account of nationality, but the CMR prohibits foreign governments, nations or entities from holding mineral concessions. This restriction does not prevent foreign governments from owning participations in companies that hold mining concessions.

5.3 International Treaties Related to Exploration and Mining

The Republic of Panama has entered into several treaties concerning the treatment and protection of investment (including BITs with the United States, Canada, Chile, the Czech Republic, the United Kingdom, France, the Netherlands, South Korea, Singapore and Spain, to name but a few). These treaties provide for a general protection regime, and generally provide for the possibility of resorting to international arbitration in the event of disputes.

5.4 Sources of Finance for Exploration, Development and Mining

Most exploration and extraction activities in Panama are carried out by foreign companies, which in most cases fund their operations from sources outside of Panama.

In the case of exploration activities, companies typically fund their operations from their working capital. These companies, in turn, fund their operations through the issue of securities in foreign securities markets.

In the case of extraction projects, companies seek financing from a variety of sources: project financing extended by private lenders, government-owned financial entities and/or multilateral agencies, and/or issuing securities in foreign securities markets, etc.

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

The local securities market has little bearing on the financing of mining activities in Panama. Mining companies with operations in Panama have almost always resorted to international securities markets.

5.6 Security over Mining Tenements and Related Assets

The following collateral security arrangements, among others, are available to creditors in mining projects:

- Mining concessions may be mortgaged (which will require the prior approval of the Ministry of Commerce and Industries).
- Surface rights may be mortgaged.
- Minerals, once extracted, may be subject to security arrangements.
- Shares and bank deposits may be pledged.
- Movable assets may be either pledged or mortgaged.

The type of security arrangement will depend on the type of collateral. Mortgages may turn out to be expensive security arrangements.

Registration duties applicable to real estate mortgages are based on the principal amount secured, at the rate of USD3 for each USD1,000 or fraction thereof secured by the mortgage. In the case of chattel mortgages, the applicable duties are USD42 for the first USD20,000 and USD30 for each USD10,000 or fraction thereof secured by the mortgage. In addition, their regis-

tration requires their text to be typed on notarial paper (which has a cost of USD8 per page). If an agreement is in English, it will have to be translated into Spanish by an official interpreter.

Stamp taxes also apply to agreements expressing obligations to pay, including security agreements, at the rate of USD0.10 for each USD100 or fraction thereof of the face value of the obligation expressed in the document. Amounts paid in notarial paper and in registration duties for the documents that have to be registered are deducted from the applicable stamp tax.

Mortgages on mining concessions have to be registered at the Mining Register and, as indicated above, require the prior approval of the Ministry of Commerce and Industries. The applicable registration duty is USD100 (regardless of the amounts secured by the mortgage). The law is somewhat unclear on whether such mortgages must also be registered at the Public Registry of Panama (wherein real estate and chattel mortgages are registered) in order to be effective against third parties. If the latter conclusion also applies, the registration duties applicable to real estate mortgages will also apply to mortgages on mining concessions.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

With the start of production and export by the Cobre Panama project, mining had become the largest export activity in Panama (in terms of both volume and value). Cobre Panama possibly represented the largest private investment in the history of Panama, second only to the Panama Canal (which was originally funded by the United States and its recent expansion by the Republic of Panama). In addition, Cobre Panama had become an important contributing factor to the reduction of unemployment in Panama.

Unfortunately, due to the events described in the following section, the future of metal mining does not seem promising.

Mining Issues to Be Addressed in Panama

As a result of two Supreme Court rulings (2017 and 2023) and the enactment of Law 407 of 2023, the future of metal mining in Panama does not look promising. In effect, except for a few concessions, metal mining in Panama has been banned.

A decision rendered by the Supreme Court in late 2017, but made public in mid-2018, ruled that the Original Petaquilla Law was unconstitutional and declared it to be void in its totality. The ruling of the Supreme Court was in the context of claims filed by environmental NGOs questioning the constitutional validity of the Original Petaquilla Law. Procedural filings were made before the Supreme Court, which suspended the effects of the ruling. However, on 28 June 2021, the Supreme Court dismissed all the filings and confirmed its decision on the unconstitutionality of the Original Petaquilla Law.

In August 2023, after almost two years of negotiations, the government presented to the National Assembly a new concession contract to replace the Original Petaquilla Law. On 20 October 2023, the National Assembly approved the contract-law by means of Law 406 of 2023 (“Law 406”). On the same day, the President of the Republic signed the law that approved the contract, which was subsequently published in the Official Gazette.

Several complaints were filed with the Supreme Court challenging the constitutionality of Law 406. On 27 November 2023, the Supreme Court unanimously held that Law 406 was unconstitutional because it had breached not less than 25 articles in the Constitution. As a result of this decision, the Cobre Panama project ceased mining operations. First Quantum Minerals Ltd. (through its Panamanian subsidiary, Minera Panama, S.A.) claims to be spending at least USD13 million per month on the care and maintenance of the site.

In addition, whilst the new contract-law was being considered by the National Assembly, the country was shaken by protests against Cobre Panama and the proposed contract-law. To try to calm the protests, the government was compelled to introduce a ban on new metal concessions (Law 407 of 2023), which also extends to applications for mining concessions that were in the process of review.

As a consequence of the 27 November 2023 Supreme Court ruling and Law 407 of 2023, some of the affected companies (including First Quantum Minerals Ltd.) have either taken or threatened to take Panama to international arbitration. Some of the claims by these companies are in the billions of dollars.

On 1 July 2024, Jose Raul Mulino was sworn in as President of Panama. On that date, a new National Assembly was also installed.

The new government has indicated that Cobre Panama cannot be left unattended because of the risk of severe environmental damage to the area. The President has suggested the possibility of temporarily restarting mining operations at Cobre Panama to generate sufficient revenue for the proper closure of the project. The government has indicated that the issues relating to the Cobre Panama project will be revisited in 2025.

We will have to wait until 2025 to find out how the new government will address the consequences of the termination of the Cobre Panama project and the ban on metal mining concessions.

Trends and Developments

Contributed by:
Roy C Durling
Arias, Fábrega & Fábrega

Arias, Fábrega & Fábrega has more than 40 attorneys ready to assist clients in all areas of the law. The mining and environmental team is comprised of three attorneys who work closely with mining, environmental and other regulatory entities related to the mining sector. The firm has acted for major world mining players, such as advising Rio Tinto in the negotiations of the concession agreement for the Cerro Colorado copper mine. It has also represented Deutsche Bank in a prepaid forward gold purchase agreement and full security package over company assets in Panama, which involved the granting of a first priority mortgage over a fully operational mining concession in Panama.

Author

Roy C Durling is a partner at Arias, Fábrega & Fábrega, which he joined in 1991, after working for four years at a major law firm in New York City. He heads the mining, oil and gas group. He has represented several mining companies in their operations in Panama. Roy obtained his JD from Cornell University and his BA from Georgetown University.

Arias, Fábrega & Fábrega

ARIFA Building
10th Floor
West Boulevard
Santa Maria Business District
PO Box 0816-01098
Panama

Tel: +50 7205 7000
Fax: +50 7205 7001/02
Email: panama@arifa.com
Web: www.arifa.com

ARIFA
ARIAS, FABREGA & FABREGA

The Status of Cobre Panama and Metal Mining

Introduction

In 2019, the Cobre Panama project, operated by Minera Panama, S.A. (MPSA), a subsidiary of First Quantum Minerals Ltd., of Canada, started mining operations and the export of copper. Between 2019 and 2023, MPSA's copper exports accounted for 80% of Panama's total exports. Around 7,000 persons worked directly for MPSA and 40,000 workers indirectly depended on the project. In 2022-2023, the copper production represented 1% of the total world production of copper and 3% of the gross domestic product of Panama. Cobre Panama was one of the largest copper mines in the world.

The Republic of Panama and MPSA had entered into a contract in 1996 pursuant to which MPSA was granted a concession for the development of a mining project in the Cerro Petaquilla area. This contract was subsequently enacted into law by the National Assembly in 1997 (Law No 9 of 1997, "Law 9"). In a decision by the Supreme Court of Panama, which became effective in late 2021, Law 9 was declared unconstitutional.

To fill the void created by the unconstitutionality of Law 9, in October 2023, a new contract was signed and approved by the National Assembly by means of Law No 406 of 2023 ("Law 406"). Demonstrations against Law 406, metal mining in general, and the government rocked Panama in the months of October and November 2023. On 28 November 2023, the Supreme Court of Panama held Law 406 to be unconstitutional. Since then, operations at Cobre Panama have ceased.

To further appease protesters, the National Assembly also enacted Law No 407 of 2023 ("Law 407"), which prohibited the granting, renewing, or extending of concessions for the exploration, extraction, or exploitation of metal mining.

Law 9: the first Cobre Panama concession

In 1996, the government of Panama, represented by the Ministry of Commerce and Industries, and MPSA signed a contract pursuant to which MPSA was granted exclusive rights for the extraction of copper and other minerals in Cerro Petaquilla for an initial period of 20 years (subject to two 20-year extensions). The concession was approved by the National Assembly of Panama by means of Law No 9 of 1997.

Law 9 was a special type of contract known in Panama as a contract-law. Contract-laws are special agreements designed to grant protection to private investors in the case of projects that require substantial investment, such as ports, oil refineries, and pipelines. Contract-laws provide (i) juridical stability and certainty for the duration of the contract to private investors, and (ii) special benefits (usually, but not exclusively, tax benefits), which are not otherwise available pursuant to the general law.

In essence, a contract-law is a law that approves a contract entered into by the nation and private investors. The contract is signed by a government representative, duly authorised by the executive branch (the President and all cabinet ministers), and the private company. The contract is subsequently countersigned by the Comptroller General of the Republic. The same terms of the contract stipulate that it will be presented to the National Assembly for approval. The National Assembly may simply approve or reject the contract. Upon its approval, the terms of the contract are embodied in a law (hence the name contract-law). The law is signed by the President and Secretary of the National Assem-

bly and by the President of the Republic and a cabinet minister. The law becomes effective upon its publication in the Official Gazette of Panama.

In 2011, after the approval of the environmental impact study, construction of the project started. In December 2016, the Ministry of Commerce and Industries extended the term of Law No 9 for an additional 20-year period. Prior to the start of mining operations, MPSA had invested more than USD6 billion. In 2019, MPSA began exporting copper. In the ensuing years, MPSA's copper exports accounted for 80% of Panama's total exports (approximately USD2 billion).

The first Cobre Panama concession is declared unconstitutional

The Supreme Court of Panama, in a decision rendered in late 2017, held that Law 9 was unconstitutional, which called into question the validity of MPSA's concession. The ruling became fully binding in late 2021.

The Supreme Court's ruling was in response to complaints filed by an environmental group and an individual. The Court held that Law 9 was unconstitutional because, in granting the concession, the government had obviated the procedures established by Cabinet Decree No 267 of 1969, which required a public bidding process. In addition, the Court held that the government had ignored the potential environmental risks associated with the project.

Until the ruling became final, Law 9 continued to be effective, and the Panamanian government honoured its terms.

The second Cobre Panama concession

While the Supreme Court decision was in the process of becoming final, in September 2021, the government of Panama and MPSA started to negotiate a new contract to replace Law 9.

The principal aims of the Panamanian government were to ensure that the mining operation continued, increase revenue to the Panamanian government, and incorporate protections for mine workers and the environment.

In March 2023, the terms of the new concession were agreed. It provided for the following financial terms:

- MPSA would pay a variable royalty rate ranging from 12 to 16% of gross earnings (earnings from the sale of minerals minus direct costs). The applicable royalty percentage would depend on the level of gross earnings. Law 9 established some fixed royalties ranging from 2 to 4%.
- MPSA would pay Panama withholding taxes on payments to foreign lenders and parties as provided by law. Law 9 exempted MPSA and its affiliates from the payment of any withholding taxes.
- MPSA would no longer benefit from any tax holiday and would pay income taxes as provided by law. Law 9 exempted MPSA and its affiliates from all taxes that might arise in relation to the development of the mining project, except for municipal taxes and surface canons and royalties, until these entities had repaid all debt acquired for the construction and development of the mining project.
- MPSA would make a yearly, minimum guaranteed payment to Panama of USD375 million adjusted for inflation ("Minimum Guaranteed Payment"), comprising the sum of royalty payments and payments of withholding and income taxes. This Minimum Guaranteed Payment was aimed at ensuring that a minimum payment of royalties and taxes

would be paid to Panama. It was expected that, under certain circumstances (eg, the low price of copper in international markets), MPSA might be exempted from having to pay the Minimum Guaranteed Payment.

In the case of labour matters, the percentage of foreign labour was reduced from 25% (as provided in Law 9) to between 15% and 10% of the total labour force, aligning with the limits set by general legislation.

With respect to environmental issues, MPSA agreed to comply with general environmental laws and regulations, including those applicable to the eventual closure of the mine, in accordance with the environmental impact study and modern mining practices.

MPSA also agreed to replace its power generation plant based on carbon with an ecologically friendlier plant. It also undertook to strive to use renewable energy sources throughout the project.

New contract approved by the National Assembly

On 3 August 2023, the Minister of Commerce and Industries submitted to the National Assembly the draft bill, which called for the approval of the new contract-law.

The first reading of the draft bill started at the Commerce Committee of the National Assembly on 21 August 2023. At the Committee, members heard opinions and comments from the public. On 28 September 2023, the first reading was suspended, and the Committee, in an unusual move, resolved to return the draft bill to the executive branch with their comments and recommendations.

As a result of the comments of the Commerce Committee, the executive branch and MPSA had to renegotiate some of the terms of the contract-law. The new contract-law was presented to the National Assembly on 16 October 2023.

On 20 October 2023, the National Assembly approved the contract-law by means of Law No 406 of 20 October 2023 ("Law 406"). On the same day, the President of the Republic signed the law that approved the contract, which was subsequently published in the Official Gazette.

The second Cobre Panama concession is declared unconstitutional and a general ban on metal mining concessions is enacted into law

Whilst the contract-law was under review at the National Assembly, the country was shaken by demonstrations against the proposed contract-law. There were several reasons for these protests, including:

- the general perception that the negotiation and approval of Law 406 had been possibly tainted by corruption;
- concerns regarding the effects of mining on the environment, coupled with an unusual and harsh drought that was affecting the Panama Canal operations and other sources of drinking water for the country;
- general frustration with the government; and
- the perception that Law 406 established a semi-colonial enclave in the area of the concession.

In addition, several complaints were filed with the Supreme Court challenging the constitutionality of Law 406.

The severity of the protests and the public clamour prompted the executive branch on 30

October 2023 to present two bills to the National Assembly: one calling for a referendum on the validity of Law 406 (so voters could vote in favour of the abrogation of Law 406) and the other a prohibition on new metal mining concessions.

The National Assembly discarded the idea of a referendum on Law 406 and opted for allowing the Supreme Court to review its constitutionality.

The other initiative (calling for a prohibition on new metal mining concessions) succeeded. Law 407 of 3 November 2023 ("Law 407") provided for a prohibition on the granting, renewing, or extending of concessions for the exploration, extraction, or exploitation of metal mining. This prohibition also extended to applications for metal mining concessions that were in the process of review.

Notwithstanding the above moves by the government, the protests continued unabated. Simultaneously, the Supreme Court was reviewing the challenges filed against Law 406.

On 27 November 2023, the Supreme Court unanimously held that Law 406 was unconstitutional because it had breached not less than 25 articles in the Constitution. In particular, the Court indicated that the granting of the concession should have been the result of a public bidding process (and not by means of a direct contract with MPSA) and that the contract had not taken into consideration environmental safeguards. The Court's decision was made public on 28 November 2023 and published in the Official Gazzette on 2 December 2023.

Consequences

As a result of the Supreme Court ruling, MPSA was left without a legal basis for continuing to operate the Cobre Panama project. It switched its operations to care and maintenance of the site. In the weeks ensuing the ruling, its labour force was reduced to 1,000 employees. MPSA claims that it is spending USD13 million per month on the site, particularly in addressing environmental matters. At the time of the ruling, there were 120,000 tonnes of copper ore that could not be exported, and which remain at the site.

First Quantum has announced that it has started arbitration proceedings against Panama before the International Chamber of Commerce in Paris pursuant to the arbitration clause in the contract-law approved by Law 406. It is reported to be claiming USD30 billion in damages. It has also threatened to start arbitration proceedings against Panama under the Canada-Panama Free Trade Agreement (the "Canada-Panama FTA").

Korea Mine Rehabilitation and Mineral Resources Corp. (KOMIR), a Korean state-owned company and holder of 10% of equity in MPSA, has also started arbitration proceedings against Panama pursuant to the South Korea Panama FTA. Komir is seeking damages of approximately USD1 billion.

Franco Nevada Corporation, a Canadian royalty and streaming company, has also taken Panama to arbitration under the Canada-Panama FTA. It is seeking up to USD5 billion in damages.

Liebherr Mining, a multinational company supplying mining equipment, has also sent notices to Panama of its intention to start arbitration proceedings under the France-Panama FTA. Liebherr is seeking more than USD100 million in damages resulting from its investments in Panama to serve the Cobre Panama project.

Although unrelated to the Cobre Panama project, Orla Mining Ltd., a Canadian company ("Orla"), has also filed a request for arbitration under the Canada-Panama FTA. Orla, through a Panamanian subsidiary, was in the process of renewing three gold concessions in Cerro Quema, Panama. As a result of Law 407, the government of Panama rejected its applications to renew the concessions. Orla is seeking USD400 million in damages.

In 2024, the Panamanian economy is expected to slow down, due in part to the closure of the Cobre Panama project. In the first months of 2023, the GDP grew at a rate of 8.2%, whilst in the same period in 2024, the rate of growth was 2.2%. In March 2024, Fitch Ratings downgraded Panama's sovereign debt to junk status in part as a consequence of the closure of Cobre Panama.

Conclusion

In the meantime, José Raúl Mulino was elected President on 5 May 2024. A new National Assembly was also elected. The new President was inaugurated on 1 July 2024.

The new government has said that it will address the Cobre Panama problem in 2025. The government is currently addressing the economic problems of the Social Security Administration.

Mr Mulino has indicated that, if left unattended, the mine could be an environmental disaster. He has also suggested the possibility of temporarily restarting mining operations at Cobre Panama to generate sufficient revenue for the proper closure of the project. The President has indicated that his government will move carefully, respecting the decision of the Supreme Court, while avoiding environmental damage and public unrest.

The government is currently assessing the value of the copper ore left in the mine (estimated at 120,000 tonnes) and the possibility of exporting it. It is also anticipated that the government will request an environmental audit of the project.

We will have to wait until 2025 to find out how the new government will address the consequences of the termination of the Cobre Panama project and the ban on metal mining concessions.

PHILIPPINES

Law and Practice

Contributed by:
Patricia A O Bunye and Rafael Raymundo A Evangelista
Cruz Marcelo & Tenefrancia

Contents

Cruz Marcelo & Tenefrancia is a top-tier, full-service law firm based in Bonifacio Global City, Metro Manila, Philippines, with proven expertise in, among others, Energy, Mining and Natural Resources, Corporate and Special Projects, Intellectual Property, and Litigation and Dispute Resolution. Its other areas of practice include Infrastructure, Transportation and Public Utilities, Taxation; Labour and Employment; Trade; Telecommunications; Data Privacy; Competition; Financial Technology; Family Law; and Information and Communications Technology. The firm's multi-disciplinary approach, involving collaboration among the firm's different departments, guarantees its clients effective and comprehensive legal solutions and representation. The Mining and Natural Resources department has represented diverse clients on a broad range of legal issues, from ensuring compliance with nationality and capitalisation requirements; obtaining government approvals, licences, and registrations; preparing and reviewing applications for pertinent agreements and permits; drafting, negotiating and reviewing contracts relevant to the industry; joint ventures; asset exchanges; disputes; regulatory and environmental issues; and project development and structuring.

Authors

Patricia A O Bunye heads Cruz Marcelo & Tenefrancia's Mining and Natural Resources and Energy departments. She is the Founding President of Diwata-Women in Resource Development, Inc, a non-government organisation advocating the responsible development of the Philippines' wealth in resources, principally through industries such as mining, oil and gas, quarrying and other mineral resources. She is also a columnist in a prominent Philippine mining, petroleum and energy publication and a member of the Chamber of Mines of the Philippines' Legal Committee and lectures in the Mining 101 course of the University of the Philippines.

Rafael Raymundo A Evangelista is a senior associate in Cruz Marcelo & Tenefrancia's Mining and Natural Resources and Energy departments. His practice encompasses a broad scope of legal topics involving the Philippine resources sector, ranging from general matters to complex legal issues. He provides comprehensive advice to clients regarding corporate restructuring, immigration, labour, indigenous peoples, land acquisition, local government, administrative regulation, intellectual property and environmental matters, among others, and frequently collaborates with members of the firm's other departments. He has conducted legal reviews of corporations involved in high-stakes transactions and has been part of teams handling controversial cases in the Supreme Court.

Cruz Marcelo & Tenefrancia

9th, 10th, 11th and 12th Floors, One Orion
11th Avenue corner University Parkway
Bonifacio Global City
Taguig 1634
Metro Manila
Philippines

Tel: +63 288 105 858
Fax: +63 288 103 838
Email: natres.department@cruzmarcelo.com
Web: www.cruzmarcelo.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The Philippines is the fifth most mineralised country in the world, with an estimated USD1 trillion in untapped reserves of copper, gold, nickel, zinc and silver. Recent statistics from the Philippine Mines and Geosciences Bureau (MGB) indicate that there are 59 operating metallic mines in the country, employing around 212,200 workers. In 2023, total exports of minerals amounted to almost USD7.32 billion, and the MGB placed the gross production value for large-scale metallic mining at PHP249.71 billion. Nickel ore with its related minerals remains the top contributor with a total production value of PHP113.37 billion, equivalent to 46% of the total output.

For the first semester of 2024, gross metallic production is at PHP114.77 billion. This is a 6.69% drop from the same period a year ago, attributable to sluggish nickel prices and output of gold, nickel ore and processed products like mixed sulfide and scandium oxalate.

1.2 Legal System and Sources of Mining Law

The Philippine legal system is a hybrid of both civil and common law. The civil law elements are primarily derived from the Spanish civil law system, while the common law elements are primarily derived from the Anglo-American system of the United States. Examples of Philippine legal concepts derived from common law include the doctrines of equity, estoppel, laches and stare decisis. The authority of Philippine courts is limited to the interpretation of law. Nevertheless, the Philippine Supreme Court may reverse rulings of lower courts, and even abandon principles laid down in previous rulings.

The mining industry in the Philippines is governed primarily by the Philippine Constitution and the Philippine Mining Act (the "Mining Act") or Republic Act No 7942, including its Implementing Rules and Regulations (IRR).

The executive branch, through agencies such as the Department of Environment and Natural Resources (DENR) and the MGB, also issues administrative orders, memoranda and circulars,

which, although they are not laws, form part of the regulatory framework of the mining industry.

1.3 Ownership of Mineral Resources

Under the Philippine Constitution, the state owns all natural resources, including minerals. The Philippine Constitution also provides that the state has full control and supervision over the exploration, development and utilisation of mineral resources. The state may undertake these activities directly or enter into co-production, joint venture or production-sharing agreements with Filipino citizens, or corporations or associations at least 60% of whose capital is owned by those citizens. The President of the Philippines may also enter into agreements with foreign-owned corporations, involving either technical or financial assistance for large-scale exploration, development and utilisation of minerals, petroleum and other mineral oils.

1.4 Role of the State in Mining Law and Regulations

As stated in **1.3 Ownership of Mineral Resources**, the state has full control and supervision over the exploration, development and utilisation of mineral resources. Furthermore, the state may undertake these activities directly or may enter into co-production, joint venture or production-sharing agreements with Filipino citizens, or corporations or associations at least 60% of whose capital is owned by those citizens. The President of the Philippines may also enter into agreements with foreign-owned corporations, involving either technical or financial assistance for large-scale exploration, development and utilisation of minerals, petroleum and other mineral oils.

As discussed in **1.5 Nature of Mineral Rights**, mineral rights are granted under law through exploration permits (EPs), mineral agreements (MAs) and financial and technical assistance agreements (FTAAs), as well as quarry, sand and gravel, guano, gemstone-gathering permits and small-scale mining permits.

1.5 Nature of Mineral Rights

As discussed in **1.3 Ownership of Mineral Resources** and **1.4 Role of the State in Mining Law and Regulations**, mineral rights have a constitutional basis and are derived under law.

These mineral rights are granted under the Mining Act through EPs, MAs, FTAAs, quarry, sand and gravel, guano, gemstone-gathering permits and small-scale mining permits.

These mineral rights are treated similarly to property, as they may be transferred or assigned, but are subject to the approval of the government, specifically through the DENR Secretary and the MGB Director.

1.6 Granting of Mineral Rights

The DENR is the primary granting authority of mineral rights and is the government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, including minerals and mines. Meanwhile, the MGB (a line bureau under the DENR) is responsible for the proper management and disposition of mineral lands and mineral resources, and the promotion of sustainable mineral resources development.

Mineral rights are granted under the law through EPs, MAs, FTAAs, quarry, sand and gravel, guano, gemstone-gathering permits and small-scale mining permits.

The MGB has the authority to grant EPs through its Director. The DENR Secretary has the authority to enter into MAs upon the recommendation

of the MGB Director. FTAAs are entered into by the President through the DENR Secretary. However, as further discussed in **2.4 Prior and Informed Consultation on Mining Projects** and **2.5 Impact of Specially Protected Communities on Mining Projects**, mining projects also require:

- approval from the relevant Sanggunian, which refers to the local legislative bodies; and
- if applicable, free and prior informed consent (FPIC) from the affected indigenous cultural communities (ICCs) and indigenous peoples (IPs).

Together with the MGB Director, local government units are represented in the Provincial or City Mining Regulatory Board, which awards small-scale mining contracts.

1.7 Mining: Security of Tenure

Exploration Permits (EPs)

EPs have a term of two years from the date of issuance, which is renewable for another two years but cannot exceed six years for metallic exploration. EP holders must annually relinquish at least 20% of the permit area during the first two years of exploration and at least 10% of the remaining permit area annually during the extended exploration period. However, if the permit area is less than 5,000 hectares, the EP holder need not relinquish any part thereof.

EPs may be transferred, subject to the approval of the DENR Secretary upon recommendation of the MGB Director.

Mineral Agreements (MAs)

MAs have a term of not more than 25 years from the date of their execution and are renewable for another term not exceeding 25 years. After the exploration period and prior to or upon approval of a declaration of mining project feasibility, the contractor must relinquish any portion of the contract area that will not be necessary for mining operations and that will not be covered by any declaration of mining feasibility. Each mining area after final relinquishment cannot be more than 5,000 hectares for metallic minerals.

MAs may be transferred, subject to the prior approval of the DENR Secretary.

Financial and Technical Assistant Agreements (FTAAs)

FTAAs have a term of not more than 25 years from the date of their execution and are renewable for another term not exceeding 25 years. FTAA contractors must relinquish at least 25% of the original contract area during the first two years of exploration period and at least 10% of the remaining contract area annually during the extended exploration period and pre-feasibility period. During the exploration or pre-feasibility study period, FTAA contractors must finally relinquish any portion of the contract area that will not be necessary for mining operations and that is not covered by any declaration of mining feasibility, provided that each mining area after final relinquishment shall not be more than 5,000 hectares.

FTAAs may be transferred to a qualified person, subject to prior approval of the President.

Grounds for Cancellation, Revocation and Termination

The grounds for the cancellation, revocation and termination of an EP, MA or FTAA are as follows:

- falsehood or omission of facts in the application that may substantially alter or affect the facts set forth in those statements;
- non-payment of taxes and fees for two consecutive years;

- failure to perform all other obligations, including abandonment, under the permits or agreements;
- violation of any of the terms and conditions of the permits or agreements; and
- violation of existing laws, policies, and rules and regulations.

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

2.1 Environmental Protection and Licensing of Mining Projects

The Mining Act and its IRR require contractors to institute an environmental protection and enhancement programme prior to the commencement of mining operations, and to submit final mine rehabilitation or decommissioning plans to ensure environmental protection beyond the life of the mine.

Other pertinent environmental laws include:

- the Toxic Substance and Hazardous and Nuclear Wastes Control Act (Republic Act No 6969);
- the Clean Air Act (Republic Act No 8749);
- the Clean Water Act (Republic Act No 9275); and
- the Act Establishing an Environmental Impact System, Including Other Environmental Management Related Measures and for Other Purposes (Presidential Decree No 1586).

These environmental laws are administered by the DENR and the agencies under it, including the MGB and the Environmental Management Bureau (EMB).

Environmental Compliance Certificates (ECCs) for Mining Projects

An ECC is required for mining projects. To secure an ECC, a proponent must submit an environmental impact statement and go through the environmental impact assessment (EIA) process, which includes baseline environmental conditions, impact assessments and proof of consultation with stakeholders, including communities in the project site and neighbouring areas.

The EIA process involves four steps:

- scoping;
- conduct of EIA study and report preparation;
- review and evaluation of the EIA report; and
- decision-making.

The EMB takes at least 40 days to process an ECC application.

2.2 Impact of Environmentally Protected Areas on Mining

Environmentally protected areas are generally closed to mining. The IRR of the Mining Act specifically enumerate the following areas as being closed to mining applications:

- areas covered by valid and existing mining rights and mining applications subject to the third point below;
- old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial and municipal forests, tree parks, greenbelts, game refuges, bird sanctuaries and areas proclaimed as marine reserves, marine parks and tourist zones as defined by law and identified as initial components of the National Integrated Protected Areas System, pursuant to Republic Act No 7586 and any such areas expressly prohib-

ited thereunder, as well as under Department Administrative Order No 25, Series of 1992, and other laws;
- areas that the DENR Secretary may exclude, based, among others, on proper assessment of their environmental impacts and implications on sustainable land uses, such as built-up areas and critical watersheds with appropriate barangay, municipal, city or provincial council ordinance specifying therein the location and specific boundary of the area concerned;
- offshore areas within 500 metres of the mean low tide level and onshore areas within 200 metres of the mean low tide level along the coast;
- in the case of seabed or marine aggregate quarrying, offshore areas of less than 1,500 metres from the mean low-tide level of land or island and where the sea-bed depth is less than 30 metres, measured at mean sea level; and
- areas expressly prohibited by law.

Executive Order No 79, Series of 2012, expanded the list of protected areas to include:

- prime agricultural lands, lands covered by agrarian reform, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries;
- tourism development areas; and
- other critical areas, island ecosystems and impact areas of mining.

2.3 Impact of Community Relations on Mining Projects

Stakeholders must be consulted as part of the EIA process and prior to the issuance of an ECC, which is required for the grant of MAs and FTAAs.

Furthermore, the law requires that contractors assist in the development of the mining community, including the promotion of the general welfare of its inhabitants and the development of science and mining technology. Investors are also required to incorporate a Community Relations Office in the organisational structure. As further discussed in **2.6 Community Development Agreement for Mining Projects**, contractors are also required to prepare a Social Development and Management Programme (SDMP) and a Community Development Programme (CDP).

2.4 Prior and Informed Consultation on Mining Projects

Prior consultation with the local government units concerned is mandatory for mining applications intended for exploration through EPs, MAs and FTAAs.

Prior approval by a majority of the Sanggunian (local legislative body) concerned is required in support of mining applications for immediate development and/or utilisation activities.

Consultation and approval are carried out by the investor through the relevant Sanggunian.

For projects located within the ancestral domain of ICCs/IPs, the FPIC of the ICCs/IPs affected must be secured, as further discussed in **2.5 Impact of Specially Protected Communities on Mining Projects**.

2.5 Impact of Specially Protected Communities on Mining Projects

Rights of ICCs/IPs are recognised under the Constitution and under law. Article II, Section 22 of the Constitution provides that "the State recognises and promotes the rights of indigenous cultural communities within the framework

of national unity and development". Section 16 of the Mining Act states that "no ancestral land shall be opened for mining operations without prior consent of the indigenous cultural community concerned". This provision is complemented by the Indigenous Peoples' Rights Act (IPRA), or Republic Act No 8371, which was enacted to recognise and promote the rights of ICCs/IPs by establishing mechanisms that will take into consideration their customs, traditions, values, beliefs and rights to their ancestral domains or ancestral lands. Therefore, ICCs/IPs are given priority rights in the harvesting, extraction, development or exploitation of natural resources within their ancestral domains.

An ancestral domain covers all areas owned, occupied or possessed by ICCs/IPs, including lands, inland waters, coastal areas and natural resources therein, specifically ancestral lands, forest, pasture, residential, agricultural and other lands individually owned (whether alienable and disposable or otherwise), hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands that may no longer be exclusively occupied by ICCs/IPs but to which they traditionally had access for their subsistence and traditional activities.

Therefore, before any issuance, renewal or grant of any concession, licence or lease, or before entering into any mineral agreement with the government, an applicant must obtain a Certificate of Non-Overlap (CNO) or a Certification Precondition (CP) from the National Commission on Indigenous Peoples (NCIP), which is the main agency tasked with enforcing the provisions of the IPRA. The CNO attests to the fact that the area affected does not overlap with any ancestral domain, while the CP attests to the grant of FPIC by the ICCs/IPs concerned.

FPIC means the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process that is understandable to the community. It is manifested through a Memorandum of Agreement containing the relevant terms and conditions, including the benefits to be received by the ICCs/IPs. The amount of royalty payment of not less than 1% of the gross output is subject to the agreement of the contractor and the ICCs. The royalty shall be kept in trust for the socio-economic wellbeing of the ICCs.

If a project proceeds without complying with the requirements of the IPRA for CP and securing of their FPIC, the IPRA provides that the NCIP, motu proprio or upon the instance of the ICCs/IPs, shall have the right to stop and suspend the project.

2.6 Community Development Agreement for Mining Projects

Community development agreements are not mandatory. However, investors are required to prepare an SDMP and to implement a CDP in connection with the project for the benefit of the local communities. The CDP shall be developed in consultation and in partnership with the host communities.

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

The Philippine Securities and Exchange Commission (SEC) requires Publicly Listed Companies (PLCs) to submit sustainability reports (SRs) disclosing material information gathered after undergoing a materiality assessment process.

The material information may constitute data relating to:

- economic impacts, such as employee wages and benefits, community investments and procurement practices;
- environmental impacts, such as energy and water consumption, materials used, operational sites near protected areas and areas of high biodiversity value outside protected areas, air emissions and solid and hazardous wastes; and
- social impacts, such as employee benefits, equal opportunities at the workplace, and customer privacy and data security.

The SEC plans to release revised SR Guidelines, where PLCs are mandated to submit a Sustainability Report Form (the "SuRe Form"). The form covers three major sections: first is the Sustainability and Climate-related Opportunities and Risks Exposures, where the PLC rates the impact of climate and sustainability-related risks to its business model; second is the Cross-Industry Standard Metrics, where the PLC discloses its metrics and targets for physical, transition and sustainability risks; and third is the Industry-Specific Metrics, guidelines for which the SEC has yet to release.

The SuRe Form must be submitted annually through the Electronic Filing and Submission Tool System of the SEC. Failure to submit will result in a reprimand for the first offence, followed by fines ranging from PHP50,000 to PHP1 million for subsequent offences.

The SuRe Form seeks to enhance the standard of sustainability reporting and uphold the uniformity of non-financial information submitted by PLCs.

In October 2023, the SEC released a copy of the draft revised SR Guidelines for PLCs to provide comments or feedback. The deadline for submitting comments was on 16 October 2023. Presently, the SEC has not yet issued the final version of the updated SR Guidelines.

Under the current Strategic Investment Priorities Plan (SIPP), incentives such as income tax holidays are granted to environment- or climate change-related projects, such as manufacturing of electronic vehicles, energy efficient maritime vessels bioplastics, etc.

Furthermore, the Mining Act allows exemption from real property tax and other taxes or assessments of pollution-control devices.

Businesses generating green jobs or jobs that contribute to preserving or restoring the quality of the environment may avail of an income tax deduction of 50% of the total expenses for skills training and research development expenses, which is above the allowable ordinary and necessary business deductions, under the Philippine Green Jobs Act.

2.8 Illegal Mining

Illegal mining is a significant issue in the Philippines, affecting both large-scale and small-scale operations. Companies engaged in illegal mining do not comply with government regulations and their negative consequences are observed in several areas. Economically, illegally mined areas are depleted of mineral resources which could have been allocated to legitimate mining contractors, from whom the government could have derived income in the form of taxes. Environmental, social and safety concerns also arise, as illegal mining operations are not subject to regulatory monitoring and do not comply with pertinent rules and regulations.

The DENR, in co-ordination with law enforcement agencies, consistently takes active measures to combat illegal mining. In recent years, the government has employed satellite imagery to monitor compliance with mining and forest protection laws and to identify potential illegal mining activities. The DENR has also partnered with the Philippine Space Agency to develop and generate maps, systems and tools that further monitor forest areas using satellite remote sensing, artificial intelligence, and geographic information systems (GIS).

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

Good environmental and community relations around mining projects involve conducting stakeholder consultations in the form of meetings with the community, by co-ordinating with the local government units and local MGB offices, which results in the development of various projects in the community, such as providing vocational education and training programmes, contributing to the needs of local schools and developing local agricultural industries. These also include ensuring that the concerns of the affected communities are heard and promptly addressed.

Bad examples involve bypassing or mishandling stakeholder engagement, which results in the mismanagement of the project's SDMP and CDP, leading to a failure to uplift the welfare of the host communities, focusing on programmes that are not needed by the community or failing to implement programmes that would otherwise benefit the community.

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

3.1 Climate Change Effects

The Climate Change Act requires the formulation of a Framework Strategy on Climate Change, which serves as the basis for a programme for climate change planning, research and development, extension and monitoring of activities to protect vulnerable communities from the adverse effects of climate change. A National Climate Change Action Plan shall also be formulated in accordance with this Framework.

On 25 January 2019, the Climate Change Commission issued Resolution No 2019-001, entitled "A Resolution adopting the National Climate Risk Management Framework to address intensifying adverse impacts of climate change", which was deemed necessary to harmonise and integrate various climate risk management efforts among sectors and stakeholders. It also functions to strengthen the country's early action system in view of the increasing losses and damages from recurring extreme weather events. These factors are taken into consideration during the EIA process when applying for an ECC for mining projects.

As a private initiative, the Chamber of Mines of the Philippines, to which the major mining companies in the country belong, has adopted a major climate change protocol to align with the global sustainability initiative: the Climate Change Protocol of the Towards Sustainable Mining (TSM) initiative of the Mining Association of Canada (MAC).

The DENR Secretary has likewise announced several initiatives on accelerating climate change action and delivery of the Philippines'

international commitments on climate change. In November 2023, the DENR and the United States Agency for International Development (USAID) signed a Memorandum of Understanding (MOU) to implement a project aimed at enhancing the adaptive capacity of key cities in the Philippines to climate change impacts. The five-year PHP836.5 million (USD15 million) project will help enable the cities of Batangas, Borongan, Cotabato, Iloilo, Legazpi and Zamboanga adapt to, mitigate and endure the impacts of climate change through knowledge-enhancement and improving access to climate change financing.

On 3 December 2023, the Philippines joined the Blue Carbon Action Partnership of the World Economic Forum (WEF), taking another step to solidify the government's pursuit of a green and blue socio-economic agenda. The three-year partnership agreement aims to strengthen coastal ecosystems, boost blue carbon conservation and mitigate climate change. Further, the partnership agreement will bring support from WEF for the Philippine government to work with businesses, communities and civil society organisations to restore, conserve and sustainably manage coastal ecosystems.

On 22 November 2024, the Anti-Red Tape Authority (ARTA) successfully enlisted more partners from several government and non-government agencies to promote responsible mining through the signing of a memorandum of agreement in Baguio City, Philippines. The memorandum of agreement embodies the collective commitment of the parties to a sustainable and inclusive mining industry in the country. It is envisioned that the extended partnership will enable the government to implement stricter environmental and social safeguards, improve transparency and accountability, and ensure that mining operations adhere to international best practices.

3.2 Climate Change Legislation and Proposals Related to Mining

No climate change legislation specifically related to mining has been enacted. However, the DENR called on the mining industry to innovate and align with the principles of sustainability, stewardship and resilience in their development of the country's natural resources. Mining companies are being encouraged to further integrate social and ecological considerations into their operations, including promoting biodiversity, reducing carbon footprints, and implementing effective waste management practices. The DENR emphasised that these efforts should not only be considered as regulatory requirements but must also become essential elements of a progressive and responsible mining sector.

The DENR is undertaking a series of initiatives to formalise small-scale mining operations, recognising their vital role in the industry. The DENR is reviewing laws that cover small-scale mining, with the goal of modernising industry standards and increased protection for small-scale miners. According to the DENR Undersecretary, "a properly regulated small-scale mining industry will benefit the community in terms of job creation and livelihood, and the country in terms of mining assets and taxes. More importantly, it will address the violation of environmental laws and mining regulations and minimize environmental risks and promote mine safety".

3.3 Sustainable Development Initiatives Related to Mining

The Chamber of Mines of the Philippines (see **3.1 Climate Change Effects**) adopted the Mining Association of Canada's "Towards Sustainable Mining" (TSM) sustainability standards

in response to the call for the mining industry to align with the responsible mining practices of Australia and Canada. TSM requires mining companies to annually assess their tailings management, community outreach, safety and health, biodiversity conservation, crisis management, energy use and greenhouse gas emissions management.

3.4 Energy-Transition Minerals

Based on the United States Geological Survey, the Philippines has the fourth-largest nickel reserves in the world, and according to S&P Global, accounted for 11% of the global mined nickel production in 2022. Thus, even during the downturn of the mining industry in the Philippines, local mining companies continued to ship nickel to China, Japan and other markets.

The Philippine government recognises the following:

- the need to utilise this natural resource by restricting its export and developing the local processing industry; and
- that nickel is important to achieving a transition to a cleaner, greener and more sustainable future.

As an energy-transition mineral (ETM), nickel is a vital component for the lithium-ion batteries used in electric vehicles, the use of which is currently being endorsed and developed by the Philippine government, having passed Republic Act No 11697, An Act Providing for the Development of the Electric Vehicle Industry, in 2021.

In connection with the above, the President of the Philippines signed Executive Order No 12 on 13 January 2023, providing a temporary zero importation tariff on electric vehicles and their spare parts for a period of five years. It is hoped that this will encourage motorists to shift from traditional modes of transportation to electric vehicles. An influx of electric vehicles could lead to a demand for nickel which, in turn, may necessitate new government or legislative action. In this regard, it has been reported that the current Trade Secretary believes that the Philippines can be a supplier of electric vehicle components, specifically ETMs, for batteries. In this connection, the Department of Energy has publicly announced that it aims to roll out approximately 2.5 million electric vehicles by 2028.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Taxes

After the lapse of the income tax holiday granted to the contractor by the Omnibus Investments Code (OIC) and the Corporate Recovery and Tax Incentives for Enterprises Act of 2022 (CREATE Act), the contractor pays income tax, which is set at a preferred rate for up to ten years. The contractor is also liable for excise tax on mineral products, value-added tax under the National Internal Revenue Code, customs duties under the Tariff and Customs Code and local business taxes and real property tax under the Local Government Code.

The contractor must likewise pay an annual occupation fee, based on the area occupied, and mine waste and tailings fees.

Royalties

Contractors shall pay royalties to the ICCs concerned, based on the agreed payment, which may not be less than 1% of the gross output.

For MAs and FTAAs over areas covered by small-scale miners, the contractor shall pay royalties to the small-scale miners concerned upon utilisation of the minerals, depending upon their agreement.

Mining operations within mineral reservations are subject to a royalty paid to the MGB of not less than 5% of the market value of the gross output of the minerals or mineral products extracted or produced, exclusive of all other taxes.

Government Share

The total government share in Mineral Production Sharing Agreements is the excise tax on the mineral product or 4%, based on the actual market value of the gross output thereof at the time of removal.

The government's share in co-production and joint venture agreements shall be negotiated with the contractor, considering the capital investment, the risks involved, the contribution to the economy and other factors for fair and equitable sharing. The government is also entitled to compensation for its other contributions, as agreed upon by the parties, consisting of the contractor's income tax, excise tax and other taxes, duties and fees provided in existing laws.

The government share in an FTAA is negotiated by the government and the contractor and consists, among other things, of the contractor's income tax, customs duties and fees on imported capital equipment, excise tax on minerals, royalties for mineral reservations and IPs, local business tax, and other national and local government unit taxes, royalties and fees.

4.2 Tax Incentives for Mining Investors and Projects

Contractors are entitled to fiscal and non-fiscal incentives under the OIC. The Mining Act provides that mining activities should always be included in the Investment Priorities Plan (now the SIPP). The relevant guidelines state that the exploration of mineral resources or the processing of minerals to produce semi-processed mineral products may qualify for registration with incentives limited to capital equipment.

Under the CREATE Act, income-tax incentives are now categorised according to tiers depending on the location and industry of the registered project or activity. Under the 2022 SIPP, mining activities are classified under Tier I, in which case registered projects or activities may enjoy an income tax holiday for up to six years, and a further ten years to avail of either the special corporate income tax or certain enhanced deductions.

There are currently no tax stabilisation agreements on mining in force in the Philippines.

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

Gains realised on a transfer of licence are generally subject to income tax. Transfers through corporate structuring outside the Philippines are not subject to tax levies.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Aside from untapped mineral reserves, investors are provided with fiscal and non-fiscal incentives, such as income tax holidays, special corporate income tax and certain enhanced deduc-

tions. Furthermore, mining activities are included in the SIPP.

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

Generally, foreign investments are not required to be registered with the *Bangko Sentral ng Pilipinas* (BSP, the Philippine Central Bank). However, a foreign investment classified as a direct investment or an inward foreign portfolio investment in a peso-denominated debt instrument issued onshore by private resident firms must be registered with the BSP.

There are no restrictions on the disposition of proceeds from exporting minerals and mineral products. Under BSP regulations, foreign exchange receipts or earnings of residents from exports may be used for any purpose. Such proceeds may be sold for pesos or retained or deposited in foreign currency accounts, whether in the Philippines or abroad, at the exporter's option.

5.3 International Treaties Related to Exploration and Mining

Although they are not specific to exploration and mining, the Philippines has so far entered into bilateral investment agreements with:

- Argentina;
- Australia;
- Austria;
- Bangladesh;
- the Belgium–Luxembourg Economic Union;
- Cambodia (not in force);
- Canada;
- Chile;
- China;
- the Czech Republic;
- Denmark;
- Finland;
- France;
- Germany;
- India;
- Indonesia (not in force);
- Iran (not in force);
- Italy;
- Kuwait;
- Laos;
- Mongolia;
- Myanmar;
- the Netherlands;
- Pakistan (not in force);
- Portugal;
- Romania;
- Russia;
- Saudi Arabia;
- South Korea;
- Spain;
- Sweden (not in force);
- Switzerland;
- Syria;
- Taiwan;
- Thailand;
- Turkey;
- the United Kingdom;
- the United States; and
- Vietnam.

The Philippines has also entered into tax treaties with:

- Australia;
- Austria;
- Bahrain;
- Bangladesh;
- Belgium;
- Brazil;
- Canada;
- China;
- the Czech Republic;
- Denmark;

- Finland;
- France;
- Germany;
- Hungary;
- India;
- Indonesia;
- Israel;
- Italy;
- Japan;
- Kuwait;
- Malaysia;
- Mexico;
- the Netherlands;
- New Zealand;
- Nigeria;
- Norway;
- Pakistan;
- Poland;
- Qatar;
- Romania;
- Russia;
- Singapore;
- South Korea;
- Spain;
- Sri Lanka;
- Sweden;
- Switzerland;
- Thailand;
- Turkey;
- the United Arab Emirates;
- the United Kingdom;
- the United States; and
- Vietnam.

5.4 Sources of Finance for Exploration, Development and Mining

The principal sources of financing are debt and equity financing and foreign investments.

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

The international and domestic securities markets provide financing to the mining industry through bond issuances, initial public offerings and the sale of preferred shares. Mining stocks are also actively traded on the Philippine Stock Exchange.

5.6 Security over Mining Tenements and Related Assets

There is currently no Philippine legal framework for taking security over mining interests. However, the IRR of the Mining Act requires MAs and FTAAs to include a stipulation that the financial institutions that have granted loans to contractors are given the authority to designate their assignees, in case of default by the contractors.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

In September 2023, the House of Representatives passed on the third and final reading House Bill No 8937, or the proposed New Fiscal Regime for the Mining Industry (HB No 8937). The counterpart measure, Senate Bill No 2826, is still being deliberated upon in the Senate.

Under the bill: (i) the royalty taxes for large-scale mining operations shall depend on whether such operations are within or outside mining reservations; (ii) a royalty tax of one-tenth of 1% is imposed on the gross output of the minerals or mineral products extracted in small-scale metallic mining operations; (iii) a windfall profits tax on income from metallic mining operations with a maximum rate of 10% is imposed; and (iv) each metallic mining operation that is the subject of

a mineral agreement or FTAA shall be treated as a separate taxable entity for tax and royalty reporting and payment.

HB No 8937 is anticipated to give the Philippine government a fair and increased tax take from mining while ensuring the competitiveness, attractiveness and sustainability of the country's mining industry.

The DENR reported that prolonged processing time of mining permit applications is one of the significant roadblocks that derail mining investments in the country. To address this, the DENR announced its plans to speed up evaluation of mining permit applications by instituting a digital application process, particularly with Eps and MPSAs. The process streamlines application by reducing waiting time and eliminating indiscretions. The DENR reported that initial roll-out was already implemented nationwide. This initiative is believed to reduce the mining permit application process from the usual six-to-11 years to as fast as two years.

Aside from the digitised application process, the DENR also plans to implement "parallel processing" to further shorten the approval of mining permit applications. Under parallel processing, application requirements that are not prerequisites of another government permit will be simultaneously processed. This system will do away with the current sequential approval system, shortening the processing time for all regulatory permits needed to operate a mine in the Philippines.

Moreover, after years of delay, the Tampakan Mine, considered one of the largest copper gold mines in the world, is now in the early access development stage and is expected to begin its operations in three years. Operator Sagittarius Mines, Inc has confirmed that all regulatory concerns have been addressed and that the development of the Tampakan Mine, which will lead to the construction of roads, port facilities, and processing facilities, among others, will promote economic and industrial growth within the country, specifically in Southern Mindanao. While the project has been opposed by many sectors due to its possible impact on the environment, Sagittarius Mines, Inc has assured the public that it will use modern technology to ensure environmental protection.

The Philippines is rich in copper, nickel and chromite. Nickel is essential in batteries, solar technologies and other renewable energy (RE) technologies. This puts the country at the forefront of the mining industry worldwide because of the increasing demand for nickel, which is crucial to the world's transition to RE in the face of climate change and global warming.

Trends and Developments

Contributed by:
Patricia A O Bunye and Rafael Raymundo A Evangelista
Cruz Marcelo & Tenefrancia

Cruz Marcelo & Tenefrancia is a top-tier, full-service law firm based in Bonifacio Global City, Metro Manila, Philippines, with proven expertise in, among others, Energy, Mining and Natural Resources, Corporate and Special Projects, Intellectual Property, and Litigation and Dispute Resolution. Its other areas of practice include Infrastructure, Transportation and Public Utilities, Taxation; Labour and Employment; Trade; Telecommunications; Data Privacy; Competition; Financial Technology; Family Law; and Information and Communications Technology. The firm's multi-disciplinary approach, involving collaboration among the firm's different departments, guarantees its clients effective and comprehensive legal solutions and representation. The Mining and Natural Resources department has represented diverse clients on a broad range of legal issues, from ensuring compliance with nationality and capitalisation requirements; obtaining government approvals, licences, and registrations; preparing and reviewing applications for pertinent agreements and permits; drafting, negotiating and reviewing contracts relevant to the industry; joint ventures; asset exchanges; disputes; regulatory and environmental issues; and project development and structuring.

Authors

Patricia A O Bunye heads Cruz Marcelo & Tenefrancia's Mining and Natural Resources and Energy departments. She is the Founding President of Diwata-Women in Resource Development, Inc, a non-government organisation advocating the responsible development of the Philippines' wealth in resources, principally through industries such as mining, oil and gas, quarrying and other mineral resources. She is also a columnist in a prominent Philippine mining, petroleum and energy publication and a member of the Chamber of Mines of the Philippines' Legal Committee and lectures in the Mining 101 course of the University of the Philippines.

Rafael Raymundo A Evangelista is a senior associate in Cruz Marcelo & Tenefrancia's Mining and Natural Resources and Energy departments. His practice encompasses a broad scope of legal topics involving the Philippine resources sector, ranging from general matters to complex legal issues. He provides comprehensive advice to clients regarding corporate restructuring, immigration, labour, indigenous peoples, land acquisition, local government, administrative regulation, intellectual property and environmental matters, among others, and frequently collaborates with members of the firm's other departments. He has conducted legal reviews of corporations involved in high-stakes transactions and has been part of teams handling controversial cases in the Supreme Court.

Contributed by: Patricia A O Bunye and Rafael Raymundo A Evangelista, **Cruz Marcelo & Tenefrancia**

Cruz Marcelo & Tenefrancia

9th, 10th, 11th and 12th Floors, One Orion
11th Avenue corner University Parkway
Bonifacio Global City
Taguig 1634
Metro Manila
Philippines

Tel: +63 288 105 858
Fax: +63 288 103 838
Email: natres.department@cruzmarcelo.com
Web: www.cruzmarcelo.com

The Philippines is the fifth-most mineralised country in the world, with an estimated USD1 trillion in untapped reserves of copper, gold, nickel, zinc and silver. Notwithstanding, its mineral wealth remains largely untapped. Out of the estimated 30 million hectares of total land area, around nine million hectares have a high mineral potential. Only about 5% reserves have been explored and mining contracts cover only about 3% of these areas.

Recent statistics from the Philippine Mines and Geosciences Bureau (MGB) indicate that there are only 59 operating metallic mines, employing around 212,200 workers. In 2023, total exports of minerals amounted to almost USD7.32 million, and the gross production value for large-scale metallic mining is pegged at PHP249.71 billion, with 0.70% contribution to the gross domestic product.

Revitalising the Mining Industry

The Philippine government has once again expressed its support for responsible mining in the country in light of the global trend for a long-term transition to renewable energy in recent years. President Ferdinand Marcos Jr renewed the call for a sustainable mining industry and prioritised the revitalisation of the mining sector. During the 2023 Presidential Mineral Industry Environmental Award (PMIEA) ceremony held on 16 October 2024 at the Malacañang Palace, President Marcos underscored the mining industry's crucial role in national development, emphasising that economic growth must align with environmental sustainability. The current administration envisions the mining sector to adhere to responsible and sustainable mining practices that balance mineral extraction with environment protection. This is a big policy shift compared to the previous administrations.

Central to the government's positive attitude toward the mining industry under the current administration is the recognition of its importance in addressing the country's looming energy crisis, global warming and long-term commitments to sustainable goals and development.

Potential Key Player in Green Technology

The exacerbating effects of climate change revealed the urgency to shift to renewable sources of energy from the traditional methods of burning of fossil fuels. The drive for green tech-

nologies and industries has long been identified as a mineral-intensive endeavour from which the Philippines may benefit and has the potential to become a significant player in the clean energy value chain.

The transition toward green energy is expected to increase the demand for critical metallic minerals, such as nickel, copper, cobalt and other rare earth metals, all of which may be found in abundance in the untapped mineral deposits in the country. With this, the Philippine mining sector is poised to drive the transition to green technologies with its abundant mineral resources. According to the National Economic and Development Authority (NEDA), the country's reserve of critical minerals could fuel green technologies and create a wave of high-quality employment opportunities for Filipinos. During the Mining Forum organised by the Department of Environment and Natural Resources (DENR) in collaboration with the Stratbase ADR Institute on revitalising the Philippine mining industry held in May 2024, NEDA Secretary Arsenio M Balisacan underscored the underutilised but immense potential of the mining sector despite the industry's modest contribution to the gross domestic product.

Key economic thinkers of the NEDA believe that there is room for significant growth once potential is realised. It was pointed out that the majority of the country's mineral exports are raw or unprocessed, which results in foregone opportunities to maximise the benefits from our mineral output in producing technologies that other economies demand. It was suggested that this can be achieved through development of the metallic and non-metallic downstream industries to catalyse the development of domestic manufacturing industries focused on green technologies.

Significant challenges were identified which impede the growth of the mineral industry. Secretary Balisacan highlighted the limited number of mineral processing plants, lack of substantial capital inputs, high operating costs due to high electricity costs and unstable policy environment governing the mining sector.

To address these, Secretary Balisacan emphasised that the government would provide support to local industries for research and development and commercialisation of green technologies. He also mentioned that reforms will be implemented to reduce the cost of electricity and logistics to create a conducive business environment for investments in the green industries. He further reiterated that the government is actively collaborating with pertinent agencies to fast-track the creation of a suitable tax regime for the mining sector and for the institutionalisation of the Philippine Extractive Industry Transparency Initiative (PH-EITI).

During the 2023 PMIEA ceremony, President Marcos also recognised that the Philippines is in a prime position to supply in-demand critical minerals in light of the promising opportunities from the green technology initiatives. However, President Marcos is aware that these may end up becoming missed opportunities if certain barriers are not addressed in due time, some of which are bureaucratic roadblocks and government policy uncertainties. President Marcos also said that the government needs to invest in resources that will boost mineral processing in the country.

Call for Simplified Mining Fiscal Regime

The mineral wealth of the Philippines remains largely untapped. Out of the estimated 30 million hectares of total land area, around nine million hectares have a high mineral potential. Only

about 5% have been explored and mining contracts cover only about 3% of these areas. The untapped potential of the mining sector to contribute to national development is partly due to the uncertain and complex fiscal mining regime.

It will be recalled that on 26 September 2023, House Bill No 8937 (HB No 8937), or the proposed New Fiscal Regime for the Mining Industry, passed the third and final reading at the House of Representatives. Under HB No 8937, four new sections were incorporated in Republic Act No 8424, otherwise known as the National Internal Revenue Code of 1997, as amended.

Under HB No 8937, the fiscal regime for large-scale metallic mining operations is bifurcated; ie, large-scale mining operations: (i) within mineral reservations; and (ii) outside mineral reservations. The proposed tax rate for large-scale mining operations within mining reservations is a flat 4%, while the tax rate for those outside mining reservations is graduated and margin-based (which is the ratio of income to gross output). It bears emphasis that, for the latter, despite being a graduated rate, the maximum royalty rate is 5%.

Further, for large-scale mining operations within mining reservations, tax is imposed on gross output, while for those outside mineral reservations, tax is imposed on income (ie, gross output less deductions). Notably, for large-scale mining outside mineral reservations, expenses for the development of host and neighbouring communities and for the development of geosciences and mining technology may be claimed as deductions. HB No 8937 also proposes windfall profits tax and ring-fencing, among metallic mining operations.

In the Senate, Senate Bill No 2826 (SB No 2826), entitled Enhanced Fiscal Regime for Large-Scale Metallic Mining Act, is pending for second reading before the plenary. The bill seeks to levy royalties on all mining operations, whether inside or outside mineral reservations, as well as a windfall profits tax to capture extraordinary gains from high commodity prices. It also proposes to consolidate the tax treatment of mining operations under a Mineral Production Sharing Agreement (MPSA) and of those under Financial and Technical Assistance Agreement (FTAA) to create a single tax structure.

The bill also introduced a provision that restricts thin capitalisation by setting a maximum debt-to-equity ratio for the tax deductibility of interest expense, and ring-fencing, where each mining operation of a mining contractor or operator with multiple operations will be treated as a separate taxable entity. A mechanism for public disclosure and scrutiny of extractive industry-related data and information to help ensure the open and accountable governance of the country's mineral resources pursuant to international standards and best practices is provided for.

Proponents of SB No 2826 believe that the proposed new fiscal regime for the mining industry represents a critical step in reforming the sector to ensure that the country's mineral wealth is harnessed responsibly and equitably for the benefit of the present and future generations while striking a balance between increasing government revenues consistent with state ownership of mineral resources and maintaining competitiveness, attractiveness and sustainability of the mining industry.

Once the counterpart measure in the Senate is passed on third and final reading, the two versions from both Houses of Congress will be

consolidated to harmonise the provisions before enactment.

Optimising Government Permitting Process

Maria Antonia Yulo-Loyzaga, Secretary of the DENR, reported that the prolonged processing time of mining permit applications is one of the significant roadblocks that derail mining investments and hamper the growth of the mining industry. To address this roadblock, the DENR plans to speed up the evaluation of mining permit applications by instituting a digital application process, particularly with exploration permits (EP) and Mineral Production Sharing Agreements (MPSAs). This streamlines the application process by reducing waiting time and eliminating indiscretions. The DENR reported that the initial roll-out was already implemented in three regions in the country and once polished, will be implemented nationwide. Such initiative is believed to reduce the mining permit application process from the usual 6-to-11 years to as fast as two years.

Aside from the digitised application process, the DENR also plans to implement "parallel processing" to shorten bureaucratic approval of mining permit applications. Under the parallel processing, application requirements that are not prerequisites for the securing of another government permit will be simultaneously processed by the pertinent government agency. This system will do away with the current sequential approval and will shorten the processing of all regulatory permits needed to operate a mine in the Philippines.

Addressing Climate Change

In a keynote message before the mining industry held on 22 November 2024 in Baguio City, Secretary Loyzaga urged the mining sector to innovate its operations to address the impacts of climate change. Secretary Loyzaga underscored that mining operators must endeavour to mitigate their environmental footprints and the social consequences of climate-related threats. She reported that the DENR held important discussions with key players in the mining industry to ensure that resilience in operations translates to climate and disaster resilience of the host and surrounding communities of mining tenements. Secretary Loyzaga urged mining companies to adopt weather and ground movement sensor data which will serve as early warning mechanisms to prevent hazards from becoming disasters.

Secretary Loyzaga highlighted that the adoption of a climate-risk and development perspective in national and planning efforts is now a priority of the government. This is in connection with the call of the United Nations Secretary General to heads of delegations of mineral-rich and climate-vulnerable developing countries, such as the Philippines, to attend a special meeting during the 29th United Nations Climate Change Conference (COP29), where the findings and recommendations of the critical energy transition minerals panel study was launched. In this meeting, in-country processing instead of exporting raw ore was advanced and recommended to address the intersecting targets of poverty reduction and transition to clean energy through transparency, responsibility and equity.

Mines to Begin Commercial Operations

Several notable metallic mines are expected to begin commercial operations in the next few years.

The Silangan mine project, situated in Surigao del Norte in southern Philippines, is expected to begin commercial mining operations in 2025. The project is being developed by Philex Mining

Corporation under a Mineral Production Sharing Agreement (MPSA). The first phase of the project has a mine life of 28 years with declared mineable reserves of 81 million metric tons equivalent to around 450,400 metric tons of recoverable copper and 2.8 million ounces of gold.

The Tampakan project, located in South Cotabato in southern Philippines, is scheduled to begin commercial mining operations in 2026. It is recognised as one of the largest untapped copper and gold reserves in the world. The project is being developed by Sagittarius Mines, Inc (SMI) under a Financial and Technical Assistance Agreement (FTAA). The project has the potential to produce an average of 375,000 metric tons of copper and 360,000 ounces of gold in concentrate annually throughout its 17-year mine life.

PORTUGAL

Law and Practice

Contributed by:
Manuel Protásio and Catarina Coimbra
VdA

Contents

VdA is a leading international law firm, set up over 40 years ago, with an impressive track record and innovative approach in corporate legal services. Its highly specialised services cover several industries and practice areas, and the firm offers robust solutions grounded in consistent standards of excellence, ethics, and professionalism. VdA has been consistently recognised for its outstanding and innovative contributions. Through the VdA Legal Partners network, its clients have access to seven jurisdictions, with broad sectoral coverage for all Portuguese-speaking African countries (Angola, Cabo Verde, Guinea-Bissau, Equatorial Guinea, Mozambique and São Tomé e Principe), as well as Timor-Leste.

Authors

Manuel Protásio joined VdA in 1991 and is the Infrastructure, Energy & Natural Resources Group executive partner, leading several teams involved in most of the transactions carried out by the firm to date in the power (including renewable energy), oil and gas, road, transport, and water and waste sectors. Manuel also works on regulation and public procurement procedures in these areas.

Catarina Coimbra is a managing associate in Infrastructure & Mobility at VdA, and is actively involved in several transactions related to the development of large infrastructure projects in Portugal and abroad (Angola and Mozambique, in particular), with emphasis on the health sector and road and rail infrastructure, particularly in public-private partnerships and under a project finance model. Catarina also works in the water and waste sector, providing general follow-up and legal advice to concessionaire companies, with general regulation for these sectors.

Vieira de Almeida e Associados

Rua Dom Luis I, 28
1200-151
Lisboa
Portugal

Tel: +35 121 311 3400
Email: fvda@vda.pt
Web: www.vda.pt

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

A variety of mineral resources are mined in Portugal, including metallic minerals such as copper, zinc, lead, and tungsten, and industrial minerals such as lithium, feldspar, kaolin, and limestone. Portugal also has significant deposits of ornamental stones, including marble and granite. Some of the country's historical mines, such as Panasqueira, Aljustrel and Neves-Corvo, have played a major role in shaping the economic development of their regions.

The Iberian Pyrite Belt is one of the world's most significant mining regions, where the Neves-Corvo mine, operated by Lundin Mining, is a major producer of copper and zinc.

In recent years, Portugal has emerged as a key player in the global lithium market due to rising demand for lithium-ion batteries for electric vehicles and renewable energy storage. With several lithium exploration projects (as well as conversion plants) underway, Portugal has the potential to become a major supplier of this critical mineral, and to command a strategic position within the global energy transition.

1.2 Legal System and Sources of Mining Law

Portugal's legal system operates under a civil law framework. The main sources of mining legislation have evolved significantly over the years.

Until 2015, mining law was regulated by Decree-Law 90/90 of 16 March, 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 16 March, which established the Spring Waters Regulation; Decree-Law 85/90 of 16 March, which established the Heavy Waters Regulation; Decree-Law 86/90 of 16 March, which established the Mineral Waters Regulation; Decree-Law 87/90 of 16 March, which established the Geothermic Resources Regulation; Decree-Law 88/90 of 16 March, which established the Mineral Deposits Regulation and Decree-Law 270/2001 of 6 October, which established the Quarries Regulation).

In June 2015, the Legal Framework for the Discovery and Use of Geological Resources Located in Portugal (including National Maritime Space) – Law 54/2015 of 22 June, or the "Geological Resources Law", was enacted. The Geological Resources Law revoked Decree-Law 90/90 of 16 March.

Following the approval of the Geological Resources Law, Decree Law No 30/2021 of 7 May, which approved the new mineral deposits' regulation (the "Mineral Deposits Law") came into force, revoking Decree-Law 88/90 of 16 March.

The creation of this new legal regime resulted from the National Strategy for Geological Resources (ENRG-RM) (Council of Ministers Resolution 78/2012) which provided for the establishment of a new, more efficient, legal and institutional framework, and has introduced significant changes to the regulation of mining rights and the extractive industry sector in general.

Other key statutes include the General Health and Safety at Work on Mines and Quarries Regulation (approved by Decree-Law 162/90 of 22 May), the Regulation on Environmental Recovery of Deteriorated Mining Sites (approved by Decree-Law 198-A/2001 of 6 July), the Regulation on Waste Management of Mineral Deposits'

Exploitation (approved by Decree-Law 10/2010 of 4 February), the Regulations on Manufacture, Storage, Trade and Use of Explosive Products (approved by Decree-Law 376/84 of 30 November 1984, as amended) and the Regulation on Social Security for Employees in Mines (approved by Decree-Law 195/95 of 28 July).

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, 1 April 2018).

As a member state of the European Union (EU), Portugal is also subject to European legislation. In the mining sector, European environmental legislation is particularly relevant.

Finally, legislation with a regional scope also applies in connection with mining activities in the Azores and Madeira autonomous regions.

1.3 Ownership of Mineral Resources

Mineral resources found within the national territory of Portugal are generally considered to be part of the state's public domain and, therefore, owned by the state. This is established under Geological Resources Law, further to which mineral deposits, natural mineral waters, mineral industrial waters, geothermal resources present within the national territory located on land or in the subsoil, as well as those found in maritime spaces, are managed and owned by the state. This means that private landowners do not automatically own mineral resources beneath their land. Instead, these resources are under national control.

Nonetheless, the Geological Resources Law also allows for certain exceptions – mineral masses and spring waters, along with geological formations and structures that do not qualify as part of the state's public domain, can be privately owned. Consequently, while the state retains control over major and strategic mineral resources, certain minor or non-strategic resources can be subject to private property rights.

1.4 Role of the State in Mining Law and Regulations

In Portugal, the state primarily acts as a grantor-regulator in the mining industry, rather than an owner-operator. The government's role includes granting licences and concessions for exploration and exploitation of mineral resources, ensuring compliance with legal and environmental standards. Companies must obtain these licences to conduct any mining operations, and the application process involves rigorous assessments, including environmental impact studies and public consultations.

Unlike some countries, Portugal does not require mandatory national or government joint ventures, nor does it enforce mandatory contracting or direct government participation in mining projects. Private companies can operate independently, as long as they secure the necessary permits and comply with the regulatory framework.

As such, 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 reasons of public interest, the Ministry of the Economy may exercise preferential rights in the acquisition of mineral deposits.

1.5 Nature of Mineral Rights

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.

As stated above, under the Geological Resources Law, geological resources are divided into public domain goods (mineral deposits, mineral waters, mineral industrial waters, geothermic resources, and 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 public domain assets is subject to the award of a concession contract, while the granting of rights over the private domain assets is subject to a licensing procedure.

1.6 Granting of Mineral Rights

In Portugal, expertise in mining matters is centralised with the Minister of the Economy, under the supervision of the Directorate-General for Energy and Geology (DGEG). Some geological resources are, by virtue of their specific characteristics – eg, geological resources located in the national maritime space – overseen by the General Directorate of Natural Resources, Security and Maritime Services. Specific matters governed by different authorities regarding health and safety, environmental protection and social issues and cultural heritage may also apply. At local level, the municipalities also play an important role in the implementation of mining projects.

The Portuguese Environment Agency (APA) also plays a significant role in the environmental approval process for mining activities. While the DGEG serves as the primary authority for granting mineral rights, the APA is heavily involved in managing the environmental aspects of these projects.

Mineral rights are primarily granted through administrative contracts. However, the granting of rights over private domain assets is subject to the award of a licence.

1.7 Mining: Security of Tenure

The security of tenure for mining rights is guaranteed through a comprehensive legal framework.

Rights Required to Conduct Reconnaissance

The Mining Regulations acknowledge and regulate the concept of reconnaissance. To conduct reconnaissance, an entity must hold a prior evaluation right over an area or areas designed for the exercise of activities for the use of metallic mineral deposits. The right is granted under an administrative contract (with a maximum non-renewable term of one year) and may be requested from the DGEG by any entity with recognised technical, economic and financial suitability. Prior evaluation rights entitle the rights holder to develop studies to allow a better knowledge of the geological potential of the area in question through the analysis of available information and samples taken from the area.

Rights Required to Conduct Exploration

To conduct exploration for mineral deposits requires 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 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 the 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 confers 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 meet the conditions necessary 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.

Rights 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, if no such prior agreement exists, granted directly in respect of: i) available areas; or ii) areas covered by prior evaluation, prospecting and research, experimental exploitation rights, where these relate to different mineral resources and the different mining activities are compatible.

Change of Control

Further to the Mineral Deposits Law, the rules on the assignment of contractual positions in prior evaluation, prospecting and research, experimental exploitation and exploitation agreements are applicable to the following.

- The encumbrance of shareholdings representing the share capital of the rights holder that result in, or may result in, a change of control, either directly or indirectly, over the rights holder, with the exception of shareholdings encumbered in favour of financing entities. For the purposes of the preceding paragraph, “control” is understood to mean: i) the holding of shareholdings representing at least half of the share capital; ii) the holding of at least half of the voting rights); or iii) the ability to appoint at least half of the members of the management or supervisory body.
- Any material or legal acts with effects materially equivalent to those intended to be avoided under the preceding paragraphs.
- Any corporate changes of the legal entity holding the right of prospecting and research, including, but not limited to, demergers, mergers, or amendments to the corporate agreement that result in the transfer of the ownership of prospecting and research rights, a change of control, or the technical and/or financial capacity of the holder.

Any modification to the corporate designation of the company for any reason must be communicated to the DGEG.

Transfer and Encumbrance

Pursuant to the Mining Regulations, the assignment of the contractual position under prospecting and research, experimental exploitation and exploitation agreements is subject to prior authorisation from the Minister of Economy.

Rights to conduct the reconnaissance may not be transferred.

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 for credits/loans for the exploitation work, and must be previously communicated to the DGEG.

The enforcement of the mortgage must follow the rules of the Code of Tax Procedure and Proceedings and of the Civil Procedure Code until the moment of auction, which must be carried out by the DGEG through a public tender.

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

2.1 Environmental Protection and Licensing of Mining Projects

From an environmental standpoint, mining activity is assessed on a global basis but still tends to be quite compartmentalised because applicable permits and legal frameworks are intrinsically connected to the specific components and characteristics of a project (ie, its location, capacity and specific features).

Accordingly, from a broad perspective, and considering the activities and infrastructures in principle required for mining activity, the following legal frameworks should be considered.

- Environmental Impact Assessment.
- Integrated Prevention and Control of Pollution.
- Responsible Industry System.
- Management of Waste from the Exploitation of Mineral Deposits and Mineral Masses.
- Use of Water Resources.
- Prevention of Major Accidents (involving dangerous substances).
- Environmental Liability.

Although the above legal frameworks involve specific licensing procedures, such permits are all included in a Single Environmental Title (TUA), which aggregates and registers all environmental licensing decisions, condensing all information on environmental requirements applicable to an establishment, activity or project.

2.2 Impact of Environmentally Protected Areas on Mining

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 anticipated for 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 these plans and restrictions must be taken into account.

2.3 Impact of Community Relations on Mining Projects

In Portugal, managing community relations in mining projects involves a well-structured and inclusive approach that prioritises transparency, consultation, and safeguarding local community interests. Significant mining projects are required to hold public consultations under the Environmental Impact Assessment (EIA) process, which give local residents an opportunity to voice their concerns, ask questions, and contribute feedback on the proposed activities.

This process ensures that the community's perspective is taken into account during decision-making. Furthermore, the EIA process evaluates both environmental and social impacts, considering how mining operations will influence the health, livelihoods, and overall wellbeing of local communities.

2.4 Prior and Informed Consultation on Mining Projects

Prior and informed consultation is mandatory under the EIA legislation.

Generally, state authorities organise and oversee the public consultation process to ensure compliance with legal requirements. The investor or project developer typically provides the necessary information and documentation for the consultations. This ensures that transparency is maintained and that the local community's feedback is appropriately considered.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no specially protected communities in Portugal.

2.6 Community Development Agreement for Mining Projects

In Portugal, community development agreements are generally not mandated by law for mining projects or other industrial activities. Legal requirements focus primarily on public consultations under the EIA procedure to ensure community involvement and address environmental and social effects.

While not mandatory, some project developers may choose to enter into voluntary agreements with local communities to foster positive relationships and mutual benefits. However, these agreements are not a common legal requirement, and are not enforced under the current legislative framework.

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

As a member state of the EU, Portugal is subject to European legislation, including Environmental, Social, and Governance (ESG) guidelines and regulations. While comprehensive sector-specific ESG regulations may still be evolving, several legislative and policy measures incorporate ESG principles.

Additionally, companies operating in Portugal are encouraged to implement Corporate Social Responsibility (CSR) practices aligned with ESG principles to promote sustainable development and ethical business practices.

Portugal is also subject to EU regulations and directives emphasising ESG features, such as the EU Taxonomy Regulation and the Non-Financial Reporting Directive (NFRD), which require companies to disclose relevant ESG information. The EU's Corporate Sustainability Reporting Directive (CSRD) further mandates that large companies report on sustainability, including ESG factors, affecting businesses in the mineral sector.

2.8 Illegal Mining

Illegal mining is not a significant or widespread issue in Portugal compared to some other regions or countries. Portugal has a well-regulated mineral sector, with stringent laws and frameworks in place to manage mining activities. Consequently, illegal mining's impact on legal industrial mineral production in Portugal is minimal.

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

The Neves-Corvo polymetallic mine developed by Sociedade Mineira de Neves-Corvo, SA, or Somicor, and located in the Iberian Pyrite Belt in the Baixo Alentejo region in the south of Portugal, is a good example of environmental and community relations around mining projects in Portugal.

Neves-Corvo is one of the EU largest underground copper and zinc mines, and started operating in 1988. It directly employs around 2,000 workers, and therefore has a significant impact on the social and economic development of the region. It is located in the Natura 2000 area within the Special Protected Areas (SPA) of Castro Verde and the Guadiana Site of Community Interest (SCI). There is also a Protection Area for Wild Birds and several Habitats, according to the Habitats Directive No 92/43/CEE.

The mining project has been subject to EIA, and was approved with constraints due to the Nature Conservation Area.

The mining company has met and gone far beyond all of its obligations. It has created multiple programmes and enhanced its corporate social responsibility drive by initiating actions to support local communities. The government is backing this initiative by permitting a share of the royalties that the company is required to pay to the state to be used for regional development activities. These efforts aim to improve the quality of life for local communities, boost public awareness, and foster acceptance and trust in the mining sector.

The recent surge in lithium exploration, with numerous mining projects underway, has sparked opposition from local communities, with resistance primarily attributable to the projects involving open-cast mining (requiring the removal of large quantities of earth to access valuable minerals), which could trigger significant environmental damage. Open-cast mining has often met with opposition from local communities, with residents living close to mining sites frequently expressing concerns over the deterioration in their living conditions, a loss of biodiversity, and the potential health risks associated with air and water pollution. Dust and noise pollution from mining operations have also been flagged by the local populations as factors that will also negatively impact their quality of life.

The new Barroso Mine, developed by Savannah Resources, has come up against subject to significant criticism from local populations. Although APA gave its preliminary approval for the environmental impact assessment of the Barroso mine project at the end of May 2023, many residents think the mine should not be built, and have founded Unidos em Defesa de Covas do Barroso (UDCB), an association organising demonstrations, assemblies, protest camps, and legal action.

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

3.1 Climate Change Effects

Climate change legislation in Portugal is affecting the mining industry by driving the integration of renewable energy sources, adoption of cleaner technologies, and compliance with stringent environmental regulations. Financially, these regulations incur additional costs, but also attract investment for companies prioritising Environmental, Social, and Governance (ESG) criteria.

Participation in the EU Emissions Trading System (ETS) requires emissions management and reporting. Environmental Impact Assessments (EIA) mandate rigorous evaluations, promoting sustainable practices and fostering transparent community engagement. Strategically, mining companies are aligning with national climate adaptation plans, supporting broader climate goals and driving innovation in sustainable technologies.

3.2 Climate Change Legislation and Proposals Related to Mining

In Portugal, while there are comprehensive climate change and environmental regulations that impact the mining sector, there is no specific climate change legislation that exclusively targets the mining industry.

3.3 Sustainable Development Initiatives Related to Mining

As an EU member state, Portugal actively follows EU initiatives on sustainable development. However, the country also has its own distinctive sustainable development measures, primarily driven by the Climate Framework Law, approved by Law No 98/2021 of 31 December.

This framework aims for climate neutrality by 2050, potentially advancing to 2045, and introduces the right to a balanced climate, which could lead to climate litigation.

Key initiatives under this law include the IRS Verde tax deduction for sustainable goods and services, the Climate Action Portal for citizen engagement and transparency, and the establishment of a carbon budget. Additionally, a new Council for Climate Action will independently analyse and discuss climate policies.

Portugal also created a voluntary carbon credits market that includes projects for both carbon sequestration and emissions reduction, exceeding a similar EU proposal.

Furthermore, there is increasing interest in carbon sequestration projects, particularly those involving marine ecosystems, capitalising on Portugal's geographic advantages.

These initiatives reflect Portugal's comprehensive and proactive approach to sustainable development, encompassing legislative action, market mechanisms, fiscal incentives, and corporate governance reforms.

3.4 Energy-Transition Minerals

As an EU member, Portugal adheres to the European legislation and participates in initiatives that promote the responsible exploration, development, and use of critical raw materials.

The EU's Critical Raw Materials Act aims to ensure a secure and sustainable supply of energy-transition minerals. This legislation outlines measures to enhance the sourcing, recycling, and production of critical raw materials within the EU, to reduce dependency on external suppliers, and to encourage sustainable mining practices.

As a European Regulation, the Critical Raw Materials Act has general application, is binding in its entirety, and is directly applicable to its member states, including Portugal.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Taxes

Companies carrying out exploration and mining activities in Portugal will be subject to the general provisions provided 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.

Royalties

Financial contributions are required for prior assessment, prospecting, research, and experimental exploration activities. These contributions will be annual, and based on the initially allocated area, with potential premiums for securing an exploitation concession.

For mineral deposit exploitation, the payment of annual royalties will be set contractually, usually at a minimum of 3% of the ore's value at the mine's gate. Calculations can be based on international market quotations, reference prices set by the DGEG, or total sales values, with deductions allowed for up to 5% for costs related to treatment, processing, storage, and transportation.

This percentage may be reduced to 2% under specific conditions involving domestic industrial processing of the ore. However, any significant change in these conditions reverts the financial contribution to the original 3% criterion.

Where several mineral deposits are being exploited simultaneously in the same concession, the value of the royalties will be the sum of the values individually determined for each mineral deposit.

No royalties will be due if the concessionaire's taxable income for the previous year is 150% lower than the amount of the due royalties.

A portion of royalties, typically between one-third to half, must be paid to the municipalities where the resource is located, with the remainder being state revenue to be allocated to the Geological Resources Fund (*Fundo dos Recursos Geológicos*).

In cases involving multiple municipalities, payments must be proportionally allocated.

Finally, licensing fees, royalties, premia and other considerations are usually negotiated and established in concession agreements on a case-by-case basis.

4.2 Tax Incentives for Mining Investors and Projects

In Portugal, mining activities are subject to the general tax provisions, meaning that there are no specific tax incentives for mining investors or projects. Furthermore, stabilisation agreements, either in tax or any other matters, are not commonly offered.

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

The tax system in Portugal imposes transfer and capital gains taxes on the transfer or sale of a mining project. However, there is no specific tax exclusively for the transfer of mining projects. When a mining project is sold, any capital gains realised are subject to taxation. For companies, these gains are included in taxable income and taxed at the standard corporate tax rate, while, for individuals, capital gains tax rates may vary.

Although there is no specific tax on the transfer of mining rights, any associated real estate or significant assets involved in the transfer could be subject to Property Transfer Tax (IMT).

This obligation can extend to international transactions involving foreign corporate structures, depending on double taxation treaties and the economic substance of the transactions.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

In Portugal, attracting investment for mining primarily hinges on several general features rather than sector-specific initiatives. The main features include a favourable regulatory framework, general government support for business and a strategic location with well-developed infrastructure, a skilled workforce.

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

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 the country. Also, there are no restrictions on the remittance of profits or investments abroad.

5.3 International Treaties Related to Exploration and Mining

Portugal is not directly a part of any specific multilateral or bilateral treaties exclusively dedicated to the mining sector. However, as a member state of the EU, Portugal benefits from a range of treaties and agreements that the EU has established with global partners. These agreements collectively provide a favourable and protective environment for investments, including those in the exploration and mining sectors.

5.4 Sources of Finance for Exploration, Development and Mining

In Portugal, there are no specific or distinct sources of finance exclusively dedicated to the development of mining activities. Instead, mining projects typically rely on general financial mechanisms available within Portugal and internationally. These include standard equity financing through stock markets and private investors, debt financing from banks and bonds, government grants and subsidies, and strategic partnerships or joint ventures. Additionally, companies may access funding from institutional investors, European Union programmes, and general project financing methods.

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

In Portugal, both domestic and international securities markets play crucial roles in financing exploration, development, and mining activities.

Domestic markets allow mining companies to raise funds through shares and bonds, offering access to local capital and ensuring compliance with national regulations. These markets enhance liquidity, broaden the investor base, and provide localised expertise.

International markets offer access to substantial global capital, diversify investor risk, and enhance company visibility and credibility.

5.6 Security over Mining Tenements and Related Assets

In accordance with the Geological Resources Law, the creation of mortgages (in rem security) is only authorised over rights arising from a con-

cession for exploitation – and over the physical facilities created for support of mining activities – as security of credits/loans for the exploitation works, and must be previously communicated to DGEG.

The enforcement of mortgages must follow the rules of the Code of Tax Procedure and Proceedings and of the Civil Procedure Code until the moment of auction, which must be executed by the DGEG through public tender.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

One of the most prominent trends in the Portuguese mining sector – which is likely to continue for the next couple of years – is the interest in lithium exploration and other activities in the lithium value chain. In fact, in addition to the projects under development for the massive exploitation of lithium reserves, several initiatives aim to establish lithium conversion plants. The development of downstream lithium processing facilities is crucial for adding value to raw lithium resources, and support for the EU's goals for a sustainable battery supply chain in Europe and Portugal is making strides in this direction.

As these projects are moving forward, it is expected that both national and European legislation will be adapted to address the challenges of this growing industry.

Portuguese legislation for the mining sector has also seen significant changes in recent years with the enactment of a new and more efficient legal and institutional framework, introducing substantial modifications to the regulation of mining rights and the extractive industry sector in general.

Such changes relate, in particular, to the following:

- the distribution of exploitation benefits (ie, royalties) between the state, municipalities and local populations;
- the possibility of having the relevant concession agreement imposing that minerals are processed on national territory;
- more demanding environmental sustainability regulations (in compliance with "green mining" standards); and
- the recognition of the wider inspection powers of the regulatory agency; and v) the promotion of public participation/consultation in the awarding procedures for the granting of mining rights.

Trends and Developments

Contributed by:
Manuel Protásio and Catarina Coimbra
VdA

VdA is a leading international law firm, set up over 40 years ago, with an impressive track record and innovative approach in corporate legal services. Its highly specialised services cover several industries and practice areas, and the firm offers robust solutions grounded in consistent standards of excellence, ethics, and professionalism. VdA has been consistently recognised for its outstanding and innovative contributions. Through the VdA Legal Partners network, its clients have access to seven jurisdictions, with broad sectoral coverage for all Portuguese-speaking African countries (Angola, Cabo Verde, Guinea-Bissau, Equatorial Guinea, Mozambique and São Tomé e Principe), as well as Timor-Leste.

Authors

Manuel Protásio joined VdA in 1991 and is the Infrastructure, Energy & Natural Resources Group executive partner, leading several teams involved in most of the transactions carried out by the firm to date in the power (including renewable energy), oil and gas, road, transport, and water and waste sectors. Manuel also works on regulation and public procurement procedures in these areas.

Catarina Coimbra is a managing associate in Infrastructure & Mobility at VdA, and is actively involved in several transactions related to the development of large infrastructure projects in Portugal and abroad (Angola and Mozambique, in particular), with emphasis on the health sector and road and rail infrastructure, particularly in public-private partnerships and under a project finance model. Catarina also works in the water and waste sector, providing general follow-up and legal advice to concessionaire companies, with general regulation for these sectors.

Contributed by: Manuel Protásio and Catarina Coimbra, **VdA**

Vieira de Almeida e Associados

Rua Dom Luis I, 28
1200-151
Lisboa
Portugal

Tel: +35 121 311 3400
Email: fvda@vda.pt
Web: www.vda.pt

Portugal has long been recognised for its rich mineral resources (particularly tungsten, primarily found at the Panasqueira mine, copper and uranium), which have historically played a significant role in the country's economy. In recent years, developments in Portugal's mining sector have positioned the country as a key player in the global mining industry.

Growing Interest in Lithium

One of the most prominent trends in the Portuguese mining sector is a growing interest in lithium exploration, as well as other activities in the lithium value chain. Portugal is home to some of Europe's largest lithium deposits, which are located in the districts of Vila Real, Guarda and Castelo Branco. The increasing demand for lithium-ion batteries, driven by the expansion of electric vehicles and renewable energy storage systems, puts Portugal firmly on the map as a potential leading supplier of this critical mineral, which could reduce Europe's dependence on imported raw materials and promote local green technologies. As part of its Critical Raw Materials Act, the EU Commission stipulated that, by 2030, at least 10% of Europe's demand for critical raw materials such as lithium should be met using domestic supplies. Portuguese mining companies have received approval for lithium projects in areas such as Barroso, Romano, Alvarrões, and Argemela. Further requests for exploration are pending in other areas of the country.

Several international companies are actively exploring and developing lithium mining projects in Portugal. A flourishing lithium mining industry could contribute significantly to the national economy by creating jobs, attracting international investment, and promoting regional expansion. Furthermore, the establishment of a robust lithium supply chain within Europe aligns with the EU's strategic objective of achieving technological sovereignty in key industries, including battery manufacturing. The development of downstream lithium processing facilities is crucial for adding value to raw lithium resources and supporting the EU's goals for a sustainable battery supply chain. Portugal is making strides in this direction, with several initiatives aimed at setting up lithium conversion plants.

The main lithium projects in Portugal are as follows.

Savannah Resources – Mina do Barroso project

The Mina do Barroso project, located in the northern region of Portugal, is one of the most advanced and significant lithium exploration projects in the country. UK-based mining company Savannah Resources has been actively developing the project, which has shown promising results with an estimated 27 million tons of lithium-bearing spodumene. The project aims to produce high-grade lithium concentrate, with plans for a sustainable, low-impact mining operation. It is expected to be a major contributor to Europe's lithium supply chain.

Lusorecursos – Montalegre project

The Montalegre lithium project is situated in the Montalegre region. Lusorecursos is a Portuguese mining company that extracts lithium from abundant pegmatite deposits. The project aims to establish a vertically integrated lithium mining and processing operation which includes not only extraction but also the production of battery-grade lithium hydroxide. This integration is expected to add substantial value and strengthen Portugal's position in the global lithium market.

Lusorecursos lithium refinery

Lusorecursos plans to build a lithium refinery in Portugal that will process lithium concentrate into battery-grade lithium hydroxide. The development of this refinery is a crucial step in creating a domestic lithium processing capability, reducing dependence on imports and aligning with the EU's strategy for a sustainable battery supply chain.

Battery manufacturing projects

The presence of substantial lithium resources has also spurred interest in battery manufacturing within Portugal. Discussions and preliminary plans are underway for battery production facilities that can utilise locally processed lithium. These initiatives aim to create a fully integrated lithium-battery supply chain within the country, fostering local economic growth and technological innovation.

Despite these promising prospects, the development of the lithium sector in Portugal does not come without challenges.

Local communities and environmental organisations have raised concerns over the potential environmental and social effects of lithium mining. Addressing these concerns through effective community engagement, transparent communication, and tangible socio-economic benefits is crucial.

In addition, energy transition trends raise issues. In fact, although the global shift towards renewable energy and the increasing demand for lithium-ion batteries have propelled lithium to the forefront of the energy transition landscape, lithium extraction and usage bring several significant disadvantages relating, in particular, to their impact on the environment, often with a negative effect on the perception of this mineral resource.

Moreover, the lithium market is prone to fluctuations in commodity prices, influenced by changes in supply and demand dynamics. This volatility can generate economic uncertainty for countries and regions that rely heavily on lithium mining as a major source of income. An over-dependence on lithium can make these economies susceptible to market downturns and global demand shifts.

Optimising the Award Process

Although the applicable legislation allows for the granting of mining rights through public tender procedures, this is not common practice in Portugal. Instead, most mining rights are typically awarded following a request from the interested party, with public tenders only used if several parties are interested in the same mining area. In recent years, there have been attempts to shift this paradigm, making the state the project initiator, although no concrete steps have yet been taken to implement this modification.

This change aims to ensure transparency, fairness, and optimal management of natural resources, as well as to foster community trust. The advantages of the public tender for the award of mining rights can be described as follows.

- *Transparency* a public tender process promotes transparency by providing a clear and open platform for all potential investors and companies in which to participate. This openness helps to minimise corruption and favouritism, ensuring that the process is fair and that all stakeholders have equal access to information and opportunities.
- *Fair competition* – public tenders encourage healthy competition among bidders, driving them to present their best proposals in terms of technical expertise, financial commitments and sustainable practices. This competitive environment helps ensure that the mining rights are awarded to the most capable and responsible company, which can effectively manage and develop the resource.
- *Optimal resource management* – by evaluating multiple bids through a structured tender process, the government can select a bidder that offers the best value and most responsible approach to resource extraction. This process ensures that natural resources are managed efficiently, maximising economic benefits and minimising environmental and social impacts.
- *Increased revenue* – public tenders can lead to higher financial returns for the government. The competitive bidding process often drives up financial offers, ensuring that the state receives a fair, often higher, price for granting the mining rights. This increased revenue can be utilised for public services, infrastructure, and community development.
- *Sustainability and accountability* – a public tender can include specific criteria related to environmental protection, social responsibility, and sustainable mining practices. By setting these standards in the tender requirements, the government can ensure that only companies committed to sustainability and accountability are awarded mining rights.
- *Community trust and engagement* – transparent and fair processes help build trust between the government, the mining industry, and local communities. When communities see that mining rights are granted through an open and competitive process, they are more likely to have confidence in the decision-making process and in the companies selected to operate in their regions.
- *Legal and regulatory compliance* – the tender process can ensure that all bidders comply with national and international legal and regulatory frameworks. This reduces the risk of future legal disputes and environmental damages, promoting a more stable and predictable investment climate.
- *Attracting high-quality investors* an open tender process can attract high-quality, reputable investors who are confident in operating within a transparent and competitive context. This can lead to better overall project outcomes and foster long-term relationships

between the government and responsible investors.

Another issue faced by investors in the mining sector in Portugal relates to obtaining land rights. While mining rights enable a promoter to explore and market mineral resources, they do not confer any real property interest over the land in which a mining facility is located. This means that promoters must obtain all the necessary permits before landowners and pay them due compensation. An awarding scheme where the required land rights are secured before the granting of the mining rights could enhance the approval process and facilitate the start-up of mining operations.

Sustainable and Responsible Mining

As global awareness of environmental issues increases, there is a strong push for sustainable and responsible mining practices in Portugal. In recent years, the Portuguese government introduced new regulations for the mining sector which reflect the growing awareness of the need to balance economic development with environmental protection and social responsibility. The changes introduced to the regulation of mining rights and the extractive industry sector in general relate, notably, to:

(a) the distribution of exploitation benefits (ie, royalties) between the state, the municipalities and local populations;
(b) having concession agreements impose that minerals be processed on national territory;
(c) introducing more stringent environmental sustainability standards (in compliance with green mining standards);
(d) the recognition of the wider inspection powers of the regulatory agency; and
(e) the promotion of public participation/consultation in the awarding procedures for granting mining rights.

Mining companies in Portugal are also committed to implementing environmentally friendly technologies and practices to minimise the ecological impact of their activities. Efforts include reducing carbon emissions, managing water resources effectively, and rehabilitating mining sites after closure. This focus on sustainability aims to ensure that mining operations align with the broader objectives of environmental preservation and social responsibility.

This has been a topic of major concern for mining companies, as the local communities and the environmental organisations have been quite challenging for recent mining projects in Portugal, particularly lithium projects.

Environmental, Social, and Governance (ESG) principles have become crucial pillars in the mining sector, shaping the way companies operate and interact with their stakeholders.

Integrating ESG principles into the mining sector offers numerous benefits, as follows.

- *Enhanced reputation* – companies that prioritise ESG factors build stronger reputations and brand loyalty among stakeholders, including investors, customers, and communities.
- *Access to capital* – investors are increasingly considering ESG criteria when making investment decisions. Companies with a strong ESG performance are more likely to attract capital from responsible investors and financial institutions.
- *Operational efficiency* – sustainable practices often lead to greater operational efficiency,

cost savings, and risk reduction. For example, energy-efficient technologies can lower operational costs and minimise environmental impacts.
- *Long-term resilience* – ESG integration contributes to the long-term resilience of mining companies by addressing emerging challenges, such as regulatory changes and climate risks.

Government Support and Regulatory Framework

The Portuguese government has been proactive in creating a favourable environment for the growth of the mining sector. A clear and transparent regulatory framework, coupled with incentives for mining investments, has been established to attract both domestic and international players. The Directorate-General for Energy and Geology (DGEG) oversees the regulatory aspects of the mining industry, ensuring compliance with safety standards whilepromoting sustainable development.

Some geological resources are, by virtue of their specific characteristics, supervised by the General Directorate of Natural Resources, Security and Maritime Services, namely the geological resources in the national maritime space. Specific matters governed by different authorities regarding health and safety, environmental protection and social issues and cultural heritage, may also apply. The municipalities also play an important role in the implementation of mining projects at local level.

In environmental matters, the Portuguese Environment Agency (APA) plays a significant role in the approval process for mining activities.

As a member state of the EU, EU policies and strategies for the mining sector also impact Portugal's activities within this sector. EU policies on raw materials – which include the Raw Materials Initiative, or RMI, the Critical Raw Materials (CRM) List and the European Raw Materials Alliance, or ERMA, to which most of the key companies operating in the mining sector in Portugal have adhered – play an important role in this context.

Exploration of Untapped Mineral Resources

Beyond lithium, Portugal possesses a wealth of other mineral resources, including tungsten, copper, tin, and gold. There is ongoing exploration activity to identify and assess new deposits of these minerals. The diversification of mineral production aims to strengthen the sector's resilience and contribute to the overall economic stability of the country.

Community Engagement

The engagement of the local population in mining projects is becoming increasingly important for mining companies in Portugal. Engaging with local communities, addressing their concerns, and ensuring that mining activities bring tangible benefits to the regions are crucial aspects of modern mining practices. Companies are focusing on building strong relationships with stakeholders, creating job opportunities, and investing in community development projects to foster goodwill and support for their operations.

In conclusion, the mining sector in Portugal is experiencing a dynamic phase of growth and transformation. A strategic focus on developing lithium resources, adopting sustainable mining practices, leveraging technological advancements, and fostering a supportive regulatory environment are driving the sector forward. These developments not only reinforce Portugal's position in the global mining industry but also contribute to the country's economic growth and sustainable development goals.

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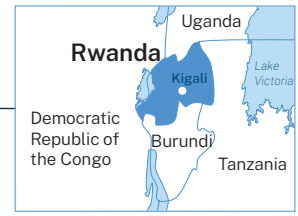


Contributed by:
Aimery de Schoutheete and Penina Ngabire
Liedekerke Great Lakes

Contents

Liedekerke Great Lakes is a business law firm located in Kigali, Rwanda. It is the second subsidiary of Liedekerke in Central Africa. Liedekerke is a premium Belgian full-service business law firm with offices in Brussels, Antwerp, London, Kinshasa and Kigali. It has a strong advisory practice based on sector expertise and in-depth knowledge of Belgian/ European law, Rwandan law, Burundian law, Congolese (DRC) law, and OHADA law. Drawing on over 40 years of experience working on Africa-related matters and the expertise of more than 140 lawyers, Liedekerke offers unparalleled experience and support in, inter alia, Rwanda and Burundi, advising clients on all aspects of cross-border and domestic transactions (corporate, data protection, employment, finance, international dispute resolution, mining, IP/IT, real estate, regulatory and transport). With wide-reaching technical experience of the law and strong local know-how, Liedekerke provides clients with optimal legal solutions and administrative support in the field.

Authors

Aimery de Schoutheete is a partner in the international arbitration and dispute resolution practice of Liedekerke and chairperson of Liedekerke Great Lakes, the firm's subsidiary in Kigali, Rwanda, and Liedekerke DRC, the firm's subsidiary established in Kinshasa, DRC. Aimery assists clients in complex and international litigation and arbitration proceedings, primarily in the areas of natural resources, mining, construction, distribution and corporate disputes. He is regularly appointed as an arbitrator in proceedings before the ICC, CEPANI, the Swiss Centre for International Arbitration and ICSID.

Penina Ngabire is an associate at Liedekerke Great Lakes and a member of the firm's corporate and finance practice. She focuses on all aspects of regulatory, corporate and commercial law, especially in the mining, energy and transport sectors.

Liedekerke Great Lakes

KG 541 St
Kigali
Rwanda

Tel: +25 079 869 5912
Email: info@liedekerke.com
Web: www.liedekerke.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Update

Rwanda's mining sector has been developing rapidly in recent years. Today, mining is the country's largest export revenue earner, followed by tourism.

Rwanda is presented as one of the world's largest producers of the 3Ts (tin, tantalum and tungsten) and exports gold, lithium and gemstones.

Future Objectives

Rwanda's mining sector consists mainly of artisanal and small-scale mining. The country aims to attract international investment to modernise, industrialise and expand the sector.

Similarly, the sector's exports are mainly raw mineral concentrates and not metals. Rwanda's near-future ambition is to become a mineral processing and value-addition hub in the region and to attract investors to set up modern value-addition processing in the country.

To achieve its objectives, Rwanda recently established the Rwanda Mines, Petroleum and Gas Board (RMB) and developed a modern legal framework. Rwanda also offers several incentives to mining investors, as mining is considered a priority sector.

Fundamental Legal Principles Governing the Mining Industry

In a nutshell, the following fundamental principles apply to any mining activity in Rwanda:

- all rights of ownership and control of minerals or quarry products under, or upon any land in Rwanda are vested in the state, notwithstanding personal ownership of land and other properties thereon;
- mineral exploration, exploitation, processing and trading can only be carried out by a licence holder (LH), ie, an entity that has a mineral licence (ML) or a quarry licence (QL) from the RMB (to date, the RMB records 940 active licences in total, including about 21 mineral exploration licences and 194 mineral mining licences);
- the LH is required to submit to the RMB an environmental and social impact assessment approved by the Rwanda Development Board (RDB) prior to commencing operations;
- in the case of discovery of a mineral or quarry deposit, the landowner or lawful occupier is fairly compensated in accordance with Law No 32/2015 of 11 June 2015 relating

to expropriation in the public interest (the "Expropriation Law"); and
- after obtaining an ML, the LH enters into an agreement with the state to determine the specific conditions under which the mining activities will be carried out.

1.2 Legal System and Sources of Mining Law

Rwanda is a civil law legal system now undergoing a transformation from purely civil law to a more hybrid legal system that incorporates certain aspects of common law. In practice, the law remains heavily codified.

Rwanda has a unitary system of government and all the powers and responsibilities with respect to mining are allocated to the Rwandan parliament and government.

From 2018 to 2024, mining activities in Rwanda (from exploration to export) were governed by Law No 58/2018 of 13 August 2018 on mining and quarry operations. This Law was subsequently repealed and replaced by Law No 072/2024 of 26 June 2024 (the "2024 Mining Law"). The 2024 Mining Law is supplemented by various presidential orders, ministerial orders and regulations issued by the RMB, most of which were already in place and remain valid.

1.3 Ownership of Mineral Resources

Pursuant to Article 4 of the 2024 Mining Law, all rights of ownership and control of minerals or quarry products located in Rwanda are vested in the state, notwithstanding private ownership of the land where the products are located. This is confirmed by Article 43 of Law No 27/2021 of 10 June 2021 on governing land.

In the case of discovery of minerals or quarry deposits, the landowner or lawful occupier is fairly compensated in accordance with the Expropriation Law and such land is then registered on the State.

1.4 Role of the State in Mining Law and Regulations

Role of the State

The State, through the RMB, serves as the grantor-regulator of mining activity. The RMB grants rights to explore, mine, process, trade and export minerals based on licence fees (payable on application, maintenance and renewal of a licence) and upon fulfilment of the requirements provided for in the 2024 Mining Law.

The RMB also regulates the mining sector by issuing regulations governing mineral, quarry, oil and gas resources, and ensuring compliance by licence holders with the provisions of the laws, regulations, guidelines and standards governing the mining industry.

No Mandatory Government Participation

There is no mandatory government joint venture, contracting or participation. However, the 2024 Mining Law provides that the government may acquire shares in mining or quarry operations on such terms as agreed upon between the LH and the government.

In practice, there are only a few examples of government participation in the mining sector. Two examples are LuNa Smelter Ltd, a joint venture (JV) between Polish Luma Holding (75%) and the Rwandan state-owned Ngali Holdings (25%), which operates a smelter in Kigali and exploration licences in the east of Rwanda, and Nyabarongo Mining and Exploration Limited, a joint Venture (JV) between Rio Tinto (75%) and the government of Rwanda (25%).

1.5 Nature of Mineral Rights

Nature of Mineral Rights

Mineral rights have a constitutional basis in so far as the Rwandan Constitution provides that private ownership of land and other rights related to land are granted by the state.

The exercise of power to grant mineral rights is regulated by the 2024 Mining Law and the various regulations that complement it. In practice, mineral rights derive from an action, that is, the issuance of an ML or a QL by the RMB to an LH.

Status of Mineral Rights

Mineral rights have the status of property and, as a matter of principle, the mineral rights granted to the LH are exclusive.

Hence, the RMB will not grant an ML in respect of an area covered by another ML of similar type. However, the RMB may, "for the purpose of national interests", authorise another person to carry out operations in an area already covered by a licence if it is for the exploration of other types of minerals.

A LH can transfer its ML subject to several conditions, including obtaining the prior authorisation of the RMB.

1.6 Granting of Mineral Rights

The RMB is the national authority granting mineral rights in Rwanda.

Demarcation of Potential Mining Areas

The RMB demarcates potential mining areas which could be economically viable. It publishes a list on the RMB website with more information on the potential mining areas and their licensing situation.

Granting of Mineral Rights

An ML is usually obtained through written application to the RMB through the One Stop Centre (OSC), although it can sometimes be achieved through open tender. The ML is granted by the RMB after taking into consideration the recommendation issued by the committee in charge of applications. In practice, mineral rights derive from an action, that is, the issuance of an ML by the RMB.

Types of MLs

There are four types of MLs:

- the exploration licence;
- the (small, medium, or large-scale) mining licence;
- the mineral processing licence; and
- the mineral trading licence.

Each type of ML confers rights and duties to the LH.

Mandatory Agreement with the RMB

After the issuance of the ML and before starting any mining activity, the LH must enter into an agreement with the RMB to determine the specific conditions under which the mining activities will be carried out.

1.7 Mining: Security of Tenure

Security of tenure is guaranteed if the LH complies with its legal and contractual obligations.

Terms, Renewals and Rights Attached to MLs

The specific mineral rights and length of tenure vary according to the type of ML, but the following generally apply.

- The RMB will not grant an ML in respect of an area covered by another ML of similar type. However, the RMB may, "for the purpose of

national interests", authorise another person to carry out operations on an area already covered by a licence if it is for the exploration of other types of minerals.

- An exploration licence is valid for an initial period not exceeding four years. It carries a positive obligation to start exploration activities within 90 days from the date of issuance of the licence and does not allow for the commercial extraction of minerals (although it is possible to obtain a special permit to export minerals discovered during exploration work). An exploration licence may be renewed once for a period not exceeding four years, during which the LH may be required to relinquish part of the licensed area.
- A mining licence is valid for an initial period that cannot exceed 15 years and carries a positive obligation to start mining operations within 180 days from the date of issuance of the licence. The holder of a mining licence can process and export their product themself (without a processing or trading licence), provided that only the minerals covered by the licence and coming from the licensed area are processed and/or exported. To export the minerals, the holder must also obtain an export permit from the RMB. A mining licence may be renewed more than once for a period not exceeding 15 years, upon fulfilment of the requirements provided in the 2024 Mining Law.
- All transactions must be carried out at arm's length, that is, at the price determined by the international market. If minerals are sold below that price, the RMB or the tax authorities may refer to the price used on the international market to determine the value of the minerals sold.

Progression from Exploration to Mining

The holder of an exploration licence receives the "first-in-time right" to apply for another ML on any portion of the exploration licence area where a mineral deposit is discovered, upon fulfilling the required conditions for that ML. On that basis, the holder of an exploration licence can apply to the RMB to add a newly discovered mineral to the existing exploration licence. It can also apply to the RMB to obtain a mining licence to start mining operations for the discovered minerals.

Maintenance of MLs

Compliance with legal and contractual obligations is all that is required to maintain the mineral rights. This includes compliance with health and safety standards, the payment of annual fees which vary according to the type of ML and, for mining licences, the size of the mining operation (small, medium or large scale).

Suspension and Cancellation of MLs

There is no room for arbitrary suspension or cancellation of MLs, as the 2024 Mining Law and the agreements between the RMB and the LH identify the limited grounds on which such a decision can be taken by the RMB. The RMB must also give 30 days' notice, before issuing a suspension or cancellation, for the LH to remedy any outstanding breaches.

Transfer of MLs

A LH may transfer its ML, subject to several conditions, including obtaining the prior authorisation of the RMB. Such transfer may be subject to duty and taxes.

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

2.1 Environmental Protection and Licensing of Mining Projects

Competent Authority

The Rwanda Environment Management Authority (REMA) is the national authority in charge of national environmental protection, conservation, promotion and overall management, including advising the government on all matters pertinent to the environment and climate change.

Mandatory Requirements

Before commencing any mining operations, the holder of an exploration licence, a mining licence or a processing licence must:

- conduct an environmental impact assessment (EIA) with the help of an independent expert and submit the EIA to the RDB for approval; and
- prepare a rehabilitation plan identifying the planned rehabilitation activities and the related budget.

In addition, the holder of a mining licence must deposit in the bank account of the National Fund for Environment (NFE) an environment rehabilitation guarantee (ERG), the amount of which must be equal to the budget of the liabilities of the mining or quarry LH under the EIA. This is to ensure that the LH will rehabilitate the licensed area in respect of any degradations resulting from mining or quarry operations.

Liability

The LH remains liable for environmental protection until the mining site is closed and a final rehabilitation certificate has been issued by the REMA.

2.2 Impact of Environmentally Protected Areas on Mining

Environmentally Protected Areas in Rwanda

Rwanda currently has five fully protected areas covering almost 2,500 km² or 9% of the country's total surface area: four national parks (Akagera NP, Gishwati-Mukura NP, Nyungwe NP and Volcanoes NP) and the Rugezi-Burera-Ruhondo wetland complex.

Additional measures have also been taken to protect other areas, including wetlands, rivers and various remnant forests.

Impact of Project Location in Environmentally Protected Areas

Environmentally protected areas have an impact on exploration, development and mining before and during the operations.

Before the operations, the independent expert conducting the EIA will automatically categorise as "high impact areas" all projects, including exploration activities, located in:

- ecologically sensitive areas (forests, wetlands, steep slopes and wildlife habitats);
- areas legally protected by national or international law (trans-boundary ecosystems, international riverbanks and lake shores, national parks, and archaeological sites); and
- socio-culturally sensitive areas (densely populated areas, national monuments, memorial sites, and burial grounds/cemeteries).

This may lead the authorities to reject the project, or to impose stricter environmental requirements on the operator. The project is also likely to be subject to closer scrutiny during its implementation.

During the operations, it is prohibited to carry out mining activities less than 20, 10 and five metres from wetlands, main rivers, and small riverbanks respectively. It is also prohibited to discharge untreated wastewater, or to wash minerals in rivers or wetlands and their established buffer zones.

In addition, all mining activities, wherever they are located, are subject to strict rules regarding land rehabilitation.

2.3 Impact of Community Relations on Mining Projects

When it comes to the issue of community relations, the following principles apply.

- The holder of a mining licence (but not an exploration licence) must prepare a plan for development and social welfare in collaboration with the authorities of the district where the mining operations are to be carried out. This plan may include, for instance, building schools or public roads, and it must be submitted to the RMB for approval. The LH may then enter into a specific agreement with the district authorities to ensure effective implementation of the community development plan.
- When expropriation is inevitable, the LH must, before starting any operation, engage with the landowners and lawful occupiers present on the licensed area, either by buying them out or by leasing the land. If an amicable settlement cannot be reached, the licensee must inform the authorities, who will seek to facilitate the process. Although it is not mandatory, it is advisable to involve the authorities from the outset.
- The LH must always comply with the provisions of the 2024 Mining Law and any other applicable laws or standards prescribed by the government to ensure the health and safety of persons within the vicinity of the exploration or mining operations.

2.4 Prior and Informed Consultation on Mining Projects

Prior consultation is mandatory between the investor and:

- the landowners/lawful occupiers of the licensed area when expropriation is inevitable, whether at the exploration or mining stage; and
- the authorities of the district where the mining operations are to be carried out since the holder of a mining licence must prepare a development and social welfare plan in consultation with these authorities.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no specially protected communities in Rwanda.

2.6 Community Development Agreement for Mining Projects

The holder of a mining or quarry licence (but not an exploration licence) must prepare a plan for development and social welfare in consultation with the authorities of the district where the mining operations are to be carried out. It must then submit the plan agreed upon with the district authorities to the RMB.

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

There are no national ESG guidelines or regulations for the mining sector as such. Instead, ESG guidelines are scattered throughout various laws and regulations applicable to the mining sector. In addition, more specific ESG provisions can be

found in the agreement that any LH must enter into with the government.

As a result, all mining investors must, among other things:

- comply with strict environmental regulations;
- conform to applicable policies on the recruitment and training of Rwandan nationals;
- purchase local goods and services;
- guarantee the health and safety of their employees and people living in the vicinity of the licensed area; and
- abide by anti-corruption laws and regulations.

2.8 Illegal Mining

So far, illegal mining does not appear to be a major issue in Rwanda. However, there are still cases reported from time to time with a recent publication from August 2023 indicating approximately 100 identified illegal mines.

The Government's Response

One of the government's strategies is to professionalise the mining sector by better regulating and controlling the sector and attracting investors. In addition, investigation and prosecution are key in cracking down illegal mining. To this effect, the RMB works closely with local authorities and security organs and deploys district task forces responsible for monitoring of mining and quarries. These task forces will conduct regular inspections to assess the activities at these mining sites. In addition, the RMB encourages all stakeholders, ie, local leaders, security organs and the communities to play their part in fighting illegal mining.

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

All LHs must comply with health and safety standards and must carry out their operations diligently and in line with the business plan submitted to the RMB.

They must also create income-generating activities for the surrounding communities, carry out reforestation and implement their social activities.

LHs that fail to meet these obligations risk having their ML revoked by the RMB.

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

3.1 Climate Change Effects

Rwanda has recently revamped its environmental legal framework to better tackle climate change and protect the environment. It has also launched a series of initiatives as part of its "Vision 2050" and its aspiration to be a green, carbon-neutral and climate-resilient country by 2050. These recent developments should contribute to more responsible development of the mining industry, which is set to grow rapidly in the coming years.

Revamped Environmental Legal Framework

Rwanda's revamped environmental legal framework can be summarised as follows.

- Rwanda is party to various international instruments tackling climate change, including the 1992 United National Framework Convention on Climate Change, the 1997 Kyoto Protocol, and the 2015 Paris Agreement.

- The Rwandan Constitution guarantees the right to a clean environment and imposes (mainly) on the State the responsibility for protecting the environment.
- Rwandan Law No 48/2018 of 13 August 2018 on the environment (the "Environment Law") determines the modalities for protecting, conserving, and promoting the environment. It sets out the fundamental principles governing environmental conservation, including the principle of sustainability and the "polluter pays" principle.
- The Environment Law has since been supplemented by various presidential orders, ministerial orders and regulations.
- The REMA is the national authority tasked with co-ordinating, regulating and enforcing the protection, conservation and management of the environment in Rwanda.

Against this background, the Environment Law and the supplemental regulations impose general and specific obligations to tackle climate change and protect the environment. On the one hand, all administrative entities are required to preserve the environment and prevent the adverse effects of climate change, and all socio-economic sectors (including the mining sector) must factor the environment and climate change into the development and implementation of their policies, strategies, plans and programmes. On the other hand, prior to the issuance of an ML or a QL, all work related to mining must undergo a full EIA (which closely examines the impact of the mining project on the environment) and be backed by a rehabilitation plan of the future licensed area. After the issuance of the licence, all work related to mining must also undergo an environmental audit (EA) conducted by an independent expert.

Rwanda's Vision 2050 and REMA's Strategic Plan for 2022–2026

Rwanda's Vision 2050 articulates the long-term strategic direction of the country, which is to make Rwanda an upper-middle-income country by 2035 and a high-income country by 2050. In elaborating this long-term programme, the government took into consideration the global and regional development agendas, including the Sustainable Development Goals (SDGs) identified by the United Nations, and the Paris Agreement on climate change. Rwanda's goal is therefore for the country's growth and development to follow a sustainable path, in terms of use and management of natural resources, while building resilience to cope with the impact of climate change.

Against this background, the REMA's Strategic Plan for 2022–2026 identifies key measures for protecting the environment and ensuring the sustainable management of natural resources. Some measures directly impact the mining industry as, for instance, the REMA intends to intensify control of the productive sector, mainly in agriculture and mining, to ensure compliance with all environmental requirements. Other measures may indirectly impact the mining industry – for example, the REMA intends to create new protected areas, which could affect the sector's ability to conduct exploration in certain areas.

3.2 Climate Change Legislation and Proposals Related to Mining

Under the current legal framework, only a few provisions scattered in the 2024 Mining Law, the Environment Law and their supplemental regulations directly impose specific obligations on the mining sector (conducting an EIA, establishing a rehabilitation plan, conducting an EA) to ensure that any mining activities in Rwanda comply

with environmental standards and mitigate their impact on the environment.

The RMB started in 2023 working with stakeholders to strengthen environmental obligations in the mining sector. This work is still in progress.

3.3 Sustainable Development Initiatives Related to Mining

One of Rwanda's priorities is to professionalise its mining sector, by better regulating and controlling artisanal and small-scale mining activities (which still account for around 80% of the sector) and by attracting investors to increase exploration activities, to conduct medium or large-scale mining activities, and to set up modern, value-adding processing in the country.

Outcome of the First EU-Rwanda Business Forum

During the first EU-Rwanda Business Forum in Kigali in June 2023, the RMB and the German development agency (*Deutsche Gesellschaft für Internationale Zusammenarbeit* – GmbH or GIZ) launched the "Sustainable Development of the Mining Sector in Rwanda" project, underscoring their commitment to driving sustainable growth in the country's mining industry.

This project is jointly funded by the EU and the German Federal Ministry for Economic Co-operation and Development (BMZ) and will be implemented by GIZ in co-operation with the RMB. Aligned with the SDGs, it aims to:

- enhance compliance with international mineral-sourcing standards;
- support sector digitalisation;
- strengthen technical and vocational education and training (TVET) skills in the mining sector; and
- improve the application of international social and environmental protection standards.

3.4 Energy-Transition Minerals

There are currently no legislative initiatives related to the increasing demand for so-called energy-transition minerals, such as lithium.

However, as part of Rwanda's vision to become a mineral value-addition hub in the region, the CEO of the RMB in 2023 announced that Rwanda is set to establish a lithium refinery in the years to come, adding to the three existing value-addition processing plants in the country (a tin smelter, a gold refinery and a tantalum refinery).

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The Rwandan general tax system can be summarised as follows, when applied to exploration and mining. However, mining investors officially registered with the RDB may benefit from the various tax incentives discussed in **4.2 Tax Incentives for Mining Investors and Projects**.

No Discrimination Between National and Foreign Investors

There is no distinction in Rwanda between taxing national and foreign investors. The tax laws and regulations apply to all mining companies established in Rwanda, regardless of the origin of the investors.

In addition, foreign investors can benefit from favourable treatment (eg, with respect to withholding taxes) under bilateral or multilateral investment treaties.

Corporate Income Tax

A corporate income tax (CIT) is levied on the income generated by any mining company established in Rwanda. The tax rate was recently reduced from 30% to 28%.

A taxpayer willing to carry forward losses must apply to the competent authority, the Rwanda Revenue Authority (RRA). As a rule, losses cannot be carried forward for more than five years.

Value Added Tax

VAT applies on goods and services at the standard rate of 18%. However, some goods and services are zero-rated or exempt from VAT. For instance, exported minerals and minerals sold on the domestic market are zero-rated.

Withholding Taxes

There is a 15% withholding tax on dividends, interest, royalties, and service/management fees paid by a Rwandan entity to a foreign entity. The same applies to profits repatriated from Rwanda.

There is also a 5% withholding tax on goods imported for commercial use.

Capital Gains Tax

A capital gains tax (CGT) of 5% is applicable on the direct or indirect sale or transfer of shares that are not listed on the capital market.

Tax on Minerals (Mining Royalties)

Rwanda has recently adopted Law No 056/2024 of 26 June 2024 establishing tax on minerals (the "2024 Minerals Tax Law"), which repealed Law No 55/2013 of 22 August 2013 on minerals tax. The 2024 Minerals Tax Law reduced tax rates on the sale of different categories of minerals notably from 4% to 3% (for the category of all base metals), and from 6% to 0.5% (for the gold category). The Law also introduced new categories of taxes on previously unclassified minerals, and a tax on minerals exported in raw form among other changes.

Licence Fees

Fees apply when an investor applies for, maintains, renews or transfers an ML or a QL. When it comes to MLs, depending on the type of licence (exploration, mining, processing or trade licence) and on the size of the licensed area:

- application fees can vary between RWF100,000 and RWF4.5 million;
- annual fees can vary between RWF100,000 and RWF5 million;
- renewal fees can vary between RWF100,000 and RWF9 million; and
- transfer fees can vary between RWF900,000 and RWF4.5 million.

As of the date of this article, RWF1,000 is equivalent to USD0.74.

Annual Surface Rent

The holder of a mining licence (granting its holder the right to mine the licensed area, and to process and sell the minerals extracted from the licensed area) must pay an annual surface rent of RWF6,500 per hectare (USD5.5/ha).

Customs Duties

As a member of the East African Community (EAC), Rwanda relies on the East African Community Customs Management (Amendment) Act (EACCMA) and the East African Community Common External Tariff (EACCET) for levying custom duties. Under the EACCET, the following common external tariffs apply to goods originating from outside the EAC:

- 0% (raw materials);

- 10% (intermediate goods that are used as input for further processing);
- 25% (finished goods); or
- 35% or above (sensitive items the import of which is discouraged by the EAC countries).

No Stamp Duty

Rwanda does not currently have a stamp duty regime for shares or bonds.

Advance Pricing Agreement

Any taxpayer may request the tax administration to enter into an advance pricing agreement (APA) for a fixed period to determine modalities for setting prices and profits complying with the arm's length principle.

4.2 Tax Incentives for Mining Investors and Projects

Under Law No 006/2021 of 5 February 2021 on investment promotion and facilitation (the "Investment Law"), mining activities related to exploration, processing and value-addition, and export are considered priority economic sectors. A mining company registered in Rwanda can become a registered investor by registering their investment with the RDB and can thus benefit from various tax incentives. Registered mining investors can also negotiate tax stabilisation agreements with the state.

Tax Incentives for Mining Investors and Projects

A mining investor registered with the RDB can benefit from various tax incentives, including:

- a preferential corporate income tax of 15% (instead of 28%) provided that at least 50% of the turnover of the company comes from exporting minerals processed in Rwanda;
- a corporate income tax holiday of up to seven years, provided that the company invests at least USD50 million and that at least 30% of this investment is in equity;
- exemption from CGT (instead of paying 5%);
- exemption from customs taxes and duties for products used in export processing zones (according to RDB's website and guidelines, this exemption applies to all heavy mining machinery imported into Rwanda);
- VAT exemption on mining equipment (instead of paying 18%);
- accelerated VAT refund where applicable; and
- accelerated depreciation for the first year for new or used assets.

In addition, a registered investor holding a valid exploration licence is entitled to carry forward losses for a period of ten years (instead of five years) from the first year of making the loss, by deducting losses in the order in which they were incurred. This incentive is applicable if the exploration expenditure has accounted for at least 50% of the investor's total expenditure during the years in which losses were made.

It is not clear from the Investment Law whether these losses can still be carried forward once the registered investor has obtained a mining licence. However, the company could seek to obtain such a guarantee from the RDB (and the RMB) during negotiations.

The company cannot in principle benefit from a preferential withholding tax on dividends, royalties, interest and service fees (the standard rate of 15% applies), unless it is entitled to preferential treatment under an international instrument (bilateral investment treaty or multilateral treaty).

Tax Stabilisation Agreements

Tax stabilisation agreements are not currently covered by Rwandan tax legislation. That said, there is nothing to prevent investors from nego-

tiating a tax stabilisation agreement with the state, particularly since mining exploration is a priority sector and the Investment Law provides that registered investors are entitled to additional investment incentives over and above those provided in the law.

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

The Rwandan tax system imposes taxes on the sale or transfer of an ML or a QL. In addition, under the 2024 Mining Law, an ML cannot be transferred unless the LH has already invested a certain fixed percentage of the committed investment.

Direct Transfer of an ML or a QL

If a company directly transfers an ML or a QL, for instance by selling it, this operation would be subject to:

- 18% VAT paid by the transferee (which the transferee can claim back if they are registered in Rwanda); and
- 28% CIT paid by the transferor (who must include the sale proceeds in their taxable income).

Indirect Transfer of an ML or a QL Through a Share Transaction

If a company indirectly transfers an ML or a QL through a share transaction, this operation will be subject to 5% CGT paid by the transferor, regardless of whether this operation takes place within Rwanda or abroad. However, if the transferor is a registered investor under the Investment Law, it will be exempted from the tax.

Transfer Fees

In any event, transfer fees are applicable to the transfer of an ML or a QL. Depending on the type of licence (exploration, mining, processing or trade licence) and the size of the licensed area, the fees vary between RWF900,000 and RWF4.5 million (USD700 and USD3,700).

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Mining activities relating to mineral exploration and export are considered priority economic sectors and therefore benefit from various investment incentives, both tax related and non-tax related. To benefit from these incentives, the mining investor must obtain an investment certificate issued by the RDB.

Tax Incentives

Tax incentives available to mining investors are discussed in detail in **4.2 Tax Incentives for Mining Investors and Projects**.

Non-Tax Incentives

In addition, a mining investor can benefit from the following non-tax incentives:

- the RDB can assign a key account manager at the RDB One Stop Centre to assist the company with administrative tasks;
- the RDB can provide notary services to the company;
- the RDB can facilitate access to utilities (water and electricity);
- the RDB can conduct environmental impact assessments and evaluations;
- the RDB can facilitate land acquisition and the obtaining of permits in collaboration with the Kigali City Council One Stop Centre for construction; and
- the RDB can facilitate the obtaining of visas and work permits (in this respect, a registered investor who invests the equivalent of at least USD250,000 may recruit three foreign

employees without necessarily demonstrating that their skills are lacking or insufficient in the labour market in Rwanda).

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

There is no restriction on foreign investment in the exploration and mining sectors.

However, any investors wishing to carry out mining-related activities must incorporate, or partner with, a local entity, as MLs and QLs can only be granted to companies registered in Rwanda.

5.3 International Treaties Related to Exploration and Mining

Rwanda is not a party to multilateral or bilateral treaties specifically related to mining. That said, Rwanda is a party to:

- the ICSID Convention, which provides for settlement by conciliation, mediation or arbitration of disputes arising directly out of an investment between a contracting state and a national of another contracting state;
- various bilateral investment treaties (BITs) aimed, among other things, at protecting foreign investors against unfair treatment and illegal expropriation; and
- various double tax agreements (DTAs) aimed at avoiding the double taxation of income for companies.

Rwanda is also considering joining the Kimberley Process Certification Scheme to facilitate the diamond trade.

5.4 Sources of Finance for Exploration, Development and Mining

The main sources of financing include ordinary finance methods such as debt financing (mainly through commercial banks) and equity finance.

In addition, the government may acquire shares in mining or quarry operations on such terms as agreed between the LH and the government.

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

Several major companies (including the main commercial banks and the first telecoms operator) are listed on the Rwandan Stock Exchange (RSE).

However, most companies undertaking exploration and mining activities in Rwanda will raise funds from international markets such as the London Stock Exchange, the Toronto Stock Exchange and the Australian Securities Exchange.

5.6 Security over Mining Tenements and Related Assets

Securities on movable property, like an ML or a QL, are governed by Law No 34/2013 of 24 May 2013 on security interests in movable property (the "Law on Security Interests").

Scope of the Law

In a nutshell, the Law on Security Interests applies to all rights in movable assets created by an agreement that secures payment or other performance of an obligation, regardless of the form of the transaction, the type of movable assets, the status of the debtor or secured creditor, or the nature of the secured obligation.

Constitution of a Security

A security interest is constituted by a written security agreement between a secured creditor and a debtor. The agreement must indicate the value of the collateral and confirm that the debtor has rights in that collateral.

Registration of a Security

The security interest becomes effective against third parties upon its registration by the Office of the Registrar General (ORG) in the register of security interests (the "Security Register").

Realisation of a Security

A secured creditor (with priority over other secured creditors) may take possession of the collateral when the debtor is in default under the security interest agreement, provided that the creditor has obtained a certificate from the ORG.

Consultation of the Security Register

Third parties may access the content of the Security Register, after introducing themselves to the ORG and paying a fee. They can also obtain a printed copy of the search result.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Having modernised its mining legal framework, Rwanda now seeks to attract investors to explore new areas, conduct large-scale mining operations, and build modern processing facilities in the country. The RMB and the EU have also entered into a partnership to, among other things, digitalise various services (see **3.3 Sustainable Development Initiatives Related to Mining**).

Focus on Exploration, Large-Scale Mining and Processing

In the near future, Rwanda is keen to attract investors to boost exploration, large-scale mining operations and mineral processing in the country.

Exploration

In 2017, Rwanda conducted an airborne survey that revealed more than 50 potential target areas (PTAs). The government and the RMB are now actively seeking to attract investors to pursue exploration efforts with the aim of better assessing the country's mineral resources.

Large-Scale Mining Operations

Over the past decade, Rwanda has significantly modernised its public infrastructure and now boasts modern road, electricity and water supply systems able to support large-scale mining operations. In parallel, the RMB is working with various stakeholders to professionalise and mechanise artisanal mining operations.

Rwanda is also diversifying its mineral portfolio to encompass new resources, like amblygonite, lithium and beryllium, complementing the extraction of the 3Ts, gold, rare earth elements and gemstones, which has formed the backbone of the mining sector over the past decades.

Lastly, the University of Rwanda and Rwanda Polytechnic both propose mining programmes that will prepare graduates for geology, environmental protection and other related earth sciences.

Processing and value-addition

Rwanda's near-future ambition is to become a mineral value-addition hub in the region and to attract investors to set up modern value-addition processing in the country.

Rwanda currently has three processing and valued-addition facilities: the Gasabo Gold Refinery, the Power X Refinery (refining tantalum) and the LuNa smelter (smelting tin).

The RMB is now actively seeking to attract investors wishing to establish other processing plants, in particular for tungsten and lithium, as well as cutting and polishing facilities for gemstones.

Investment incentives

All mining activities related to exploration, processing and value-addition, and export, can benefit from investment incentives under the Investment Law.

Digitalisation and Traceability

Through its partnership with the EU and GIZ, the RMB is working on the digitalisation of various mining services. In particular, the RMB and GIZ developed an online mining cadastre system known as GIMICS (geological information mining cadastre system) that is currently operational and accessible to potential investors.

Moreover, the RMB intends to develop a digital system to improve the traceability of minerals in the near future, in accordance with the OECD guidelines.

Revision of the Mining Legal Framework

The parliament, government and the RMB are revising the mining legal framework to address some loopholes that have been identified over the past few years. The 2024 Mining Law and 2024 Minerals Tax Law have recently been adopted.

Overall, Rwanda's main priorities are to strengthen some investment incentives, and to ensure that LHs comply with health, environmental and safety standards.

Trends and Developments

Contributed by:
Aimery de Schoutheete and Penina Ngabire
Liedekerke Great Lakes

Liedekerke Great Lakes is a business law firm located in Kigali, Rwanda. It is the second subsidiary of Liedekerke in Central Africa. Liedekerke is a premium Belgian full-service business law firm with offices in Brussels, Antwerp, London, Kinshasa and Kigali. It has a strong advisory practice based on sector expertise and in-depth knowledge of Belgian/ European law, Rwandan law, Burundian law, Congolese (DRC) law, and OHADA law. Drawing on over 40 years of experience working on Africa-related matters and the expertise of more than 140 lawyers, Liedekerke offers unparalleled experience and support in, inter alia, Rwanda and Burundi, advising clients on all aspects of cross-border and domestic transactions (corporate, data protection, employment, finance, international dispute resolution, mining, IP/IT, real estate, regulatory and transport). With wide-reaching technical experience of the law and strong local know-how, Liedekerke provides clients with optimal legal solutions and administrative support in the field.

Authors

Aimery de Schoutheete is a partner in the international arbitration and dispute resolution practice of Liedekerke and chairperson of Liedekerke Great Lakes, the firm's subsidiary in Kigali, Rwanda, and Liedekerke DRC, the firm's subsidiary established in Kinshasa, DRC. Aimery assists clients in complex and international litigation and arbitration proceedings, primarily in the areas of natural resources, mining, construction, distribution and corporate disputes. He is regularly appointed as an arbitrator in proceedings before the ICC, CEPANI, the Swiss Centre for International Arbitration and ICSID.

Penina Ngabire is an associate at Liedekerke Great Lakes and a member of the firm's corporate and finance practice. She focuses on all aspects of regulatory, corporate and commercial law, especially in the mining, energy and transport sectors.

Liedekerke Great Lakes

KG 541 St
Kigali
Rwanda

Tel: +25 079 869 5912
Email: info@liedekerke.com
Web: www.liedekerke.com

Rwanda: A Future Mineral Hub in Central Africa?

The Republic of Rwanda is a landlocked country situated in the heart of Africa.

With a modest land area of 26,338 km² and a population of 14.19 million, it is the second most densely populated country in Africa, and current projections estimate that the population will reach around 21 million in 2050. It is hardly surprising, then, that Rwanda is highly import-dependent.

As part of its efforts to contain its growing trade deficit, Rwanda is betting heavily on exploration and mining to boost its exports and reverse the trend.

Rwanda is presented as one of the world's largest producers of the 3Ts (tin, tantalum and tungsten) and exports gold and gemstones. The country also has a variety of minerals such as rare earth elements and lithium.

Rwanda's mining sector has been developing rapidly in recent years. Today, mining is the country's largest export revenue earner, before tourism. Mineral export revenues increased from USD772 million in 2022 to USD1.1 billion in 2023.

Despite significant growth in the past decade, Rwanda's mining sector consists mainly of artisanal and small-scale mining. Similarly, the sector's exports are mainly raw mineral concentrates and not metals.

Rwanda has therefore paved the way over the past decade to attract foreign mining investors. Soon, it is Rwanda's ambition to transform the mining sector into a modern mechanised industry and to become a mineral value-addition hub in the region.

Current Situation: Paving the Way for Foreign Investment

In order to attract foreign mining investors, Rwanda has created the Rwanda Mines, Petroleum and Gas Board (RMB) and developed a modern legal framework. Rwanda also boasts a modern domestic road network and offers several incentives to mining investors, as mining is considered a priority sector.

Modern Legal Framework

In 2024, Rwanda adopted a new mining law governing all mining activities, Law No 072/2024 of 26 June 2024 on mining and quarry operations (the "2024 Mining Law"), which repealed Law No 58/2018 of 13 August 2018 on mining and quarry operations (the "Mining Law"). The 2024 Mining Law continues to be supplemented by

various existing presidential orders, ministerial orders and regulations issued by the RMB.

The 2024 Mining Law and related regulations provide a comprehensive legal framework governing the licensing process and the rights and obligations of licensees.

In addition, and in the same year, Rwanda adopted a new minerals tax law, Law No 056/2024 of 26 June 2024 establishing tax on minerals (the "2024 Minerals Tax Law"), which repealed Law No 55/2013 of 22 August 2013 on Minerals Tax.

Modern Transport Network

Over recent decades, Rwanda has significantly increased the capacity of its domestic road network through infrastructure construction, rehabilitation, upgrading and maintenance.

Rwanda is now poised to improve regional and international connectivity with the aim of facilitating international trade and reducing transport costs. In doing so, the Rwandan government is pursuing two avenues.

Firstly, the government has been planning for years to connect Kigali (the nation's capital) to the Indian Ocean and the nearest seaports by extending two existing railroads: the so-called Northern Corridor connecting Kigali to Mombasa, via Kampala (Uganda) and Nairobi (Kenya); and the "Central Corridor" connecting Kigali with Dar Es Salaam. However, both projects are still under discussion and no official schedule has been announced.

Secondly, the government has embarked on the construction of the new Bugesera International Airport situated 40 km south of Kigali. This USD2 billion project lies at the heart of Rwanda's current development strategy and could also go some way to solving Central Africa's lack of connectivity.

Investment Incentives

In 2021, Rwanda revised its investment law by enacting Law No 006/2021 of 5 February 2021 on investment promotion and facilitation (the "Investment Law").

Pursuant to the Investment Law, mining activities related to exploration, processing and value addition, as well as export, are considered priority economic sectors. Therefore, a company registered in Rwanda carrying out any of these activities can become a registered investor by registering its investment with the Rwanda Development Board (RDB) and can thereby benefit from various incentives.

Tax incentives include a preferential corporate income tax rate or corporate income tax holiday, exemption from capital gains tax and customs duties, VAT exemption on exploration and mining equipment, and accelerated depreciation.

Non-tax incentives include facilitated access to the water and electricity networks, facilitated land acquisition and facilitation with obtaining visas and work permits for foreign workers.

The list of incentives provided in the Investment Law is not exhaustive. Any registered investor may therefore negotiate additional incentives with the authorities, which may decide to grant them, depending on the specific characteristics of the contemplated project.

Rwanda's Near-Future Ambition: To Become a Mineral Value-Addition Hub in the Heart of Africa

To become a mineral value-addition hub in the region, Rwanda has made modernisation of the

mining sector a priority and is counting on foreign investment and know-how to achieve its objective. In parallel, the RMB has entered into a partnership with the EU to boost the digitalisation of its services. It is also worth highlighting Rwanda's commitment to developing its mining sector while preserving the environment, which has been and remains the country's most precious resource and its best ally in the fight against climate change.

Focus on Exploration, Large-Scale Mining and Value-Addition Processing

In 2017, Rwanda conducted an airborne survey that revealed 52 potential target areas (PTAs) for mineral resources. The government and the RMB are now actively seeking to attract investors to pursue exploration efforts with the aim of better assessing these PTAs.

Rwanda is also diversifying its mineral portfolio to encompass new resources such as lithium and beryllium, complementing the extraction of the 3Ts, gold, rare earth elements and gemstones, which have formed the backbone of the mining sector over the past decades.

Rwanda currently has three processing and value-addition facilities: the Gasabo Gold Refinery, the Power X Refinery (refining tantalum), and the LuNa smelter (smelting tin). The RMB is now actively seeking to attract investors wishing to establish other processing plants, in particular for tungsten and lithium, as well as cutting and polishing facilities for gemstones.

Lastly, the University of Rwanda and Rwanda Polytechnic have both proposed mining programmes that will prepare graduates for geology, environmental protection and other related earth sciences.

Digitalisation and Traceability

During the first EU-Rwanda Business Forum in Kigali in June 2023, the RMB and the German development agency (*Deutsche Gesellschaft für Internationale Zusammenarbeit* – GmbH or GIZ) launched the "Sustainable Development of the Mining Sector in Rwanda" project, underscoring their commitment to driving sustainable growth in the country's mining industry.

Through its partnership with the EU and GIZ, the RMB is working on the digitalisation of various mining services. In particular, the RMB and GIZ have developed an online mining cadastre system, known as GIMICS (Geological Information Mining Cadastre System), which is currently operational and accessible to potential investors. Moreover, the RMB intends to develop a digital system to improve the traceability of minerals in the near future, in accordance with the OECD guidelines.

Environmental Protection and the Fight Against Climate Change

Rwanda has also recently revamped its environmental legal framework to better tackle climate change and protect the environment. It has also launched a series of initiatives as part of its "Vision 2050" and its aspiration to be a green, carbon-neutral and climate-resilient country by 2050. These recent developments should contribute to more responsible development of the mining industry, which is set to grow rapidly in the coming years.

Against this background, the relevant laws and regulations impose general and specific obligations to tackle climate change and protect the environment. On the one hand, all administrative entities are required to preserve the environment and prevent the adverse effects of climate change, and all socio-economic sectors (includ-

ing the mining sector) must factor environment and climate change into the development and implementation of their policies, strategies, plans, and programmes. On the other hand, all work related to exploration and mining must undergo a full environmental impact assessment, which closely examines the impact of the project on the environment and must be backed by a plan for the future rehabilitation of the licensed area. After the issuance of the licence, all work related to mining must also undergo an environmental audit (EA) conducted by an independent expert.

The Rwandan authorities have also made it clear that any deviation from environmental rules will not be tolerated. For instance, the RMB announced in November 2023 that it has revoked 13 mining licences (either by cancellation or non-renewal) after inspections revealed serious shortcomings in safety, environmental and labour standards, as well as in fulfilment of investment commitments. The RMB also announced in January 2024 that it had cancelled additional seven mining licences for failure to comply with industry standards.

Revision of the Legal Framework and Centralisation of Services in the One Stop Centre

The RMB started in 2023 and is currently working with stakeholders to strengthen environmental obligations in the mining sector and to address some loopholes that have been identified over the past few years. In this regard, Rwanda's main priority is to ensure that licensees comply with health, environmental and safety standards.

In addition, Rwanda has streamlined administrative procedures for (new) investors. Since 2024, the RDB's One Stop Centre (OSC) became the single point of contact for every mining investor, receiving all administrative requests, from licensing to investment incentives, and co-ordinating with the relevant authorities.

2025–2035: A Decisive Decade for the Rwandan Mining Sector

With a revamped legal framework, modern infrastructures and an investor friendly climate, Rwanda has paved the way for attracting mining investors.

Rwanda now hopes to capitalise on its efforts to radically transform its mining sector, by mechanising and modernising what is presently an artisanal industry, and by increasing the number of value-adding processing plants within its borders.

According to Rwanda's National Strategy for Transformation (NST2) 2024 – 2029, Rwanda expects to grow its mining sector and seeks to double its mining revenues by 2029.

If investors flock to the country in the years to come and the government delivers on its commitments, Rwanda will undoubtedly be able to rely on its mining industry to support its rapid economic growth and restore its trade balance.

SENEGAL

Law and Practice

Contributed by:
Hariliva Andriamahefa and Mampionona Razafimamonjy
John W Ffooks & Co

Contents

John W Ffooks & Co is a leading corporate and commercial law firm providing local counsel advice across French-speaking Africa. The firm's bilingual team of 11 partners and 40 lawyers uniquely combines Napoleonic legal expertise with a common law approach, making it the preferred choice for international transactions in the region. John W Ffooks & Co specialises in supporting inward investors, bridging the gap between Anglo-Saxon business practices and local legal systems derived from the Napoleonic Code. Trusted by global corporations, financial institutions, private equity firms, and government bodies, the firm offers tailored legal solutions, advising on a wide range of commercial legal issues in countries including Benin, Burkina Faso, Cameroon, Chad, Ivory Coast, Mali, Niger, Senegal and Togo. With senior colleagues in every jurisdiction, the firm's partner-led services ensure high-quality advice across all sectors. Leveraging firm-wide expertise, John W Ffooks & Co manages complex transactions efficiently, saving clients time and costs while delivering exceptional legal solutions tailored to their needs.

Authors

Hariliva Andriamahefa specialises in natural resources and mining, providing expert advice on corporate matters and regulatory compliance in Senegal and OHADA member states across Francophone Africa. She has played a key role in guiding major companies with respect to local law for their business operations, particularly in the mining sector. Hariliva's deep understanding of regional legal frameworks ensures tailored solutions that align with clients' strategic objectives while navigating complex regulatory landscapes. Her expertise has proven invaluable for cross-border transactions and mining projects. Fluent in French and English, Hariliva effectively bridges linguistic and legal gaps to support successful ventures in the region.

Mampionona Razafimamonjy brings extensive expertise in natural resources and mining, providing strategic counsel on corporate, commercial and regulatory issues across Madagascar and OHADA member states in Francophone Africa. Her in-depth understanding of local legal systems and the mining sector allows her to guide clients through complex operations and compliance requirements. Mampionona has been pivotal in advising major companies on tailored legal strategies for mining ventures and business activities. Her experience in cross-border transactions helps clients achieve their objectives seamlessly. Fluent in French and English, Mampionona bridges linguistic and legal gaps to support successful projects in the region.

John W Ffooks & Co

3rd Floor, Building Lot 671
Yoff Airport Road
Ngor Extension
Dakar PB 29606
Senegal

Tel: +22 133 825 8482
Email: Senegal@JWFLegal.com
Web: www.jwflegal.com

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Senegal, a growing sector that significantly contributes to the country's economy, is driven by its rich deposits of gold, phosphates, heavy mineral sands (zircon and titanium) and other resources like iron ore. Governed by the Mining Code, the sector provides legal certainty for investors through clear provisions for environmental and community obligations. It leverages environmental impact assessments and development funds to contribute to the progress of local communities located in the areas where mining companies operate.

The principal actors in the mining industry are the state, operating through the administration of mines, and Senegalese mining companies. However, artisanal and small-scale mining is widespread, especially for gold, presenting both opportunities and challenges related to governance and environmental sustainability.

1.2 Legal System and Sources of Mining Law

Senegal's legal system is based on civil law, inherited from the French model. Senegal is also a member of the Organization for the Harmonization of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (OHADA)) and the West African Economic and Monetary Union (WAEMU), which ensures uniformity of the rules applicable in commercial matters with other African member countries. The main sources of mining legislation follow.

The community regulations governing the mining sector are:

- Regulation No 18/2003/CM/UEMOA of 23 December 2003 on the WAEMU Mining Code (the "WAEMU regulation") – this covers all operations related to the exploration, extraction, procession and marketing of mineral substances across the whole territory of the Union; and
- the Economic Community of West African States (ECOWAS), through its Model Law on Mining and Mineral Resources Development and Directive C/DIR 3/05/09 on the harmoni-

sation of guidelines and policies in the mining sector.

Local legislation governing the mining sector includes the following.

- Law No 2016 – 32 of 8 November 2016 on mining (the "Mining Code"): The Mining Code is the main legal instrument governing the exploration, exploitation and management of mineral resources in Senegal, setting out licensing procedures, environmental requirements, fiscal and royalty obligations, and the rights and responsibilities of stakeholders. The Code also includes provisions for state participation and community development to ensure the equitable distribution of resources.
- Law 2023 – 15 of 2 August 2023 on the environment (the "Environmental Code"): The Environmental Code regulates environmental management and sustainability in mining operations, requiring mining companies to conduct environmental impact assessments before starting operations and to comply with measures to prevent environmental degradation.
- Decree No 2017 – 459, setting out the terms and conditions for implementing the Mining Code (the "Decree"): The Decree governs the application of the Mining Code and regulates, among other things, mining research, mining titles and production-sharing agreements.

1.3 Ownership of Mineral Resources

Following the provisions set by Article 3 of the Mining Code, mineral resources are the property of the nation. This implies that all the minerals in the soil, subsoil, territorial waters and continental shelf of Senegal belong to the state. However, companies who have been given the right to mine (through mining titles) can claim ownership of the minerals they extract, as long as they adhere to the terms of their licence and follow the relevant laws. This provision was made to allow the state to keep an eye on natural resources while letting private companies make a profit from the minerals they are allowed to extract (Article 3 of the Mining Code).

1.4 Role of the State in Mining Law and Regulations

Role of the State in the Mining Sector

In Senegal, the state primarily acts as a grantor-regulator rather than an owner-operator in the mining sector. Under the Mining Code, the government – through its ministries – is responsible for granting exploration and exploitation permits and monitoring compliance with mining laws, environmental standards and social obligations. It ensures that mineral resources are developed responsibly while safeguarding public and environmental interests. The state maintains ownership of all mineral resources, as per Article 3 of the Mining Code, but delegates their exploitation to private entities through permits and licences.

Mandatory National or Government Joint Venture, Contracting or Participation

The Mining Code includes provisions for state participation in mining operations. Article 31 allows the state to hold a minimum free equity interest of 10% in mining companies, with the option to negotiate additional stakes up to 25% against a financial reward and on the usual legal terms in place. In this way, the government directly benefits from mining revenues while leaving operational control largely in the hands of private investors.

Furthermore, a mining agreement should be contracted between the state and the investor prior to the issuance of the permit. It sets out the rights and liabilities of the state and the holder of the permit. The mining agreement is valid for

12 years, renewable once for further periods of validity not exceeding ten years.

1.5 Nature of Mineral Rights

Constitutional Basis and Sources of Mineral Rights

Mineral rights in Senegal derive from constitutional principles, local laws and regulations from WAEMU. Amended Law No 2001-03, dated 22 January 2001 and establishing the Constitution of Senegal (the "Constitution"), states in its Article 25-1 that natural resources belong to the people of Senegal. They must be managed and exploited transparently and legally to guarantee future generations' rights. Furthermore, the state is committed, together with the local authorities, to ensure the preservation of land assets. In this regard, it is the source of more specific laws, like the Mining Code, designed to regulate the mining industry. For example, the Mining Code requires all mining activities to have a mining title from the government.

With that said, while mining projects may be governed by contracts (eg, mining conventions), these contracts are subordinate to the Mining Code and do not override the state's ownership of the minerals.

Mineral Rights Status

Under the Senegalese Mining Code, the mineral rights given by a mining title are considered as immovable property held by a mining company and registered in the land register at the request of the Ministry of Mines.

1.6 Granting of Mineral Rights

In Senegal, mineral rights are granted by the government through the Ministry of Mines.

1.7 Mining: Security of Tenure

In Senegal, security of tenure for mining rights is well-regulated under the Mining Code.

Term Length and Renewals

Exploration permits are granted for a maximum of four years, with the possibility of two renewals of three years each, making the total possible duration ten years. A single legal entity cannot hold more than two exploration permits for the same substance.

Regarding the exploitation permits granted for mining activities, they are valid for a period up to 20 years and renewable for successive periods until the deposit is exhausted. These durations ensure that companies have sufficient time to explore and develop mineral resources. The granting of a mining permit leads to the withdrawal of the exploration permit within the mining perimeter.

Right to Progress From Exploration to Mining

The Mining Code guarantees the holder of an exploration permit a priority right to obtain an exploitation permit over the area covered by their exploration activities. This will guarantee a smooth transition from exploration to mining, provided all legal and technical conditions are met.

Maintenance Requirements

To maintain their rights, permit holders must comply with obligations such as paying annual surface rents and mining fees, submitting regular activity reports and commencement of work within legal deadlines. Failure to fulfil these obligations may result in fines or the suspension or cancellation of permits.

Cancellation and Revocation Procedures

Mining rights can only be cancelled for specific reasons, such as non-compliance with legal obligations, failure to meet financial commitments or environmental violations. The state must follow a formal procedure, including issuing a notice to rectify the violation and hearing the permit holder before revoking the rights.

Operating Control and Marketing

Permit holders retain control over mining operations but must comply with regulatory frameworks governing safety, environmental protection, and labour conditions. The marketing of extracted minerals is generally unrestricted, although operators must adhere to export rules and report their sales to the authorities.

Transferability

Mining rights are transferable, subject to prior approval from the Ministry of Mines. The Mining Code provides for the procedure, the information required from both parties and all the documents relating to the purpose of the transaction needed to carry out the transfer.

In the event that the holder of the mining title waives its exploitation permit, or at the expiry of the exploration permit without any request for renewal from the permit holder, full ownership of the rights as well as the quarry will be transferred to the state.

However, renunciation does not release permit holders from the obligations resulting from activities undertaken prior to the effective date of renunciation.

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

2.1 Environmental Protection and Licensing of Mining Projects

Environmental Laws and Regulations

The Environmental Code provides an in-depth description of features such as strategic environmental assessments, initial environmental analyses and mandatory environmental and social impact assessments.

An environmental impact assessment is a precondition for any development project that is likely to harm the environment, and mining projects are no exception. Consequently, projects are classified into two categories based on their environmental impact:

- high-risk projects require comprehensive environmental and social impact assessments; and
- moderate-risk projects undergo initial environmental analyses.

The foregoing process emphasises public participation at all stages, ensuring community involvement and transparency. Approved projects receive renewable environmental compliance certificates that are valid for five years, with periodic environmental audits to ensure ongoing compliance.

2.2 Impact of Environmentally Protected Areas on Mining

Protected Areas

Protected areas in Senegal are areas where exploitations are subject to rules designed to preserve their quality. To ensure a balance between resource extraction and the protection of critical public assets and interests, the Mining

Code establishes the possibility for the Ministry of Mines to designate protected areas where mining activities such as prospecting, exploration and exploitation are strictly prohibited. Additionally, protected areas may be created wherever deemed necessary by the Ministry, such as for preserving ecological integrity, public safety or cultural heritage.

While this safeguards critical assets and promotes sustainable development, it also restricts mining companies' access to certain reserves, potentially reducing their operational scope and profitability. The requirement to avoid said areas increases the need for careful project planning and environmental assessments, which can lead to higher compliance costs and operational adjustments.

2.3 Impact of Community Relations on Mining Projects

The Ministry of Mines in Senegal addresses community relations in relation to mining projects by mandating public consultations and community involvement throughout the project life cycle, as required by the Mining Code and the Environmental Code.

On the one hand, mining companies must conduct environmental and social impact assessments, which include consultations with affected communities to ensure their concerns are addressed.

On the other hand, mining companies are specifically required to contribute to the development of local communities through mechanisms like a local development fund (*fonds de développement local*), funded by mining revenues to support community projects and considering the opinion of local communities and authorities. Additionally, to avoid any potential issue between the community and the mining operators, the Mining Code requires the latter to prioritise Senegalese workers and to promote equal employment opportunities.

2.4 Prior and Informed Consultation on Mining Projects

Informed consultations are required when the investor wants an authorisation to open a public/private quarry, or for artisanal mining exploitation. The responsibility for carrying out these consultations with the relevant authorities and local communities lies with the Ministry of Mines.

2.5 Impact of Specially Protected Communities on Mining Projects

Senegal does not recognise indigenous or traditional people. Under its Constitution, there are no statutes or privileges relating to place of birth, person or family.

2.6 Community Development Agreement for Mining Projects

The Senegalese Mining Code provides for the establishment of a local development fund to ensure that mining projects contribute directly to the socio-economic development of affected communities. Mining companies are required to contribute 0.5% of their turnover to this fund, excluding taxes. The local development fund is used to finance projects that benefit the community and promote sustainable development in mining areas.

The management of the fund is overseen by local authorities and representatives of the affected communities to ensure that it meets their specific needs and priorities.

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

Following the rebranding of *Caisse Nationale de Credit Agricole du Senegal* (CNCAS) to *La Banque Agricole* (the Agricultural Bank), an environmental, social and governance (ESG) policy was adopted in February 2018 and updated in December 2019. The policy is designed to promote sustainable banking activities by seeking to protect the environment and people from the potential negative impacts of financing. The bank encourages borrowers/clients and partners to comply with the safeguard standards of the ESG policy during the preparation and execution of projects and financed activities.

The bank's ESG policy is periodically reviewed with a view to ensuring continued applicability to the bank's activities.

2.8 Illegal Mining

Illegal Mining

Illegal mining is a major problem in Senegal. It generally occurs in artisanal and small-scale operations and overlaps with concessions held by industrial operators, leading to operational conflicts and loss of resources. Furthermore, illegal mining causes environmental degradation, soil erosion and water pollution via chemical agents, making it difficult for industrial companies to comply with the strict environmental standards set by the laws.

The Senegalese government has reacted by setting strong penalties for those who practise illegal mining. In this regard, the Mining Code states that whoever carries out exploration or exploitation of a mine or quarry without authorisation will be punished by imprisonment for a term of up to five years and a fine of up to F.CFA125,000,000 (approximately USD200,000). Illegally extracted mineral substances will be seized by the competent legal authority and confiscated for the benefit of the state or the holder of the mining or quarrying title concerned.

Regarding mining companies, they have reacted by focusing on community involvement, raising awareness among local populations of the negative impacts of illegal mining and offering economic alternatives. For example, co-operation initiatives with local authorities are helping to formalise artisanal mining, while establishing buffer zones to protect their concessions.

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

Good Example of Community Relations/ Consultation

In Senegal, both positive and negative examples of environmental and community relations in mining projects have emerged. An example of effective community engagement in line with the requirements of the Mining Code is when companies work closely with local stakeholders, ensuring transparent consultations and addressing concerns about environmental impacts. Mining companies that provide community jobs or infrastructure as part of their project planning can build trust and support. These efforts are often part of environmental and social management systems, where companies actively involve the community in environmental monitoring and promote mutual benefits.

Bad Example of Community Relations/ Consultation

Some mining projects in Senegal have been the subject of criticism for insufficient consultation and lack of transparency, which has led to tensions with local communities. In such cases, failure to address concerns about water contami-

nation, land rights or employment opportunities has resulted in social issues and conflicts. Some mining companies have been slow to respond to complaints, which has caused further difficulties. The Mining Code and Environmental Code requires that consultation processes are in place and that the voices of impacted communities are heard, but challenges remain in ensuring these are genuinely participatory and not just a formality.

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

3.1 Climate Change Effects

The transparency framework developed by the Senegalese authorities is in progress. To make the national measurement reporting and verification (MRV) system effective, the government has established an online training programme for government officials and relevant stakeholders on the use of the MRV system.

3.2 Climate Change Legislation and Proposals Related to Mining

There is currently no specific legislation relating to climate change or global warming in Senegal. The outstanding laws are the environmental provisions set out in the Mining Code.

3.3 Sustainable Development Initiatives Related to Mining

There are currently no sustainable development initiatives related to climate change or global warming in Senegal. The outstanding laws are those mentioned in the foregoing.

3.4 Energy-Transition Minerals

There are no governmental or legislative initiatives regarding the increasing demand for so-called energy-transition minerals in Senegal.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The tax system for exploration and mining in Senegal is strictly regulated. With this said, fixed fees are generally due upon the granting or renewal of a mining title. Since 2016, the issuance and renewal of a mining exploitation permit in Senegal have been subject to a fixed fee of F.CFA10 million.

On another note, the surface royalty is based on the size of the mining area. In this regard, the holder of a mining permit in Senegal is required to pay an annual surface royalty of F.CFA250,000 per square kilometre.

Additionally, there is a mining royalty that is applied to the value of the extracted mineral, with rates varying depending on the type of mineral. For example, for gold, the royalty rate is 5% of the market value, which is reduced to 3.5% if the gold is refined in Senegal.

It is also noteworthy that the current Tax Code in Senegal does not differentiate between national taxes and those specifically targeting foreign investors. Mining companies operating in Senegal are subject to the standard corporate income tax rate, which has been set at 30% since 2013.

4.2 Tax Incentives for Mining Investors and Projects

According to the explanatory note of the 2016 Mining Code, the incentive approach of the 2003 Code was characterised by a broad range of exemptions. This situation did not promote an equitable distribution of revenues between the investor and the state. Therefore, the adoption of the new Mining Code marked the culmination of the fiscal reform process in Senegal's mining sector.

Regarding tax stabilisation agreements, the relevant laws in Senegal allow the inclusion of stability clauses, which provide guarantees to investors against potential increases in tax burdens. The Senegalese state has committed to ensuring that the taxation applicable to a mining project will remain fixed and consistent with the terms agreed upon at the time of signing the mining convention or granting the exploitation permit. It is important to note that the conditions and duration of such stability are determined within the mining convention itself.

On another note, it should be noted that bilateral double tax treaties can limit taxation. However, it turns out that there is also the provision for denunciation of a tax treaty, where the source state can choose to denounce such treaty. For example, according to the Senegalese government, the country lost USD257 million over 17 years as a result of the tax treaty signed with Mauritius. If the other state party to the treaty refuses to amend or replace it with a new one, the source state may be forced to denounce it unilaterally.

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

The General Tax Code provides for a 5% registration fee for the transfer of mining titles, calculated based on the value of the transaction, to ensure appropriate taxation and regulate the transfer of mining rights. This registration fee is applicable for transfer through corporate structures outside of Senegal.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

As a country endowed with significant mineral resources, Senegal is actively working to promote its mining sector both nationally and regionally. In line with this vision, the government aims to position the mining industry as one of the key drivers of the country's economic growth through an initiative called the "Regional Mining Hub". This project, part of *Plan Sénégal Emergent* (PSE) for the period 2024–28, seeks to establish Senegal as a leading mining service centre in West Africa.

To achieve this, Senegal is committed to implementing a strategic framework designed to make the mining sector more attractive to investors. Alongside the Regional Mining Hub initiative, the government is also advancing several flagship projects, including:

- the effective exploitation of the Falémé iron ore deposit;
- the acceleration of gold and zircon production;
- the development of the phosphate and fertiliser industries; and
- the regulation and promotion of artisanal mining activities.

Senegal offers a wealth of mineral resources within its subsoil, including:

- precious metals (gold and platinum group metals);
- base metals (iron, copper, chrome, nickel);
- industrial minerals (phosphates, industrial limestone, salts, etc);
- heavy minerals (zircon, titanium, etc); and
- ornamental stones and construction materials.

This robust mineral wealth underlines Senegal's ambitious efforts to solidify its position as a regional leader in the mining industry.

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

Senegal has created an investment-friendly climate through a legislative and regulatory framework that is transparent, flexible, competitive and non-discriminatory. This is the only way in which the Senegalese government has been able to attract both domestic and foreign investors.

As it stands, Senegal has a wealth of mining potential, most of which is underexploited. To enhance the value of its mineral resources, the Senegalese government has introduced a mining policy aimed at improving the return on extractive activities, so that investors will invest more in the country. As such, this constitutes a measure that encourages foreign mining investment.

Since Senegal is a member of WAEMU, investors, particularly those holding mining permits, must comply with Central Bank of West African States (*Banque Centrale des Etats de l'Afrique de l'Oues* t (BCEAO)) requirements, in particular the foreign exchange regulations set out in Regulation No 09/2010/CM/UEMOA dated 1 October 2010 on external financial relations and its instructions. To this end, all foreign exchange transactions as well as capital movements – ie, transfers and/or receipts of funds and settlements of any kind with foreign countries, must be carried out through the BCEAO, the administration or a post office; an approved intermediary; or a manual foreign exchange agent.

5.3 International Treaties Related to Exploration and Mining

Senegal is a party to all major United Nations human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). At the regional level, Senegal is a member of the African Union (AU) and ECOWAS. It is also a signatory to the African Charter on Human and Peoples' Rights (the "African Charter").

However, given that any holder of a mining licence or concession is required to sign a comprehensive mining agreement with the state – defining the relationship between the titleholder and the government as well as the general conditions for mineral prospecting or exploitation – the establishment of bilateral or multilateral treaties in the mining sector is also a primary focus of the Senegalese government, given the numerous treaties that they have already signed.

5.4 Sources of Finance for Exploration, Development and Mining

The Senegalese government has implemented a strategy for local participation to maximise the involvement of the population (ie, the people, who are the rightful owners of natural resources according to Article 25.1 of the Senegalese Constitution, which states that "natural resources belong to the people and are used to improve their living conditions") in the management of

mining activities through local financing. Specifically, local participation is defined as "the level of contribution made by Senegalese citizens in the implementation of projects, measured in terms of capital, labor, acquired technology, or goods and equipment provided or sold".

Additionally, the Senegalese government is actively involved in the industrialisation strategy for the period 2021–35, which aligns with the National Strategy for the Development of Local Content (SNDCL) for the mining sector. The purpose of this strategy is to monitor and mobilise funding for major projects impacting the mining sector, in order to regulate the competitiveness of regions, particularly industrial platforms.

On another note, financial support is also available from funders such as the African Development Bank.

However, it is worth noting that accessing finance in Senegal presents some challenges, particularly the limited impact of guarantee funds on the financing of small and medium enterprises (*petites et moyenne enterprises* (PME)).

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

The authority regulating the securities in exploration financing is not yet established in Senegal. However, tax regulations are in place. Income derived from securities is subject to withholding tax in Senegal, with the rate varying depending on the nature of the income. Specifically, dividends from shares, partnership interests and equity stakes in companies are taxed at a rate of 10%, with certain rate caps applicable. Since the 2016 Mining Code, income from securities has not been eligible for any tax exemptions.

5.6 Security over Mining Tenements and Related Assets

In the absence of specific legislation regulating sureties, Senegal, as a member of OHADA, is bound by the provisions of the OHADA Uniform Act dated 15 December 2010 on the organisation of securities, which governs sureties and related matters.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Energy sector growth is one of the key priorities for Senegal in its sustainable and economic development strategy, with the aim of achieving the status of an emerging economy in line with the PSE. Adopted in 2024, the PSE outlines the economic and political framework that will guide Senegal in lifting its population out of poverty by 2035. Additionally, the PSE is implemented through five-year action plans developed by the respective ministers, focusing on three main strategic axes:

- structural transformation of the economy and growth;
- human capital, social protection and sustainable development; and
- governance, institutions, peace and security.

The institutional framework for implementing the PSE consists of a strategic orientation committee, headed by the President of the Republic, a steering committee, chaired by the Prime Minister, and an operational bureau, which is responsible for monitoring the PSE's progress.

Senegal's commitment to combating climate change is closely aligned with its development objectives, given the crucial role played by inter-

national aid in supporting its efforts. The country's climate policy is fully in line with the PSE, which sets out the national priorities for sustainable development.

On another note, industrialisation plays a central role in structural transformation and economic growth, particularly in this third phase of the PSE. This phase will mark the start of a new era of industrial development on a national scale, making full use of the assets and specific skills of each region of the country. The mining sector falls within this industrialisation effort. The ambition of this key initiative is to make the mining sector in Senegal a powerful driver of sustainable economic and social growth.

SWEDEN

Law and Practice

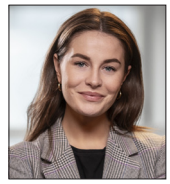
Contributed by:
Peter Dyer and Alexandra Thörnroos
Wåhlin Advokater AB

Contents

Wåhlin Advokater AB is a Swedish full-service business law firm, established in 1964, with offices in Stockholm, Gothenburg and Malmö. In addition to mining, the firm offers a broad range of advisory services, primarily within the construction and real estate, infrastructure, automotive, maritime and transport, IT and technology, life sciences, private equity and public sectors. Wåhlin is the Swedish representative of INTERLAW, a long-established global network of independent law firms comprising more than 8,000 lawyers based in over 150 cities around the world.

Authors

Peter Dyer is a partner at Wåhlin Advokater and has extensive experience in general business law, with a focus on M&A transactions, financing arrangements and joint ventures. He advises several international exploration and mining companies, and has negotiated a wide range of commercial contracts for the mining industry and also regarding infrastructure projects, including power plants, cable construction, railway development and build-operate-transfer projects. Many of his clients are international entities with Swedish subsidiaries or other companies with cross-border projects. Peter also represents clients in major commercial disputes.



Alexandra Thörnroos is a senior associate in the business law group at Wåhlin Advokater. Her primary focus is on corporate law matters, including equity and debt financings, regulatory compliance, restructuring and M&A transactions. She advises several international exploration and mining companies active in the Swedish market.

Wåhlin Advokater AB

Nybrogatan 39
114 39 Stockholm
Sweden

Tel: +46 101 290 000
Fax: +46 317 437 320
Email: info@wahlinlaw.se
Web: www.wahlinlaw.se

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Sweden is the leading mining nation in the EU and accounts for over 90% of the European continent's iron ore, as well as considerable proportions of its lead, zinc, silver, gold and copper. The mining industry is of substantial importance to the country's growth and economy. Since the early 20th century, the mines of Västerbotten and Norrbotten in the north of Sweden, and particularly the iron ore mines in Kiruna and Malmberget, have dominated the Swedish mining and metals industry. The Kiruna mine is the largest underground iron ore mine in the world, while Boliden's Aitik mine, outside Gällivare, is Europe's largest copper mine, and is also Sweden's largest gold producer.

Apart from the traditional mining areas in northern Sweden, the past few years have seen an increased interest in exploring minerals such as vanadium, lithium and cobalt in several different parts of the country. All of these minerals are part of the EU's list of critical raw materials that are needed for batteries, wind turbines and solar panels in the effort to reduce fossil fuel emissions. With some exceptions, these minerals are not mined in Sweden today. However, efforts are underway to improve conditions for the exploration and development of mines through substantial amendments of the current legislation, including a simplified permit process and strengthening of the national interest to extract innovation-critical minerals when weighed against other interests under the environmental laws.

The industry consists of a large mining cluster made up of large and small companies, many of which act as subcontractors to the direct mining industry. Sweden's long history of mining and the size of the industry have led to Sweden also being a leader in mining equipment manufacturing, with Swedish engineering companies accounting for a large share of global underground equipment sales.

1.2 Legal System and Sources of Mining Law

Sweden's legal system is based on civil law. All laws governing the mining industry are national and apply throughout the country, but decisions under the laws are taken by authorities on state, regional and local levels. Any EU legislation relating to the mining industry is also applicable.

The principal law regulating the mining industry is the Minerals Act (1991:45), which governs the entire procedure for obtaining exploration permits as well as mining (exploitation) permits. Its provisions include the conditions for land designation, termination, transfer and fees regarding permits.

The Environmental Code (1998:808) is equally important. The start of any mining operations will require an environmental permit following an environmental impact assessment (EIA). This means that all permits for mining (as opposed to exploration) must be obtained both under the Minerals Act and under the Environmental Code.

On 23 May 2024, the EU regulation on critical raw materials came into force as Swedish law. The purpose of the regulation is to reduce the EU's dependency on imports of the metals and minerals required for essential societal functions and the green transition. It also aims to streamline the permitting processes for both exploration and the opening of mines, and to increase the recycling of raw materials. However, the regulation will not result in any changes to existing environmental requirements, the consul-

tation process for the Sami people or the overall responsibilities for exploration and mining companies.

Other laws that may come into play include:

- the Minerals Ordinance (1992:285), with further details regarding the application process;
- the Planning and Building Act (2010:900), governing any structures to be built on land;
- the Off-road Driving Act (1975:1313), regarding use of vehicles outside of regular roads; and
- the Heritage Conservation Act (1988:950), concerning any archaeological discoveries.

1.3 Ownership of Mineral Resources

Mineral resources in Sweden that are listed in the Minerals Act are the property of the nation and are available for commercial use to anyone who is able to obtain a mining permit. There is no difference between surface and subsurface minerals.

Any minerals not listed in the Minerals Act belong to the landowner. The reasoning behind this legislation is that landowners in general are considered not to have the expertise or capacity to exploit mineral resources on their land. The rules are the same regardless of whether the landowner is a private or public entity or an individual.

1.4 Role of the State in Mining Law and Regulations

The role of the Swedish State is essentially that of grantor and regulator. There is no expectation of participation by the State as explorer or operator, whether through joint ventures, shareholdings or otherwise. The State has, however, retained its historical ownership of 100% of the shares in LKAB, Sweden's foremost iron ore mining company.

1.5 Nature of Mineral Rights

Mineral rights do not have a constitutional basis but derive from law, principally in the form of the Minerals Act. Any commercial entities are free to enter into contracts for joint ventures, earn-in agreements, transfers of permits and other transactions regarding mineral rights. To the extent that such agreements change any circumstances that are subject to existing permits, the parties may need consent from the relevant authority. Mineral rights (ie, permits) have the status of intellectual property in the Swedish legal system.

1.6 Granting of Mineral Rights

The main granting authority is the Mining Inspectorate, which is a national state authority. The Mining Inspectorate will assess all applications for exploration permits and mining permits in Sweden, and also supervises compliance with the Minerals Act (1991:45). The Mining Inspectorate also provides information about legislation and ongoing prospecting and processing for companies, interested parties, authorities, media and the public. The Mining Inspectorate is organised under the Geological Survey of Sweden (SGU) but has independent status in exercising authority. It is headed by the Chief Mining Inspector, who decides on issues in accordance with the Minerals Act.

Decisions by the Inspectorate take the form of formal public authority decisions, which can be appealed to:

- a general administrative court;
- a land and environmental court; or
- the government, depending on the type of decision.

Apart from the fact that any mining operation must also be approved by the relevant regional land and environmental court (see **1.2 Legal System and Sources of Mining Law**), there is no overlap in jurisdiction between state and regional authorities.

1.7 Mining: Security of Tenure

An exploration permit is valid for a period of three years and can be extended for a maximum of 15 years. The conditions for extension depend on the likelihood of finding mineable minerals and the amount of exploration already conducted. For each extension, the conditions tend to become gradually more strict.

The holder of an exploration permit has a preferential right to acquire a mining permit for the area concerned. A mining permit will be granted if the applicant can show that the mineral deposit provides a sufficient probability of profitable mining, and provided that the location and nature of the deposit do not render it inappropriate to grant the permit for other reasons.

A mining permit gives the holder the right to exploit a mineral deposit for a period of 25 years. It can be extended for ten years at a time if work is performed on a regular basis in the stipulated area. If work is not performed on a regular basis in the area, the concession can still be extended for an additional period of ten years under certain circumstances – eg, if the mining operation can still be considered active or if it is otherwise motivated by the common interest that the mineral findings should continue to be exploited.

Environmental permits may be time limited or valid for an unlimited time. However, even if unlimited, the environmental permit will be linked to the restrictions of the parallel mining permit under the Minerals Act.

Both exploration permits and mining permits can be transferred to another party after approval by the Mining Inspectorate. Such permission can be granted if the intended new permit holder meets the conditions set forth in the Minerals Act. The transfer of an environmental permit is also possible, provided that the new holder is taking over the permitted operation.

The Mining Inspectorate has the power to revoke any exploration permit or mining permit if the holder fails to fulfil their obligations under the Minerals Act or the terms specified in the exploration permit or mining permit, or if there are other exceptional reasons. In the latter case, the permit holder is entitled to compensation from the State for the loss suffered.

The terms of a mining permit can be changed by the Mining Inspectorate if an operation under the permit leads to considerable negative effects that were not anticipated when the permit was granted. The Environmental Code also provides the possibility to change the conditions of an environmental permit or to revoke the environmental permit, in whole or in part. Valid reasons for this would be either considerable breach of the terms of the permit or unforeseen consequences of a severe nature. A change process can be initiated by several governmental authorities.

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

2.1 Environmental Protection and Licensing of Mining Projects

The development of a mining project in Sweden is always subject to approval by a regional Land and Environment Court, which rules according

to the main environmental law in Sweden: the Environmental Code. The same rules in the Code apply to mines as to any other operation that has an impact on the environment. In respect of a mining operation, the Land and Environment Court will examine the health and environmental effects of a mine and the protective measures to be put in place if the permit is granted. The court will also decide on the conditions for noise levels, damming, dumping, limiting emissions and so on. An EIA must always be submitted in the application process.

The first step in acquiring an environmental permit for mining is the consultation process. This takes place between the applicant and those parties that may be environmentally affected by the mining operations, as well as public and private agencies and organisations concerned with environmental issues, such as the Environmental Protection Agency (*Naturvårdsverket*). The purpose is to allow all concerned parties to be heard and have their interests considered when preparing the EIA.

When the consultation and the EIA have been completed, the applicant may proceed and submit to the Land and Environmental Court, which will assess whether the information presented in the consultation and the EIA is sufficiently detailed to proceed with a ruling or if further particulars are required. As the case proceeds, other affected parties are allowed to file additional information relating to the application. The complete information will then be sent to all parties for review and comments. The applicant will have the opportunity to address any comments made during the consultation process. The complete process for obtaining a permit under the Environmental Code usually takes three to five years, depending on the size of the operation and where it is to be carried out.

If exploration work could have a significant impact on the environment, this will also necessitate certain investigations of the environmental aspects according to the Environmental Code. The Mining Inspectorate also hears applications for both exploration permits and mining permits in consultation with the County Administrative Board, which conducts its own examination of whether the site is acceptable from an environmental point of view and not just under the Minerals Act.

Overall, the County Administrative Board plays an important role in the examination of mining operations. Apart from acting as a referral body, it issues special permits for some exploration work, such as for driving off-road. The Environmental Permit Office of the County Administrative Board decides on test mining permits. The County Administrative Board and the local municipality's Environment Health Board are supervisory authorities regarding permit holders' compliance with the environmental conditions.

2.2 Impact of Environmentally Protected Areas on Mining

Natura 2000

Natura 2000 is a network of core breeding and resting sites for rare and threatened species, and some rare natural habitat types that are protected in their own right. It stretches across all 27 EU countries, both on land and at sea. The aim of the network is to ensure the long-term survival of Europe's most valuable and threatened species and habitats, listed under both the Birds Directive (2009/147/EC) and the Habitats Directive (Council Directive 92/43/EEC). Under the Environmental Code, if an intended operation is located near or within a Natura 2000 area, the applicant must demonstrate that the activity will not affect the environment in a significant way. The Land and Environmental Court tends

to take a strict view on matters affecting Natura 2000 areas.

Environmental and other considerations also dictate that mining operations are normally not permitted in locations that are:

- part of local or regional plans under the Planning and Building Act;
- within 200 metres of inhabited buildings;
- within 200 metres of public buildings, hotels, churches and comparable establishments;
- in certain parts of the Swedish mountains;
- within areas of military interest;
- sites of electric power stations and industrial plants; and
- in churchyards and burial grounds.

No exploration is allowed in national parks or in any area that has been reserved for a national park according to a governmental request.

Since a legislative amendment came into force on 1 July 2024, it is no longer a requirement to have a Natura 2000 permit in order for an exploitation concession to be granted. The matter of a Natura 2000 permit is instead examined within the framework of the environmental permitting process. This change has been made to streamline the concession process while ensuring that the EU law requirements for a complete, accurate and final assessment of the impact on habitats or species in a Natura 2000 area are met.

2.3 Impact of Community Relations on Mining Projects

During the application for an environmental permit, there are opportunities for all affected parties (ie, members of the public, organisations, local councils and authorities) to put forward opinions regarding the application. There is also a right to appeal. Following publication of the terms of an environmental permit, there is also an opportunity for other affected parties to suggest further conditions. Such conditions are typically aimed at limiting the environmental impact and disruption to the public and residents in the area, in the form of noise, dust and vibrations.

2.4 Prior and Informed Consultation on Mining Projects

Prior and informed consultation is a mandatory part of the process to obtain an environmental permit. The consultation must be carried out by the applicant in order for the application to proceed. All affected parties shall have the opportunity to express their opinions on a mining application.

In the case of exploration permits, consultation according to the Environmental Code is normally not required, unless the application concerns unexploited mountainous areas or unless the intended exploration may substantially affect the natural environment (eg, by way of new roads, logging or extensive drilling). However, the Minerals Act still requires an application for an exploration permit to be notified to all real estate owners concerned and other known affected parties, as well as the County Administrative Board and the local municipality. If the intended exploration area is used for reindeer husbandry, notification is also required to the indigenous Sami people, who have a right to object.

2.5 Impact of Specially Protected Communities on Mining Projects

Because of the concentration of mining operations in the northern parts of Sweden, the impact on the indigenous Sami people is of particular importance, particularly with regard to the reindeer industry. The reindeer industry operates over large areas and is therefore affected by several different operations that occupy large

land areas, including mines, forestry, wind power and tourism. The Sami are one of the world's indigenous peoples and one of Sweden's official national minorities. Their minority status means that they have special rights and that their culture, traditions and languages are protected by law.

Both the Minerals Act and the Environmental code provide that holders of rights to the affected land must be notified and/or consulted during the processing of exploration permits, mining permits and environmental permits. This means the Sami may have the power to argue, contest or appeal permit applications at different stages. If mining rights affect the Sami's reindeer herding, compensation will have to be paid.

2.6 Community Development Agreement for Mining Projects

Sweden's dominating iron ore mining company – LKAB, which operates in Kiruna and in Malmberget in northern Sweden – has entered into several development agreements with the Kiruna municipality. This has been necessitated by the unprecedented urban transformation currently underway due to the effects of LKAB's mining on the local community. A series of "Mine City Park agreements" has made it possible for LKAB to continue mining the iron ore that slopes in under the current Kiruna city centre. In addition, a substantial part of the entire city is being moved several kilometres to the east, in a project that is being paid for by LKAB.

The LKAB–Kiruna development agreements represent a very special case because of the unique circumstances in LKAB's areas of operation. Community development agreements are not a common feature of the Swedish mining industry.

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

In 2017, Sweden's *Riksdag* (parliament) introduced a climate policy framework with a new Climate Act (2017:720). The Act establishes that:

- the government's climate policy must be based on the climate goals;
- the government is required to present a climate report every year;
- the government is required to draw up a climate policy action plan every four years, to describe how the climate goals are to be achieved; and
- climate policy goals and budget policy goals must work together.

The action plan includes a review of all relevant legislation and further measures in emissions sectors. There is a particular focus on the transport sector, which is likely to have an impact on the mining industry.

2.8 Illegal Mining

There are no known instances of illegal mining in Sweden.

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

Good Example

A prime example of good community relations and consultation around a mining project is iron ore producer LKAB's very long-term and extensive co-operation with the municipality of Kiruna in the north of Sweden (see **2.6 Community Development Agreement for Mining Projects**). The community is dependent on LKAB for jobs and investment, while at the same time LKAB needs the community to provide infrastructure, homes and services for its workforce. The local

municipality and LKAB have entered into a number of agreements for the development of the community, particularly as a consequence of the expansion of the mining area, which has led to large-scale moving and reconstruction of public and private buildings in Kiruna.

Bad Example

In contrast, one of the most contentious mining projects in Sweden in recent times is the Kallak project in the far north of the country. A UK mining company, Beowulf Mining, has found at least 600 million tonnes of iron ore in the area and has been pressing for a mining permit in the face of fierce opposition. Plans for the mine have been opposed by the indigenous Sami people, who have the backing of UN rights experts and the UN cultural organisation UNESCO, as well as climate change activist Greta Thunberg. A UN spokesman issued a public statement expressing great concern about "the lack of good-faith consultations and the failure to obtain the free, prior and informed consent of the Sami, and over the significant and irreversible risks that the (Kallak) project poses to Sami lands, resources, culture and livelihoods".

In the summer of 2019, more than 1,000 people got together in a tent camp in Kallak to protest in solidarity with the Sami people. Nevertheless, in March 2022 the Swedish government gave a qualified green light to Beowulf to proceed with its plans for an iron ore mine. This enabled Beowulf to start economic and environmental studies and apply to an environmental court to start processing ore, but it will have to meet a range of environmental and other conditions that the government attached to its approval.

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

3.1 Climate Change Effects

In 2018, Svemin (the Swedish Association of Mines, Mineral and Metal Producers) presented a Road Map for a Competitive and Fossil-free Mining and Mineral Industry, in collaboration with the Research Institutes of Sweden (RISE) and Fossil Free Sweden. The targets in the road map include fossil-free mining in 2035 and climate-neutral processing and completely fossil-free energy use in 2045. To implement the roadmap, the industry is working on:

- increased electrification;
- switching to biofuel in a transitional phase where electricity cannot yet be used;
- further automation and digitalisation for more efficient vehicles; and
- technological development in processing – eg, using hydrogen and carbon capture and storage (CCS).

Svemin is co-ordinating the process of implementing the roadmap, and it is reported that several mining companies have drawn on it to produce roadmaps of their own.

3.2 Climate Change Legislation and Proposals Related to Mining

No climate change legislation specific to mining has yet been passed in Sweden. The Climate Policy Framework of 2017, which introduced the Climate Act, includes a review of all relevant legislation in emissions sectors. One of the sectors to be analysed is the transport sector, which is closely related to and is likely to impact the mining industry. In the meantime, climate change initiatives directly related to mining are being pushed forward by industry organisations such

as Svemin, with its Road Map for a Competitive and Fossil-free Mining and Mineral Industry (see **3.1 Climate Change Effects**).

Currently, efforts are being made to develop a global, consolidated mining standard for sustainability (Consolidated Mining Standard Initiative). The standards being considered for inclusion are:

- Towards Sustainable Mining (TSM);
- International Council on Mining and Metals (ICMM);
- the Copper Mark; and
- Gold Standard.

The first version of the consolidated standard has been issued for public consultation, and Svemin is preparing a response on behalf of the industry. The goal is to address all relevant sustainability issues within the mining sector, organised into categories, including governance and management, working conditions, environmental impact, climate, stakeholder relations and legal matters. Another aim is to establish a standard that is applicable to all types of mines and regions globally.

3.3 Sustainable Development Initiatives Related to Mining

Svemin has developed a roadmap detailing how increased consideration for biological diversity can also be profitable, called Mining with Nature. The goal is for the mining industry to contribute to increased biodiversity in all the regions where mining and mineral activities and exploration are ongoing by 2030.

Svemin has also introduced the TraceMet project, which investigates the possibility of tracing certified and sustainably broken metals. The project uses the following criteria:

- carbon footprint; and
- quantity of recycled material.

Another project is "Swedish Mining and Minerals Industry in a Sustainable Future", which is a collaborative project between Svemin and the Stockholm Environment Institute (SEI). The project examines the mining industry's conditions for contributing to sustainable societal development based on different future scenarios.

3.4 Energy-Transition Minerals

The Swedish bedrock contains about half of the critical raw materials listed by the EU as being needed for batteries, wind turbines, solar panels and other products in the renewable energy industry. Today, however, there is no mining of these metals and minerals in Sweden, widely attributed to the lengthy and inefficient permitting process. The situation has caused Sweden to drop in the international rankings of attractiveness for prospecting, even though it is one of the only countries in Europe where the geological conditions make it possible to contribute to reducing Europe's dependence on imports.

In 2013, the government published a Mineral Strategy identifying the need for a clearer and more effective regulatory framework, including follow-up and evaluation of performed initiatives to shorten environmental permitting lead-times. Since then, the problem has been discussed in numerous reports, and the continuing problems with permitting lead-times have been increasingly criticised by the industry.

On 11 March 2021, the government decided to appoint a public inquiry to review and report on permitting laws and procedures, with the aim of ensuring a sustainable supply of innovation-critical metals and minerals from primary and secondary sources. The inquiry published its

findings on 31 October 2022, recommending substantial amendments to the Minerals Act, the Environmental Code and other laws aimed at the following, among other things:

- increasing local community acceptance through better information and dialogue at an early stage and through benefit sharing using central government funds;
- improving conditions for exploration through a simplified permit process and by extending the maximum exploration permit term from 15 to 17 years;
- improving access to information about the permit process by boosting the role of the Geological Survey of Sweden into a one-stop shop and by developing new digital tools for applicants; and
- strengthening the importance of innovation-critical metals and minerals in relation to other interests in the Environmental Code and underlining that both the deposits themselves and their extraction are national interests.

The first recommendations from the inquiry were transformed into new regulations in November 2023, when the government introduced a general exemption for exploration work in respect of the restrictions in the Off-road Driving Act (1975:1313) and abolished the need under the Environmental Assessment Ordinance (2013:251) to notify the local municipality of deep drilling activities that are within the scope of an exploration permit.

The new regulations entered into force on 1 January 2024. Further legislative proposals are expected as a result of the inquiry.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Anyone operating an active mine must pay a state mineral fee of 0.2% of the average value of the minerals mined. The revenue is then split between the landowner(s) and the State, with landowners receiving 0.15% and the State receiving 0.05%.

Exploration permits are subject to an application fee of SEK500 for every 2,000 hectares, payable to the Mining Inspectorate. If permission is granted, another SEK20 for each hectare has to be paid for the first three years. An application for a mining permit carries a fee of SEK80,000 for each area the application concerns. There is an additional fee for the designation of land proceedings.

There is no distinction between national and foreign investors in relation to these fees.

4.2 Tax Incentives for Mining Investors and Projects

Sweden does not offer any tax incentives for mining investors. All exploration and mining companies are subject to the standard corporate income tax, currently 20.6%.

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

There is no transfer tax related to the sale of mining projects. The disposition of a project may result in a capital gain and, if so, will be subject to tax on that gain. For a Swedish limited liability company, all income – whether capital gain or otherwise – is taxed as business income at a flat rate corporate income tax (20.6%).

If the transfer of a project happens entirely through corporate structures outside of Sweden, no capital gains tax will be payable in Sweden.

Stamp duty is always payable by the buyer of real estate, regardless of the buyer's tax domicile. For legal persons, the duty is 4.25%.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

After having ranked consistently highly in world mining surveys for investment attractiveness, Sweden started plunging down the list of the Fraser Institute's Annual Survey of Mining Companies after 2016, attributed largely to the lengthy and inefficient permitting process. It is hoped that the substantial amendments to the Minerals Act and the Environmental Code that are now being suggested will address the situation and allow Sweden to regain its position among the world's top mining nations.

Sweden has vast deposits of minerals and metals, and a track record of mineral discoveries in numerous commodities. The country has political stability with a strong rule of law, a high concentration of professionals to service the mining industry, low corporate tax and well-functioning capital and private equity markets. These are factors that contribute to attracting considerable investment in the Swedish mining industry.

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

A new Foreign Direct Investment Screening Act (2023:560) (FDI Act) came into force on 1 December 2023 and applies to certain designated sensitive sectors of Swedish industry, one of which is the exploration and mining of strategic minerals. The purpose of the FDI Act is to prevent foreign direct investments that may harm national security, public order or public safety. The FDI Act will apply to investments that result in the investor acquiring (directly or indirectly):

- voting rights equal to or exceeding 10%, 20%, 30%, 50%, 65% or 90% in a target company performing activities eligible for protection;
- influence over the management of such target company through other means; or
- assets or business eligible for protection.

No turnover or deal value thresholds apply. Specific thresholds apply to investments in other legal entities (eg, limited partnerships) and to greenfield investments. Investors from all countries are covered by the screening mechanism (including investors from Sweden and other EU member states). However, only investments made by an investor from a country outside the EU may be subject to a substantive examination by the screening authority and a decision to prohibit the investment or to impose conditions.

The potential investor is responsible for filing the transaction with the screening authority. There is no filing fee. The authority then has 25 working days from receipt of a complete notification to initiate an examination. If no action is taken, the transaction is deemed to be accepted. If the authority decides to examine the investment, it has to make a final decision within three months after the decision to initiate the examination. If there are special grounds, this deadline may be extended to six months.

5.3 International Treaties Related to Exploration and Mining

Sweden is not party to any particular treaties related to exploration and mining. There have

been calls for Sweden to ratify the Indigenous and Tribal Peoples Convention (ILO 169) and to amend the Minerals Act to give more weight to the Sami people's interests. Sweden has chosen not to ratify this treaty, but a current legislative proposal aims to increase local community acceptance in general through better information and dialogue at an early stage, and through benefit sharing using central government funds.

5.4 Sources of Finance for Exploration, Development and Mining

For exploration projects, the main sources of financing are the equity markets (public or private equity placements) and earn-in/joint venture transactions. A typical version of the latter is where a smaller company controlling a portfolio of exploration permits extends an option to a more senior company for it to earn an equal or majority interest in the project in exchange for expending funds in exploration, according to an agreed schedule. The smaller company will typically not be required to contribute funds until the senior company earns its controlling interest, following which (unless either party makes an exit) both parties contribute to the project in proportion to their interests. A joint venture will then be formed between the companies.

For projects developing into actual mining, traditional bank loans and project financing will become more available. In the case of project financing, a package of security will be created, typically comprising the shares in the project entity (which in turn includes the permits), floating charges in the business operation, and charges over any real estate and over machinery and equipment.

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

The largest Swedish mining operators are listed on the Stockholm Stock Exchange (Nasdaq OMX Nordic Stockholm). Several international exploration and mining companies active in Sweden are listed on the Toronto Stock Exchange, while other companies have listings in London, Sydney or Hong Kong. This means that the international securities markets play an important role in the financing of Swedish exploration and mining.

5.6 Security over Mining Tenements and Related Assets

Security cannot be obtained directly in exploration permits or mining permits. It is not possible to register a charge, pledge or other third-party interest over the permit. However, permits will normally be held by a limited liability company, which can be subject to a pledge of its shares in favour of the lender and a floating charge in its business. Any real estate held can always be mortgaged as security. Mining machinery can be pledged individually in accordance with a special registration procedure.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The increasing focus on critical minerals has led to a surge in exploration permit applications in Sweden. In the past 18 months, the Mining Inspectorate has granted some 335 exploration permits, which is almost as many as the total number granted in the years 2019–2022. Applicants are both Swedish and international companies. Many applications are for rare earth metals, while others are for minerals such as cobalt, graphite or lithium – all on the EU's criti-

cal minerals and metals list and all necessary for the production of electric cars, solar panels, battery parks and other assets needed for the green transition. With its vast deposits of minerals and metals critical for innovation and with the greatly heightened European interest in such deposits, Sweden is set to play an important role in the ongoing climate transition and the efforts of the EU to reduce its dependency on imported critical minerals.

Another development is the renewed prospect of uranium mining in Sweden. The exploration of uranium was outlawed by a centre-left coalition government in 2018 on the grounds of environmental and health concerns, but the current nuclear-friendly conservative-led government has repeatedly stated its intention to lift the ban on uranium prospecting and mining. More than a quarter of Europe's known uranium resources are found in Sweden's bedrock. Uranium often occurs together with other metals and currently needs to be separated and managed as waste. The current government wants to enable the utilisation of uranium and has on December 20, 2024 published the findings of a public inquiry which has examined what regulatory changes are needed to allow uranium extraction in Sweden going forward. The resulting proposals include amending the Environmental code (1988:808) and the Minerals Act (1991:45) so as to lift the prohibition and once again recognise uranium as a legal mineral for prospecting and mining. The inquiry's report has now been referred to expert bodies for comment. The changes are proposed to come into effect on January 1, 2026. Market expectations have led to increased exploration activity related to polymetallic deposits that include uranium. Interest in Swedish uranium is expected to grow further when the government proceeds to propose a formal bill to introduce the amendments.

TIMOR-LESTE

Law and Practice

Contributed by:
João Afonso Fialho, Tomás Cabral Anunciação and Teófilo de Jesus
VdA

Contents

VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading professional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in Timor-Leste and all Portuguese-speaking African countries.

Authors

João Afonso Fialho joined VdA in 2015. He is a partner and head of the oil and gas and natural resources practice. In the last 25 years, João has been involved in a variety of natural resources projects and transactions in jurisdictions such as Timor-Leste, Mozambique, Angola, Sao Tome and Principe, Portugal, Republic of Congo, the DRC and Guinea Bissau. In the mining sector, João has advised foreign investors in the negotiation of exploration and mining agreements, JV agreements, legal due diligences, farm-in and farm-out agreements, royalties and streaming agreements, etc. João has also advised state entities and international mining companies in the drafting and discussion of legal statutes and ancillary regulations.

Tomás Cabral Anunciação worked at VdA in 2022 as an associate in the public law area of practice, where he was actively involved in several transactions. He rejoined VdA in 2023 as local director of the firm's office in Timor-Leste and has been admitted to the Timor-Leste Bar Association. He has a law degree from the University of Lisbon Law School and a master's in law from the Catholic University of Lisbon Law School. He also attended the Professional Development Programme for Lawyers at the IE Business School in Madrid, Spain. Tomás is also a Professor of Comparative and Administrative Law at the National University of Timor Lorosa'e.

Teófilo de Jesus joined VdA in 2018 and works as an international adviser at the firm's Dili office. He assists VdA's main clients and stakeholders, operating in the natural resources, energy, banking and telecommunications sectors. He also assists foreign investors in all matters relevant to their activity in the country. Given his Tetum language skills, Teófilo is an indispensable member of VdA's operation in Timor-Leste. He is currently preparing for his admission to the Timor-Leste Bar Association.

VdA

Rua Dom Luís I 28
1200-151
Lisboa
Portugal

Tel: 351 21 311 3400
Email: vieiradealmeida@vda.pt
Web: www.vda.pt/en

VIEIRA DE ALMEIDA

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Most of Timor-Leste's mineral resources remain unexplored. According to the Atlas of Mineral Resources of the ESCAP Region published by the United Nations Economic and Social Commission for Asia and the Pacific, the target minerals in the country are chromite, copper, copper-gold, gold and silver manganese, as well as some non-metallic minerals such as bentonite, limestone, marble and phosphate. The country also has battery mineral reserves such as chromium, cobalt and nickel.

Notwithstanding the huge potential of Timor-Leste's mineral resources, the country's mining industry is still at an early phase of development (on an industrial scale).

The government is focused on attracting and developing investment in the sector, which contributes to the creation of jobs, improvement in the living conditions of the population, an increase in the country's tax revenues and diversification of the economy, reducing its dependency on the oil and gas industry.

Acknowledging the potential economic value of the existing mineral resources in Timor-Leste, the government decided to launch a public tender in March 2023 for the award of mineral rights over 49 concession areas for the exploration and mining of metallic minerals, gemstones, industrial minerals, radioactive minerals, rare earths and coal.

In November 2023, the government awarded licences to prospect and research 13 mining areas to four companies, Estrella Resources, Peak Everest Mining, Iron Fortune and Beacon Minerals.

Moreover, between 2023 and 2024, the government enacted legal frameworks with an impact on the mining sector, which included:

- the creation of a regulatory authority exclusively dedicated to the mining sector, the National Authority of Mineral Resources or ANM (which is the result of a split from the former Petroleum and Mineral Resources National Authority or ANPM);
- the legal redefinition of the state-owned mining company Murak Rai Timor, EP; and
- the legal regime for classifying and marketing strategic minerals.

1.2 Legal System and Sources of Mining Law

Timor-Leste has a civil law legal system.

The main sources of mining legislation in Timor-Leste are the Timorese Constitution and the Mining Code (approved by Law 12/2021, of 30 June 2021).

The Mining Code is the main legal instrument in the sector, governing the award and exercise of mineral rights, from exploration to processing and marketing of all types of minerals. Sections of the environmental licensing process and the tax regime are also applicable to the mining industry. The approval of the Regulations to the Mining Code (including rules for the classification of minerals, management and use of the mine closure reserve, health and safety in mining operations, administrative offences and investigation procedures in mining operations, etc) is still under review by the government, with approval pending.

1.3 Ownership of Mineral Resources

In accordance with the Timorese Constitution and the Mining Code, the Timorese State is the

owner of all mineral resources, and the terms and conditions for the award to, and exercise by, third parties of exploration and mining rights are established in the Mining Code. Mineral rights may be granted to private entities as well as to the national mining company (Murak Rai Timor, EP).

The Mining Code expressly states that the holder of mineral rights is the owner of all minerals extracted and produced in accordance with the Mining Code. Minerals that are unlawfully extracted remain the property of the state. If mineral resources are found in privately held areas, the state may acquire the area through direct negotiation with the owner, or expropriation (where there is properly justified public interest, and subject to the expropriation being carried out in a non-discriminatory manner in accordance with the law and subject to the payment of fair compensation).

1.4 Role of the State in Mining Law and Regulations

As the original owner of all mineral resources in Timor-Leste, the state acts as a grantor-regulator of mineral rights and is responsible for awarding mineral rights and overseeing how mineral activities are conducted.

The participation of the Timorese State in mining activities is expressly foreseen in the Mining Code, with the state either acting on its own whenever this is deemed strategic by the Council of Ministers and following a recommendation issued by the National Authority of Mineral Resources, or in co-operation with private parties, up to a maximum amount of 30% of participating interest.

1.5 Nature of Mineral Rights

The Timorese mineral regime may be described as a contractual system, with the operational and economic terms and conditions found under the mineral agreements/licences executed prior to and for the exercise of mineral rights.

The award of a mineral right provides an exclusive right to access and conduct mineral activities, with the holders of the mining rights being the owners of all minerals extracted and produced, in accordance with the Mining Code.

The holders of mineral rights do not acquire property rights over the concession areas.

1.6 Granting of Mineral Rights

The award of mining rights in Timor-Leste is made by means of direct award or public tender (on a first come, first served basis). The relevant awards procedure and awarding entity will be determined based on the type of mineral and the industrial/artisanal nature of the operations.

Direct Awards

On the recommendation of the National Authority of Mineral Resources, the member of government responsible for the mineral resources sector may decide not to launch a public tender procedure and may directly award mineral rights in the following cases:

- where the area is considered as a new area delimitation with insufficient information and data;
- where no bids were received in a previous public tender;
- where there are health, safety and environmental risks associated with the mining area;
- where the minerals are regarded as strategic;
- where the National Mining Company is being awarded the mineral rights; or

- where mineral passes (for artisanal mining) are being awarded.

Mineral resources may be classified as strategic by the Council of Ministers on any of the following grounds:

- economic importance;
- energy security;
- balance of the country's commercial trade;
- rarity;
- national defence and security; and
- growth support of domestic manufacturing industries.

Public Tender

According to the Mining Code, the procedure for the award of mineral rights is as follows:

- Reconnaissance authorisation must be requested from the National Authority of Mineral Resources.
- A natural or legal person is then required to apply for an exploration and appraisal licence. An exploration and reconnaissance licence may then be granted, provided that it has been previously approved by the Council of Ministers (or by the Ministry of Petroleum and Mineral Resources, as applicable).
- The award of a mining licence is granted through a mining agreement (previously approved by the Council of Ministers) between the third party and the National Authority of Mineral Resources, in which the operational and economic terms and conditions of the agreement are defined. The operation and mining licence is issued by the National Authority of Mineral Resources (subject to previous authorisation by the Ministry of Petroleum and Mineral Resources).
- Mineral permits for the exploration and mining of construction materials or ornamental stones are awarded by the Ministry of Petroleum and Mineral Resources (upon proposal by the National Authority of Mineral Resources), except where the applicant intends to export the construction materials produced, in which case, the Council of Ministers must also be consulted.
- Mineral permits for the exploration and mining of transformation minerals are awarded by the Ministry of Petroleum and Mineral Resources upon consultation with the Council of Ministers.
- Mineral passes for artisanal mining are issued by the Ministry of Petroleum and Mineral Resources and/or the National Authority of Mineral Resources (with delegated powers).
- Marketing licences are issued by the National Authority of Mineral Resources, following a request by an interested party who is not the holder of the mining licence.

1.7 Mining: Security of Tenure

Award of Mineral Rights and Progress From Exploration to Mining

Mineral rights can be awarded by means of public tender or by direct award.

According to the Mining Code, mineral activities are exercised in four stages:

- reconnaissance (optional phase);
- exploration and appraisal;
- mining; and
- marketing.

The rights and obligations of the holders of mining rights are set out in the Mining Code and further developed in the relevant mineral contracts (where applicable).

To develop exploration and appraisal activities, a natural or legal person is required to apply

for an exploration and appraisal licence. While transiting to the mining stage, the relevant holder of exploration rights must apply for a mining licence by submitting a mining plan (including a technical, economic and financial feasibility study) for approval. Only in cases of manifest technical and financial incapacity, or by the decision of the holder of exploration and appraisal rights, are the mining rights not awarded to the entity that carried out the exploration works.

Holders of mineral rights are entitled to sell minerals obtained as a result of mining activities, developed in accordance with the relevant mineral contract or licence. Unprocessed minerals may only be exported if:

- the domestic industry is not capable of absorbing the unprocessed minerals;
- from a technical and economic point of view, the processing of the minerals in Timorese territory is not justifiable; and
- the exported minerals are classified as strategic minerals (exportation being subject to previous approval by the competent body).

The sale of minerals by a third party (namely, not the holder of the mining rights) is subject to the issuance of a marketing licence.

Duration of Mineral Rights and Extensions

An exploration and appraisal licence has a maximum duration of four years, but it may be extended by successive two-year periods up to a maximum of an additional six years. Mining rights can be awarded for a maximum of 25 years, which may be extended by successive five-year periods up to a maximum of an additional 25 years.

Different rules apply to artisanal mining and the exploration and mining of construction materials.

Transfer of Mining Rights and Change of Control

Assignment, sale or any type of transfer of a mining right is subject to written consent by the Ministry of Petroleum and Mineral Resources or by the National Authority of Mineral Resources, as applicable. Transfer of a dominant interest or participation in a company that holds mining rights is also subject to written consent by the Ministry of Petroleum and Mineral Resources or by the National Authority of Mineral Resources, as applicable, following a written notice sent by the interested shareholder to the National Authority of Mineral Resources. This written notice must contain the identification details of the assignee or transferee and the terms and conditions of the transaction.

Termination

Mineral rights may be terminated early by the Timorese State if:

- there is a serious breach by the holder of the mineral rights of the legal or contractual obligations arising from the mineral contract;
- the holder of the mineral rights fails to comply with the statutory requirements related to the award of the relevant licence;
- a series of environmental damages occurs as a result of the mining activities, and such damages are attributable to intent or gross negligence on the part of the holder of the mineral rights;
- the holder of the mineral rights fails to comply with the obligation of restoring an area impacted by mining activities, in breach of the applicable environmental quality standards;

- there is proof of tax debts for two consecutive fiscal years during the mining phase;
- the holder of the mineral rights intentionally provides false information to any government entity or the National Authority of Mineral Resources;
- the holder of the mineral rights fails to comply with the obligation of relocating or indemnifying local communities for damages caused by mining activities;
- an illegal transfer of the mineral right occurs;
- an illegal transfer of a dominant interest or participation occurs; or
- the mineral activities are suspended for 120 consecutive days, except if such suspension is previously approved by the National Authority of Mineral Resources, or if it is caused by any act or omission on the part of the state or one of its representatives, or if it is caused by a force majeure event.

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

2.1 Environmental Protection and Licensing of Mining Projects

Laws and Regulations

The Mining Code contains specific provisions regarding prevention and minimisation of environmental and human damages, and establishing the award of environmental mining licences.

Decree-Law 5/2011, of 9 February 2011, which established the environmental review and licensing procedure, as amended by Decree-Law 39/2022, of 8 June 2022 (the "Environmental Licensing Regime"); Decree-Law 26/2012, of 4 July 2012, which approved the Framework Environmental Law; and Decree-Law 41/2022, of 8 June 2022, which created the National Authority for Environmental Licensing, are also relevant in this respect as they foresee provisions regarding environmental protection and licensing of mining projects in Timor-Leste.

Main Environmental Authorities

The main environmental authorities responsible for the administration and supervision of compliance with the above-mentioned diplomas are the National Authority of Mineral Resources, the National Authority for Environmental Licensing, and the Ministry of Petroleum and Mineral Resources.

Review and Licensing Processes

The environmental review and licensing processes are regulated by the Mining Code and by the Environmental Licensing Regime. The Mining Code foresees the possibility of approval of a specific diploma regarding the environmental review and licensing procedure of mining activities, which has not to date been enacted.

The entity responsible for the review process and approval of the environmental licence is the Ministry of Petroleum and Mineral Resources, in co-ordination with the National Authority of Mineral Resources and the National Authority for Environmental Licensing.

According to the Environmental Licensing Regime, mining projects are subject to environmental impact assessments, which must be requested from competent bodies. Pursuant to the Environmental Licensing Regime, the completion of the review and licensing process may take up to 90 days.

2.2 Impact of Environmentally Protected Areas on Mining

Pursuant to the Mining Code, certain areas may be declared as excluded areas for mineral activ-

ities if and when justified by national interest, national security, the well-being of the nearby community, environmental, cultural or religious issues, or when such mining activities are incompatible with activities projected or being carried out in the target area.

The creation of an excluded area must be declared by the Council of Ministers, under a proposal by the Ministry of Petroleum and Mineral Resources.

The Mining Code also establishes the following as protected:

- areas reserved for graveyards;
- areas where relevant archaeological and cultural heritage has been found;
- areas where national monuments are located;
- areas containing religious sites;
- areas within 250 m of a dam or reservoir;
- areas within 100 m of state buildings;
- areas used for national defence or occupied by national defence entities, including the 100 m surrounding area;
- areas within 100 m of an airport;
- areas reserved for railway, aqueduct, oil or gas pipeline, or construction projects;
- areas reserved for tree plantations or forestry projects;
- areas in or within 250 m of villages, towns, municipalities or cities;
- streets, roads, bridges and other public infrastructure, including a 100 m surrounding zone on each side; and
- national parks.

In this case, if the economic value or other benefits associated with the mineral activities clearly surpass the value and importance of the archaeological and cultural heritage, national monuments or religious sites, or any other legally imposed off-limits areas, the development of mineral activities in such area may be approved by the Council of Ministers, if proposed by the Ministry of Petroleum and Mineral Resources, subject to consultation with the relevant municipal entities and government bodies.

2.3 Impact of Community Relations on Mining Projects

Holders of mineral rights are required to recognise and respect the rights, customs and traditions of local communities, and promote and contribute to the development of the host and neighbouring communities of the concession area.

The Mining Code further establishes that during the planning and development of mining activities, the holders of mining rights and any third parties responsible for conducting mining activities must put in place adequate measures to consult local communities and accommodate their legitimate concerns.

For that purpose, the holders of mineral rights must appoint a Community Relations Officer, who must be a Timorese national, fluent in one of the official languages (Tetum or Portuguese). This officer will be responsible for co-ordination with the local communities, particularly with the local community leaders. During the planning of any exploration and evaluation, and mining and processing activities, the Community Relations Officer and the representative of the state will consult with the local community leadership to discuss all relevant aspects of the performance of mineral activities in the concession area that may impact the local community, including but not limited to the following:

- creation of jobs and training for Timorese nationals and local residents;

- development of local infrastructure;
- resettlement, if necessary;
- protection of the environment;
- protection and/or relocation of cultural and/or religious sites; and
- rights of access or easements for the movement of populations and animals, as well as for the grazing of the latter, or access to water or cultural and religious sites.

If the presence of local communities in the concession area is not compatible with the development of the mining activities, the holder of the mineral rights, together with the local and national authorities, must prepare and implement a relocation plan, which must be approved and monitored by the competent government entities. The relocated communities are entitled to be compensated by the mining rights holders for the loss of crops, livestock and forest products, among other things, where profits have ceased due to land usage.

There are other protective local content provisions in the Mining Code aimed at protecting local entrepreneurs and promoting local businesses, benefiting from a statutory preferential right in procurement procedures for the provision of goods and services to the mining industry.

2.4 Prior and Informed Consultation on Mining Projects

The Mining Code foresees prior consultation with local communities in the following situations:

- the closure of a mining project (this consultation must be provided for in the corresponding mining closure plan, which is mandatory);
- the approval of the development of mining activities in protected areas; and
- the planning and development of mining activities and, if applicable, the relocation of the local communities impacted by mining activities.

2.5 Impact of Specially Protected Communities on Mining Projects

There are no provisions addressing specially protected communities in mining projects in Timor-Leste.

2.6 Community Development Agreement for Mining Projects

Community development agreements for mining projects are not mandatory by law, nor are they common practice in Timor-Leste.

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

ESG policies are incorporated in various scattered legal statutes, but there are no express ESG regulations for the mining sector. Nevertheless, the Mining Code enshrines certain industry-specific ESG principles with which the holders of mineral rights must comply.

These include the duty:

- to conduct mineral activities under strict environmental regulations;
- to comply with the applicable local content policies on recruitment and training of Timorese nationals, and procurement of local goods and services;
- to ensure the involvement of local communities;
- to abide by local laws and regulations; and
- to adopt the best business ethics practice.

However, ESG provisions can also be found in mineral investment contracts (where applicable),

which usually enclose guidelines and principles on environment protection/preservation, human resources and business ethics.

2.8 Illegal Mining

Illegal mining does not constitute a significant disruptive issue in Timor-Leste mineral production. Notwithstanding this, pursuant to the Mining Code, illegally extracted minerals are the property of the Timorese State, and carrying out mining activities without a valid mining right is considered a very serious administrative offence, subject to financial penalties and ancillary sanctions, such as the confiscation of the minerals resulting from the illegal practice.

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

There are no relevant examples to cite.

However, the following is worthy of note – the efforts of the National Authority of Mineral Resources to ensure that the development of mineral activities in the country does not disturb or negatively affect the rights of local communities, and to ensure that these mineral activities ultimately contribute to the sustainable development of the Timorese people.

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

3.1 Climate Change Effects

Climate change is on the agenda of the Timorese government but has not yet (directly) impacted the mining industry.

3.2 Climate Change Legislation and Proposals Related to Mining

No climate change legislation relating to the mining sector has been passed or is currently being discussed in Timor-Leste.

It is nevertheless worth noting that Timor-Leste is a party to the Paris Agreement, and also approved, in 2011, the National Adaptation Programme of Action on climate change, which considers the environmental sector to be an essential and indispensable vector in the country's sustainable development strategy and in the promotion of the quality of life of Timorese citizens.

More recently, the Timorese government issued Government Resolution 8/2022, of 1 March, which approved the National Climate Change Policy, aimed at strengthening co-operation between the relevant ministries and avoiding the duplication of measures and the implementation of outdated policies. The guiding principles of the policy, addressing the complex challenges created by climate change through mitigation and adaptation to its effects, and compensation of losses and damages, are the following:

- equity and social inclusion;
- inclusion of climate change in sectorial plans and policies;
- informed and active participation;
- commitment to sustainable development;
- long-term capacity building; and
- science and technology-based policy and action.

In compliance with Timor-Leste's commitments under the Kyoto Protocol, the government has also created the Designated National Authority for the Fight Against Climate Change, with the mission to approve the participation of public

and private national entities in projects related to clean development and emissions trading. The Designated National Authority for the Fight Against Climate Change will also liaise between Timor-Leste and the Green Climate Fund.

3.3 Sustainable Development Initiatives Related to Mining

Although growing concern about sustainability is emerging in Timor-Leste (with climate change under the spotlight), there are no relevant sustainable development initiatives for the mining industry.

3.4 Energy-Transition Minerals

There are no specific government or legislative initiatives related to the increasing demand for so-called energy transition minerals as such.

However, as regards rare earth and radioactive minerals, these are classified as strategic minerals under Decree-Law 19/2024, of 25 March, which establishes the rules for the classification and marketing of strategic minerals.

This legal framework establishes special rules for the Timorese State's participation in mining activities related to these minerals, through the national mining company in association with private companies. It also establishes special rules for their commercialisation, such as the duty to take into account the classification and evaluation of these minerals, their scarcity, rarity, price and the particular characteristics of the international market, in order to value these resources in the best interests of the national economy.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The Mining Code sets out a special tax regime for holders of mineral rights (without prejudice to the general tax regime that applies to any entity in Timor-Leste, namely, corporate income tax). No distinction is made between taxing domestic and foreign parties.

Royalty

The rates for mining royalties, calculated on the value of the mineral resources, are as follows:

- precious metals and minerals – 8%, if unprocessed, 3.5%, if processed;
- common metals – 7%, if unprocessed, 2.5%, if processed;
- gems – 8%, if unprocessed, 3.5%, if processed;
- radioactive minerals – 8%;
- rare earth minerals – 15%; and
- ornamental stones – USD10 per tonne, if unprocessed, USD1 per tonne, if processed.

Surface Fee

The surface fee levied on the concession area is payable by all natural and legal persons carrying out mining activities. The amount payable varies in accordance with the size of the concession area, the type of mineral under exploration, the type of mining activity and the operation year in question. It can range from USD25 to USD400 per square kilometre.

4.2 Tax Incentives for Mining Investors and Projects

There are no industry-specific tax incentives for holders of mineral rights, and tax stabilisation

agreements are not expressly foreseen in the law.

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

Direct and indirect transfers or sales of mineral rights/mining assets (including by means of M&A operations in and/or outside the country) may trigger capital gains for the purposes of assessment of corporate income tax.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The Mining Code contains several provisions regarding transparency and best international practices aimed at creating a safer environment for investment in the mining industry. These provisions include:

- the prohibition of any offers, benefits or gifts to any employee of the National Authority of Mineral Resources or their family members; and
- the annual publication, by the Ministry of Petroleum and Natural Resources, of a report relating to state revenues and other direct and indirect benefits received by the state as a result of or in connection with mining activities (this report must be prepared in accordance with the best international transparency practices).

Other features that may be relevant for attracting investment are discussed below.

Dispute Resolution

The Mining Code regards the judicial courts of Timor-Leste and arbitration courts as the proper mechanisms to resolve any disputes arising in connection with mineral activities or disputes related to other issues regulated in the Mining Code, in accordance with the titles that granted the corresponding mining rights.

On 17 March 2021, Timor-Leste approved the accession of the country to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Its ratification instrument was deposited with the secretary-general of the United Nations on 17 January 2023 and the convention came into effect in Timor-Leste on 17 April 2023. As such, international arbitral awards are recognised and enforceable in Timor-Leste, without prejudice to the reservation made by the Timorese State, which limits the applicability of the convention to:

- the recognition and enforcement of arbitral awards handed down in another contracting state; and
- disputes arising from legal relationships of a commercial nature, whether contractual or not.

Timor-Leste's national parliament also approved Law 6/2021, of 31 March 2021, which establishes the legal regime of voluntary arbitration and allows Timor-Leste's competent judicial courts to recognise and enforce arbitration decisions.

Early Stage of Development of the Mining Industry

Mining activities have been gradually taking off in Timor-Leste and the country still has abundant mineral reserves to be explored and mined by potential investors, as further detailed in **6.1 Two-Year Forecast for the Mining Sector**.

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

There are no specific restrictions imposed on foreign investment related to exploration and mining activities, except for strategic minerals. In the case of strategic minerals, if public interest reasons justify it, the government may determine that their marketing must be carried out directly by the national mining company, or through an association with national or foreign companies.

There are also no special rules in respect of foreign ownership, except for artisanal mining and the exploration and mining of construction materials, where access to mineral rights is restricted by local content provisions.

5.3 International Treaties Related to Exploration and Mining

Timor-Leste is not a party to international treaties that favour or protect investment in exploration and mining.

5.4 Sources of Finance for Exploration, Development and Mining

The main sources of funding for private parties intending to carry out mining activities in Timor-Leste are privately owned capital and international funding instruments.

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

Timor-Leste does not have a stock exchange market. Most of the funds invested in the mining sector come from overseas.

5.6 Security over Mining Tenements and Related Assets

The creation of security interests over mining rights is subject to the prior approval of the National Authority of Mineral Resources, except when securities are created for the financing of mining activities and the beneficiary entity agrees that any judicial sale related to the enforcement of the security interest is subject to consent by the Ministry of Petroleum and Mineral Resources.

To achieve this, the holders of the mining rights must send a written notice to the National Authority of Mineral Resources of their intention to create an encumbrance over a mineral right. This notice must include:

- all identity details in respect of the beneficiary of the encumbrance; and
- information regarding the underlying transaction by which the mining rights or assets are encumbered.

The Mining Code foresees that the creation, modification or expiration of charges or encumbrances over mining rights is subject to registration under the Mining Registry (still pending creation), to be organised and managed by the National Authority of Mineral Resources.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The government of Timor-Leste is keen to attract investment in the country's mining industry, after the launch in 2023 of the first public tender for the award of mineral rights since the enactment of the Timor-Leste Mining Code in 2021. In total, 49 areas were opened for tender and, according to the Overview of Timor-Leste's Geology and Mineral Potentials Report enclosed with the public tender, Timor-Leste has various metallic minerals such as gold, copper, zinc, manganese

and silver, in addition to minerals such as kaolin and, potentially, phosphate, with significant potential for development.

Nine companies (most of which are based abroad, in Australia, India, Indonesia and Singapore) were qualified under the public tender. In late November 2023, the government announced four companies as the bid winners of the public tender: Estrella Resources, Peak Everest Mining, Iron Fortune and Beacon Minerals.

In particular, Estrella Resources was officially awarded three promising mining concessions by the government in the Lautém Municipality in March 2024. Afterwards, in June 2024, this company entered into a joint venture with the state-owned company Murak Rai Timor, EP to perform the mining activities in Lautém, in highly prospective areas for manganese, copper and gold mineralisation.

With the creation of a solid legal framework through the Mining Code and other relevant regulation, the development of the mining industry in Timor-Leste is expected to take off, with the ongoing mapping of mining areas, the publicising of the country's mining potential to attract the numerous mining companies operating in the region, and the effective award of mineral rights by the government to the mining companies, through public tenders such as the one in 2023.

Timor-Leste's robust and investor-friendly legal framework, the success of the first public tender and the global demand for minerals will certainly attract investors in the future.

Trends and Developments

Contributed by:
João Afonso Fialho, Tomás Cabral Anunciação and Teófilo de Jesus
VdA

VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading professional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in Timor-Leste and all Portuguese-speaking African countries.

Authors

João Afonso Fialho joined VdA in 2015. He is a partner and head of the oil and gas and natural resources practice. In the last 25 years, João has been involved in a variety of natural resources projects and transactions in jurisdictions such as Timor-Leste, Mozambique, Angola, Sao Tome and Principe, Portugal, Republic of Congo, the DRC and Guinea Bissau. In the mining sector, João has advised foreign investors in the negotiation of exploration and mining agreements, JV agreements, legal due diligences, farm-in and farm-out agreements, royalties and streaming agreements, etc. João has also advised state entities and international mining companies in the drafting and discussion of legal statutes and ancillary regulations.

Tomás Cabral Anunciação worked at VdA in 2022 as an associate in the public law area of practice, where he was actively involved in several transactions. He rejoined VdA in 2023 as local director of the firm's office in Timor-Leste and has been admitted to the Timor-Leste Bar Association. He has a law degree from the University of Lisbon Law School and a master's in law from the Catholic University of Lisbon Law School. He also attended the Professional Development Programme for Lawyers at the IE Business School in Madrid, Spain. Tomás is also a Professor of Comparative and Administrative Law at the National University of Timor Lorosa'e.

Teófilo de Jesus joined VdA in 2018 and works as an international adviser at the firm's Dili office. He assists VdA's main clients and stakeholders, operating in the natural resources, energy, banking and telecommunications sectors. He also assists foreign investors in all matters relevant to their activity in the country. Given his Tetum language skills, Teófilo is an indispensable member of VdA's operation in Timor-Leste. He is currently preparing for his admission to the Timor-Leste Bar Association.

VdA

Rua Dom Luís I 28
1200-151
Lisboa
Portugal

Tel: 351 21 311 3400
Email: vieiradealmeida@vda.pt
Web: www.vda.pt/en

Contributed by: João Afonso Fialho, Tomás Cabral Anunciação and Teófilo de Jesus, **VdA**

Background

Timor-Leste is one of the world's youngest countries. After decades of conflict, in 2002 it became the first new sovereign state of the 21st century.

Over the last two decades, Timor-Leste's government has been particularly focused on rebuilding public infrastructure (water and sanitation systems, roads, airports, ports, etc) and trying to diversify the country's economy, which continues to be highly dependent on oil and gas revenues. Despite all the government's efforts and the stringent local content policies imposed on the country's extractive industries, additional investment and policy changes are still required to strengthen the country's economy, private sector growth, basic infrastructure and services, and human capital for long-term inclusive and sustainable development.

Asian Development Bank (ADB) is supporting Timor-Leste's pandemic recovery and inclusive development through a country partnership strategy for 2023–2027 that focuses on climate-resilient infrastructure and services and the development of a system that fosters economic diversification. ADB will also continue to prioritise promoting good governance and institutional capacity, improving knowledge and innovation, and accelerating gender equality in Timor-Leste.

Mining Potential

Most of Timor-Leste's mineral resources remain unexplored. According to the Atlas of Mineral Resources of the ESCAP Region published in 2003 by the United Nations Economic and Social Commission for Asia and the Pacific, the target minerals in the country are chromite, copper, copper-gold, gold and silver manganese, as well as some non-metallic minerals such as bentonite, limestone, marble and phosphate. Battery mineral reserves such as chromium, cobalt and nickel are also found in Timor-Leste, which may position the country as a key mineral producer in the context of the energy transition movement.

Developments in the Industry

National legislation

Considering the huge potential of Timor-Leste's mineral resources, the mining industry in Timor-Leste is still at an early stage of development. The government is focused on attracting investment to the sector. The Mining Code, approved in 2021, aims to give investors a robust regulatory framework (aligned with best international mining practices) through which to invest in the country. The regulations aimed at further developing the rules set out in the Mining Code are currently being drafted and are expected to be approved and published in the near future.

The enactment of the Mining Code aims to attract investment to the Timorese mining sector and contribute to the creation of jobs, the improvement of living conditions, the increase of the country's tax revenues and the diversification of the economy, to reduce the dependency on the oil and gas industry.

In March 2023, the Timorese government launched a public tender for the award of mineral rights over 49 concession areas for the exploration and mining of metallic minerals, gemstones, industrial minerals, radioactive minerals, rare earths and coal. In November 2023, the government awarded licences to four companies to prospect and research 13 mining areas. The creation of the state national mining company, Murak Rai Timor, EP, in September 2023 was also reported as a strong sign from the government that the mining sector would be ready to start operating at full capacity within a short period of time.

Also noteworthy was the approval of Decree-Law 62/2023, of 6 September 2023, which created the National Authority of Petroleum, and Decree-Law 63/2023, of 6 September 2023, which created the National Authority of Mineral Resources. According to the latter, this change was aimed at improving the quality and efficiency of sectoral regulation and the achievement of socio-economic development in the country in a sustainable way, while also benefiting current and future generations.

More recently, the government approved Decree-Law 19/2024, of 25 March 2024, which establishes the rules for the classification and marketing of strategic minerals and for the Timorese state's participation in mining activities related to these minerals.

International commitments

In 2008, Timor-Leste joined the international Extractive Industries Transparency Initiative (EITI), a voluntary initiative that works to enhance revenue transparency by verifying and publicising the revenues paid to member governments by extractive companies. Timor-Leste has been using EITI reporting to shed light on transfers from the Petroleum Fund to the national budget, but is expected to starting using the EITI to report data from the country's mining industry.

It is also worth mentioning that, on 17 March 2021, Timor-Leste approved the accession of the country to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, having deposited the ratification instrument with the secretary-general of the United Nations on 17 January 2023. The convention came into effect in Timor-Leste on 17 April 2023.

Future Prospects

Timor-Leste's economic growth is forecast to accelerate to an average of 4.1% in 2024 and 2025 as easing inflation pressures and a stable fiscal outlook contribute to growth, according to the World Bank's semi-annual Timor-Leste Economic Report.

In particular, after the creation of a solid legal framework through the Mining Code and other relevant regulation, the development of the mining industry is expected to take off in the country, with the continuing mapping of mining areas, the publicising of the country's mining potential to attract the numerous mining companies operating in the region, and the effective award of mineral rights by the government to the mining companies through public tenders such as the one in 2023.

Timor-Leste's robust and investor-friendly legal framework, the success of the first public tender and the global demand for minerals will certainly attract investors in the future.

ZAMBIA

Law and Practice

Contributed by:
Harriet Mdala, Natasha Lungu, Samuel Muleya and Chanda Musonda-Chiluba
MAY and Company

Contents

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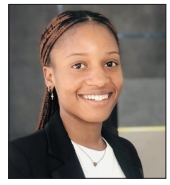
MAY and Company

MAY and Company is an innovative full-service corporate law firm committed to providing comprehensive legal solutions to businesses of all sizes. The firm brings a fresh perspective, innovative approaches, and a passion for delivering exceptional client service. It has highly regarded partners who are known within the Zambian market as being among the best in their practice areas. The team brings together key expertise in corporate and commercial work which enables clients to access the full spectrum of legal services within the commercial space.

Authors

Harriet Mdala of MAY and Company focuses on mergers and acquisitions, energy, extractives and infrastructure within the Zambian market. She also serves as the key relationship partner for the Zambia Association of Manufacturers (ZAM) and is a member of the board of the French Business Circle.



Natasha Lungu is an associate designate at MAY and Company and is specialised in commercial and corporate law in Zambia. She has experience in mining law and regulation, with a focus on navigating complex legal frameworks and negotiations. She has advised clients on compliance with industry regulations, including environmental and health and safety regulations, and has represented clients in negotiations with government agencies and regulatory bodies.

Samuel Muleya is an associate designate at MAY and Company and specialises in mining law and advisory. He has experience in conducting due diligence on mining projects, ensuring compliance with industry regulations, and advising on mineral rights and related transactions. He offers guidance on various aspects of mining operations, including investment structuring, risk assessment, and legal compliance. His experience also extends to navigating mining legal frameworks, negotiating agreements and addressing challenges in the mining sector.

Chanda Musonda-Chiluba of MAY and Company is known to clients for her expertise in banking and finance, green finance, project finance and capital markets. Her clients include local banks and financial institutions, notable international DFIs, telecoms operators including MNOs, ISPs and data centre providers. She also sits on the board of directors of a financial institution and a fintech enterprise. Additionally, she is recognised in Chambers and Partners Global 2024.

Contributed by: Harriet Mdala, Natasha Lungu, Samuel Muleya and Chanda Musonda-Chiluba,
MAY and Company

MAY and Company

759 Glasshouse Independence Avenue
Woodlands Roundabout
Lusaka
Zambia

Tel: +26 021 125 0580
Email: info@mayandco.co.zm
Web: www.mayandco.law

1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Mineral Resources and Production

Zambia is endowed with a wealth of mineral resources. The key minerals mined in Zambia include copper, cobalt, manganese, silver, iron, uranium, lead, zinc, coal, and gemstones such as emeralds, tourmaline, aquamarine, and amethyst. Copper remains the cornerstone of Zambia's mining industry, forming the bulk of its mineral resources and accounting for the majority of the country's export earnings.

To enhance copper production, Zambia has embarked on the National Three Million Metric Tonnes Copper Production Strategy, which aims to increase copper production from the current 800,000 metric tonnes to three million metric tonnes by 2032.

The Role of Mining in the Economy

The mining sector is the backbone of Zambia's economy, accounting for over 70% of the country's export earnings. It contributes significantly to government revenues through taxes, royalties, and employment opportunities.

Government Regulation

The mining industry in Zambia operates within a comprehensive regulatory framework, primarily governed by the Mines and Minerals Development Act No 11 of 2015 (the "Mines Act"). This legislation provides for the management and oversight of mining activities and the licensing of both small-scale and large-scale operations.

Regulatory oversight is administered by the Ministry of Mines and Minerals Development and the following departments which report to it:

- the Mining Cadastre Department;
- the Mines Safety Department;
- the Geological Survey Department;
- the Mines Department; and
- the Mining Licence Committee (the "MLC").

Foreign Investment and Partnerships

Zambia's mining sector is characterised by the coexistence of small-scale, artisanal miners and large-scale operations, with foreign investors predominantly driving the latter. International investors account for a significant portion of copper and cobalt production, contributing advanced technologies and significant capital investments.

Technological Advancements

The Zambian government has taken proactive steps to modernise and enhance the mining sector. In 2024, a high-resolution aerial geological survey was launched to attract targeted investments and accelerate mineral exploration. This initiative aims to provide accurate geological data, which is critical for ramping up copper production and exploring new mineral opportunities. The initial target areas for the survey include western and north-western provinces, covering districts such as Chavuma, Zambezi, Lukulu, and Kalabo. Preliminary geological data from these areas has already been obtained.

In the 2025 national budget, the government announced that it had increased the allocation for the aerial geological and geophysical mapping to ZMW364.0 million from ZMW160.0 million in 2024. It is hoped that the mapping exercise will help define the nation's mineral resource endowment and attract investment.

Challenges and Risks

While the mining industry is vital to Zambia's economy, it faces several challenges. These are:

- energy shortages in the mining sector;
- fluctuating commodity prices;
- unregulated artisanal and small-scale mining risks;
- unstable mining legislation and policies; and
- underdeveloped road infrastructure making transportation of minerals in and out of Zambia difficult.

Future Prospects and Development

Zambia's mining industry has a promising future, with several growth opportunities on the horizon. The country has continued to attract investment in the mining sector. Zambia's untapped mineral deposits, including rare earth elements and uranium, present significant investment opportunities. Ongoing and new exploration projects, supported by the government's geological survey initiatives, are expected to uncover additional resources.

Meanwhile, anticipated improvements in mining policies, such as streamlined licensing processes aim to attract more investors and ensure sustainability.

1.2 Legal System and Sources of Mining Law

Zambia operates a dual legal system, incorporating both statutory and customary law. The legal framework is based on the common law system, inherited from its colonial history.

Mining activities in Zambia are regulated by a combination of statutes, regulations, and environmental laws aimed at ensuring the sustainable and transparent management of mineral resources. The key statutes include the following.

The Mines Act

The Mines Act is the principal statute governing exploration, mining, and processing of minerals in Zambia. It establishes the Mining Appeals Tribunal for resolving disputes related to mining licences.

The Minerals Regulation Commission Act, 2024, which has recently been passed is poised to repeal the Mines Act. However, the commencement order putting this new Act into effect is yet to be issued and so the Mines Act remains law.

Mines and Minerals (General) Regulations, Statutory Instrument No 7 of 2016

This covers processes such as applying for mining rights, transferring licences, and renewing mining permits.

Environmental Management Act No 12 of 2011 (EMA)

The EMA provides a framework for environmental conservation and sustainable resource use.

Environmental Impact Assessment Regulations, Statutory Instrument No 28 of 1997

This requires environmental impact assessments (EIAs) for proposed mining projects.

Ionising Radiation Protection Act No 16 of 2005

This governs the handling, storage, and use of radioactive materials, such as uranium, in mining activities.

1.3 Ownership of Mineral Resources

All rights of ownership in, searching for, mining and disposing of minerals vest in the President. The President holds these rights on behalf of the Republic and the people of Zambia. The rights of landowners in Zambia do not extend to minerals, oils, or precious stones found on or beneath their land. Consequently, even if an individual holds title to land where minerals are discovered, ownership of those minerals remains vested in the President, acting on behalf of the people of Zambia.

Surface rights and mining rights are therefore separate under Zambian law.

1.4 Role of the State in Mining Law and Regulations

The State adopts a hybrid role in the mining sector, functioning as both a grantor-regulator and an owner-operator.

Role of the State as Grantor-Regulator

The Mines Act establishes key offices responsible for the State's regulatory functions in the mining sector through the Ministry of Mines and the:

- director of mines;
- director of mines safety;
- director of geological survey; and
- director of mining cadastre.

Additionally, the MLC plays a central role in managing mining rights. Through these offices and structures, the State:

- processes and issues applications for mining licences;
- verses the proper development of mines and ensures compliance with operational standards; and
- conducts geological mapping and exploration activities across Zambia.

Role of the State as Owner-Operator

The State also actively participates in mining operations through its investment vehicle, ZCCM Investments Holdings PLC (ZCCM-IH). ZCCM-IH originated from Zambia's consolidation of mining assets in 1982, following earlier government nationalisations in 1968 and 1969. Initially formed to manage copper mining, ZCCM-IH now holds minority stakes in privatised mining companies and assets like energy and real estate, maintaining strategic influence over Zambia's mining sector.

Additionally, Section 17 of the Mines Act grants the government the authority to acquire mining rights for purposes of government investment in designated areas. The Section outlines a framework allowing the government to reserve specific areas for investment by acquiring mining rights. These areas are protected from applications by private individuals or entities, ensuring exclusivity for government-led projects. Rights obtained under this provision are then allocated to government investment companies, ensuring compliance with relevant laws.

1.5 Nature of Mineral Rights

Article 16 of the Constitution of Zambia recognises the right to property. Specifically, Article 16(u) and (x) of the Constitution provide that property can, among other things, consist of any licence or permit. It also provides that it can be any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases.

Mineral rights do therefore have the status as property and they derive from law under Article 16 of the Constitution and the Mines Act. Mining rights are therefore protected under the Constitution and any person deprived of these rights may be able to challenge the deprivation as being unconstitutional.

1.6 Granting of Mineral Rights

In Zambia, the authority responsible for granting mineral rights operates at the national level. Applications for mining rights are received and processed by the Mining Cadastre Office (the "MCO"), established under Section 8 of the Mines Act. However, the consideration and decision-making on these applications are handled by the MLC, which is constituted under Section 6 of the Mines Act.

While the Mines Act envisions the establishment of regional mining cadastre offices to facilitate decentralised processing of mining applications, these offices have not been established as of 2024. Consequently, all applications are submitted directly to the MCO in Lusaka for initial processing before being forwarded to the MLC for approval.

Notably, there is no overlap of jurisdiction at the national or provincial level in the granting of mineral rights, as the process is centralised under the Mines Act.

1.7 Mining: Security of Tenure

In Zambia, the framework for security of tenure in the mining sector is established under the Mines Act. It provides a structured system for granting, maintaining, and enforcing mining rights, ensuring stability and predictability for investors while safeguarding national interests.

Validity of Mining and Other Licences

Exploration licence

An exploration licence is valid for an initial period of four years. On its expiry, it may be renewed for two further periods not exceeding three years each but the maximum period from initial grant of the licence will not exceed ten years. At each renewal, a holder of an exploration licence is required to relinquish at least 50% of the exploration area.

An application for renewal must be made six months before the expiry of the licence.

Mining licence

There are three types of mining licences: artisanal, small-scale and large-scale. Artisanal mining can only be undertaken by citizens.

The validity periods are:

- two years for artisanal mining;
- ten years for small-scale mining; and
- 25 years for large-scale mining.

Applications for renewal must be made three months before expiry for an artisanal mining licence, six months for a small-scale mining licence and one year for a large-scale mining licence.

Mineral processing licence

A mineral processing licence is valid for a period of 25 years and may be renewed for a similar period.

Gold panning certificate

A gold panning certificate is valid for a period of two years and is renewable for a further two years.

Mineral trading permit

A mineral trading permit is valid for a period of three years and is renewable.

Mineral import and mineral export permits

Mineral import and mineral export permits are valid for a period of one year and are limited to the quantities specified in the permit.

The Mines and Minerals Development (General Regulations), 2016 require that the director of the mining cadastre must inform the applicant where the MCL rejects the renewal of the licence. The notice of rejection must state the reasons/grounds for the rejection. If the applicant is aggrieved by the decision of the MCL, the Mines Act provides an appellate process to the Minister of Mines within 30 days of receipt of the rejection.

Conversion of an Exploration Licence to a Mining Licence – Rights

The Mines Act does not grant an automatic right to a holder of an exploration licence to convert it to a mining licence. A party that seeks to convert an exploration licence to a mining licence must meet the requirements under the Mines Act to apply for a mining right. These are as follows.

- There are sufficient deposits or resources of minerals to justify their commercial exploitation.
- The area of land over which the licence is sought does not exceed the area required to carry out the proposed programme for mining operations.
- The proposed programme of mining operations is adequate and compliant with the decision letter in respect of the environmental project brief or EIA approved by the Zambia Environmental Management Agency (ZEMA).
- Consent is required for the area under any written law, and the applicant must have submitted evidence of that consent.
- The standards of good mining practice and the applicant's proposed programme for development, construction and mining operations in order to ensure the efficient and beneficial use of the mineral resources for the area over which the licence is sought must have been met.
- The applicant is not in breach of any condition of the exploration licence or any provision of the Mines Act.

In respect of large-scale mining some of the conditions are:

- that the applicant has the financial resources and technical competence and the financing plan is compatible with the programme of mining operations;

- that the applicant has undertaken to employ and train citizens and promote local business development;
- that the applicant's feasibility study report is bankable; and
- that the applicant has submitted a capital investment forecast.

Maintenance Requirements

The mining rights established are granted subject to certain conditions. These differ depending on the mining rights. Generally, to maintain the mining licence, holders are required to:

- pay annual area charges;
- adhere to approved work programmes;
- submit various reports; and
- contribute to the Environmental Protection Fund, among others.

Cancellation Procedure

A mining licence can be suspended or revoked for various reasons. The Mines Act specifies these reasons under various provisions. The MCL can suspend or revoke a mining licence where:

- the licence was obtained by fraud or submission of false information;
- the holder contravenes the Mines Act, any other written law or any terms and conditions of the right;
- the holder fails to carry out mining operations in line with the approved plan of mining operations and the gross proceeds of sale of minerals from the mining area in any three successive years is less than half of the deemed turnover applicable to the mining licence in each of those years;
- the holder gives false information on the recovery of ores and mineral products, production costs or sale;
- the holder fails to pay annual area charges;
- the holder fails to pay mineral royalty;
- the holder fails to execute the approved exploration programme, in the case of a holder of an exploration licence;
- the holder has ceased to fulfil the eligibility requirements under the Mines Act; or
- the suspension or revocation is in the public interest.

However, before the MCL exercises this power, it must give written notice to the holder of the licence of the intention to suspend or revoke the licence. The MCL must also give reasons for the intended suspension or revocation and require the holder to show, within 60 days, why the licence should not be suspended or revoked.

The MCL cannot suspend or revoke a mining licence if the holder takes remedial measures to the satisfaction of the MCL.

Where a person is dissatisfied with the decision of the MCL, the Mines Act provides that the person can appeal to the Minister of Mines within 30 days.

Transferability

A mining right like any other property right is transferrable. Section 66 of the Mines Act entitles the holder to do so. However, this right is subject to approval from the Minister of Mines and payment of property transfer tax (PTT).

Similarly, Section 67 of the Mines Act further requires the consent of the Minister of Mines in order for a transfer of shares in a company holding a mining right to be effected. This consent is required for both direct and indirect transfers.

Protection of the Right to Property

The security of tenure of mining rights is also guaranteed under the Constitution. Mining rights being property are protected under Article 16 of the Constitution. This provision protects a holder from being deprived of property without compensation.

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

2.1 Environmental Protection and Licensing of Mining Projects

Legal Framework

The primary environmental law in Zambia is the Environmental Management Act No 12 of 2011 (the "Act") read together with its amendments such as the Environmental Management (Amendment) Act, 2023. The Act provides for integrated environmental management and the protection and conservation of the environment and the sustainable management and use of natural resources. The Act further provides for:

- the preparation of environmental management strategies and other plans for environmental management and sustainable development; and
- the conduct of strategic environmental assessments of proposed policies, plans and programmes likely to have an impact on environmental management.

It also provides for the prevention and control of pollution and environmental degradation, public participation in environmental decision-making and access to environmental information amongst other things.

Other environmental laws and regulations in Zambia include the following.

- The Forest Act No 4 of 2015 which provides for the establishment and declaration of national forests, local, joint forest management areas, botanical reserves, private forests and community forests and overall sustainable forest management.
- The Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations (Statutory Instrument No 28 of 1997) (the "EIA Regulations") which provide for essential procedures and requirements for compulsory project briefs and EIAs.
- The Environmental Management (Licensing Regulations) Regulations, 2013 which provide for air quality control. It sets procedures for waste management and deals with hazardous waste to the environment and other substances harmful to the environment such as pesticides and toxic substances and ozone-depleting substances.
- The Environmental Management (Strategic Environmental Assessment) Regulations, Statutory Instrument No 48 of 2021. It provides for the conducting of strategic environmental assessments.
- The Mines and Minerals (Environmental Protection Fund) Regulations, Statutory Instrument No 102 of 1998. These Regulations provide for the Environmental Protection Fund which provides assurance that a developer will execute an environmental impact statement (EIS).
- The Mines and Minerals (Environmental) (Exemption) (Amendment) Order, Statutory Instrument No 19 of 2000 as read together with the Mines and Minerals (Environmental) (Exemption) (Amendment) Order, Statutory Instrument No 19 of 2000. These Orders exempt Konkola Copper Mines Plc, ZCCM

(Smelterco) Limited and Mopani Copper Mines Plc from the provisions of Statutory Instrument No 102 of 1998.
- The Mines Act which provides for environmental protection and pollution control, environmental information, public participation in environmental decision-making and the Environmental Protection Fund.

Environmental Licensing

The main features of the environmental licensing process for an exploration and mining project in Zambia are as follows.

ZEMA issues an approval authorising a person to conduct exploration or mining activities. A decision letter is granted by ZEMA after an EIA is conducted. The EIA evaluates the potential environmental and social impacts of the mining operations and suggests appropriate mitigation measures and the Act prohibits exploration, mining or mineral processing without an EIA.

The EIA is conducted by the Ministry of Mines and Minerals Development together with ZEMA. The application procedure for ZEMA approval is governed by the EIA Regulations.

EIAs in Zambia fall into two classes depending on the nature of the project. The first category is a project brief while the second is the EIS. Projects likely to have an adverse impact on the environment tend to fall under the EIS category.

There are serious challenges that ZEMA faces that affect its efficiency. Among the most critical challenges are inadequate funding and low staffing levels. During its interactions with stakeholders, the Committee was informed that because of a lack of funds and inadequate human resources, ZEMA failed to discharge most of its functions, which included, but were not limited to, environmental audits and monitoring of other activities of licensed facilities. ZEMA's failure to undertake these activities means that facilities may be wantonly polluting the environment and, thereby, impinging on human health and the wellbeing of the environment.

2.2 Impact of Environmentally Protected Areas on Mining

Zambia has about 640 environmentally protected areas. These include national parks, game management areas, forests, fisheries management areas, private wildlife estate such as game ranches which are managed by the private sector and wetlands and wildlife reserves. The Lower Zambezi National Park and the Kavango-Zambezi Transfrontier Conservation Area are two of these environmentally protected areas. Furthermore, the Protected Places and Areas Act of 1960 allows the President to declare, by statutory order, an area to be a protected area. Section 52 of the Mines Act requires the consent of the appropriate authority for use of any land declared to be a forest or botanical reserve, a National Community Partnership Park, a Game Management Area or a bird sanctuary.

Protected areas affect exploration, development and mining in the sense that there are more considerations and oppositions regarding the impact the mining has.

If a mineral deposit is found within a protected area, the regulatory process mandates an EIA to evaluate potential environmental risks for mining to proceed. An environmental permit for mining in a protected area may have conditions attached that are more stringent. It is important to acknowledge that the current regulatory framework may not possess all-encompassing mechanisms required to comprehensively analyse and sufficiently address the possible envi-

ronmental consequences in sensitive and highly valuable ecosystems.

2.3 Impact of Community Relations on Mining Projects

Zambian laws do not have robust provisions and guidelines around mining and its contribution to the sustainable development of the communities in which mining companies operate.

However, Zambia mainly addresses the issue of community relations in mining projects through corporate social responsibility (CSR) frameworks. This is done through mining community development programmes. Section 4 of the Mines Act states that the development of local communities in areas surrounding the mining area based on prioritisation of community needs, health and safety is one of the general principles for mining and minerals development. Furthermore, Section 32 of the Mines Act provides that there will be attached to a mining licence as part of the conditions of the licence the programme of development, construction and mining operations as approved by the director of the mining cadastre and the undertaking for the promotion of local business development.

Additionally, community relations may be part of the conditions attached to a mining right when it is granted. For example, Section 35 of the Mines Act imposes an obligation for large-scale mining to implement the local business development undertaking attached to the mining licence.

Furthermore, Section 20 of the Mines Act provides for preference for Zambian products, contractors, and services and employment of citizens. This includes the promotion of local business development before beginning operations.

2.4 Prior and Informed Consultation on Mining Projects

Prior and informed consultation on mining projects is mandatory. Stakeholder engagement is required as part of the EIS process under the EIA Regulations. There is a requirement for the developer to seek the view of the community which is likely to be affected by the project. The views sought are considered in the development of mitigation measures. Regulation 10(1) of the EIA Regulations is categorical and requires that the developer will, prior to the submission of the EIS to the Council, take all measures necessary to seek the views of the people in communities, which will be affected by the project.

This is a legal requirement carried out by the developer/investor.

2.5 Impact of Specially Protected Communities on Mining Projects

Zambia does not have specially protected communities.

2.6 Community Development Agreement for Mining Projects

Community development agreements (CDAs) in Zambia are not robust and community development obligations are addressed through the use of business development undertakings which are attached to a mining licence.

Holders of mining rights have an obligation to develop the mining area which is the subject of a mining right. There is a further obligation to conduct mining operations in compliance with the mining right condition as well as the EIA and the programme of mining operations which is compliant with the decision letter issued.

Furthermore, the Mines Act require the holder of a large-scale mining licence to implement

the local business development undertaking attached to the mining licence.

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

Zambian ESG guidelines are found in a myriad of regulations and policies under the Mines Act and environmental laws are primarily focused on community development and environmental protection. Some of these are as follows.

Environmental

Environmental authorisation is carried out under the Act as read together with the EIA Regulations and other regulations. Under these, exploration, mining or mineral processing is prohibited without an EIA. Furthermore, an obligation is placed on the holder of a mining licence to develop the mining area, and carry on mining operations, with due diligence and in compliance with the programme of mining operations and the EIA.

Furthermore, Section 32 of the Mines Act provides that there will be attached to a mining licence as part of the conditions of the licence the developer's undertaking for management of the environment in the mining area.

Social

Holders of mining rights have various social obligations under the Mines Act including the following.

- The obligation to develop the mining area which is subject to a mining right.
- The obligation for a holder of a large-scale mining licence to employ and train citizens of Zambia in line with the proposal for employment and training attached to the licence. Section 4 of the Mines Act on general principles for mining and minerals development provides for the development of local communities in areas surrounding the mining area to be based on the prioritisation of community needs and health and safety.
- Section 20 of the Mines Act requires a holder of a mining right, in the conducting of mining operations or mineral processing operations and in the purchasing, constructing, installing and decommissioning of facilities, to give preference to Zambian products, contractors and services as well as employ Zambian citizens with relevant qualifications or skills and conduct training programmes for the transfer of technical and managerial skills to Zambians.

It should also be noted that attached to a mining licence as part of the conditions of the licence under the Mines Act is the developer's undertaking for the employment and training of citizens and undertaking for the promotion of local business development.

An EIA also evaluates the potential social impacts of the mining operations and suggests appropriate mitigation measures.

Governance

There are no mandatory governance requirements specifically placed on mining companies. However, it is worth noting that the Mines Act disqualifies the holding of a mining right to a company which is in liquidation, forms part of a scheme for the reconstruction of the company or for its amalgamation with another company, is not incorporated under the Companies Act of 2017 or has not established a registered office in Zambia.

It also disqualifies a company whose directors or shareholders become an undischarged bankrupt or have been convicted within the previous five

years of an offence involving fraud or dishonesty or an offence under other written law within or outside Zambia and sentenced to imprisonment without the option of a fine.

2.8 Illegal Mining

Illegal mining is a major issue in Zambia with the escalation of cases in recent years such as illegal gold mining in Kasempa district. It is highly disruptive to legal mineral production in the sense that it has led to deforestation, soil degradation and vast land damage or ruin due to evasion of environmental regulations. This affects other economic activities dependent on natural resources. Furthermore, government treasury and companies are deprived of what they would produce and earn because the illicit miners are producing and supplying through the back door thereby distorting the formal mining sector as the illegal mining competes with the formal mining sector.

Section 5 of the Mines Act provides that the director of mines safety is responsible for matters concerning the environment, public health and safety in exploration, mineral processing and mining operations. The Mines Safety Department has a Mining Unit that is responsible for carrying out inspections, mining safety audits and risk assessments. The Mines Act places an obligation on the holder of a mining licence to maintain security and ensure that there are no illegal miners at the licensee's tenements under Section 35(1)(l). Furthermore, Section 111(1) of the Mines Act provides that a person who explores, retains a mineral deposit or mines otherwise than in line with the provisions of the Mines Act commits an offence.

The Section is not categorical on the criminal sanctions. However, Section 112 of the Mines Act states that a person who commits an offence under the Mines Act for which no penalty is provided is liable, upon conviction in the case of an individual, to a penalty not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or to both; or in the case of a body corporate or unincorporate body, to a penalty not exceeding one million penalty units.

Notably, the government has embarked on the formation of mining co-operatives to encourage illegal miners to legally contribute to the nation's development though the payment of taxes.

Companies usually have recourse to court mechanisms when faced with illegal mining within their licence areas. Remedies sought are usually a declaration that certain operations and mining activities are illegal and an injunction to restrain illegal miners from interfering with the holder's rights in respect of a licence as well as damages in respect of loss suffered by a holder of the licence.

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

A good example of environmental and community relations/consultations around mining projects in Zambia is environmental requirements to start mining. The conducting of an EIS is required by the Act as read together with the EIA Regulations as is the conducting of an EIA. Furthermore, Section 35(1) of the Mines Act, places an obligation on a holder of a mining licence to develop the mining area, and carry on mining operations, with due diligence and in compliance with the programme of mining operations and the EIA. Section 32(2) of the Mines Act provides that there will be attached to a mining licence as part of the conditions of the licence the applicant's undertaking for management of the environment in the mining area.

A bad example of environmental and community relations/consultations around mining projects in Zambia is the lack of a clear path towards sustainability regarding the relationship between mining companies and their host communities. As stated in **2.3 Impact of Community Relations on Mining Projects**, the policy framework in Zambia is vague regarding various important issues related to mining and its contribution to the sustainable development of the communities in which mining companies operate. For example, the case study of Kabwe Lead-Zinc Mine, Zambia conducted in 2021 highlighted the effects of the closure of the mine on the community. It revealed that communities in Zambia often sink into a state of abject poverty once a mine closes as all socio-economic activity opportunities disappear with the mine closure and this has replicated itself in various communities in mining towns in Zambia. This shows that the economic, social and environmental decline of the community in this context is mainly attributable to the lack of a socio-economic closure plan at the time of mine closure.

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

3.1 Climate Change Effects

Zambia has undertaken several initiatives to address climate change and its impact on the mining industry. Zambia signed and ratified the Paris Agreement and the UN Framework Convention on Climate Change (the "UNFCCC") on 21 September 2016 and 9 December 2016 respectively. The overall objective of the two agreements is to stabilise the greenhouse gas (GHG) emissions at a level that would prevent dangerous anthropogenic interference with the climate system and to strengthen the global response to the threat of climate change.

In 2024, the Green Economy and Climate Change Act No 18 of 2024 (the "Climate Change Act") was passed into law by the Zambian Parliament. The Climate Change Act seeks to, among other things, transpose the UNFCCC and the Paris Agreement into domestic law. The Climate Change Act also seeks to regulate carbon markets and provide environmental and social safeguards for climate change actions and establish a Climate Change Fund. Additionally, the Climate Change Act establishes the Green Economy and Climate Change Council, specifies GHG emission standards and establishes a greenhouse inventory management system. It also includes provisions on carbon stock management, registration of verifiers and enforcement provisions.

Furthermore, prior to the introduction of the Climate Change Act, the Zambian Cabinet approved the declaration of critical minerals such as copper, cobalt, lithium, amongst others as strategic minerals in 2023. Under this initiative, the government resolved to transition the country to a green economy. This led to an enhanced mobilisation of financial resources including in the public sector budget.

3.2 Climate Change Legislation and Proposals Related to Mining

It is intended that the Climate Change Act will act as a mechanism for climate change adaptation and disaster risk reduction. Its main features are climate change adaptation and disaster risk reduction; climate change mitigation; low emission development; a green economy; and related actions.

Some of the salient provisions of the Climate Change Act are as follows.

- Section 10 of the Climate Change Act places a duty on the Minister of Green Economy and Environment to develop a National Adaptation Plan and a National Mitigation Plan, which will be reviewed every five years. This Section transposes Article 4(1)(b) of the UNFCCC, which deals with commitments of the parties, requires the parties to formulate, implement, publish and regularly update national programmes that contain measures to mitigate climate change and to facilitate adequate adaptation to climate change into domestic law.
- Section 4(2)(l) of the Climate Change Act, places responsibility for overseeing the revision and updating of the nationally determined contributions (NDCs) on the Department of Green Economy and Climate Change in the Ministry of Green Economy. This is similar to Article 4(2) of the Paris Agreement, which enables parties to determine the efforts that each of them will take to achieve the objectives of the agreement. These efforts are referred to NDCs and need to be prepared successively.
- Article 6(2) of the Paris Agreement introduced the concept of internationally transferrable mitigation outcomes (ITMOs), which have been described as a co-operative approach that allows countries to cut their GHG emissions by investing in projects that reduce GHG emissions in other countries. The Climate Change Act seeks to extend the domestication of the notion of ITMO to apply to projects other than those that come under the Forests Act and/or the Forests Carbon Stock Management Regulations.
- Under Article 7 of the UNFCCC, the parties agreed to adopt regular reports on the implementation of the UNFCCC and to publish these reports. This reporting requirement was enhanced under Article 13 of the Paris Agreement, which established an enhanced transparency framework. The Climate Change Act has provided mechanisms that allow for collection and storage of data related to climate change.
- Article 4(1)(g) of the UNFCCC requires the parties to promote and co-operate in scientific, technological, technical, socio-economic and other research related to the climate system intended to further the understanding and to reduce/eliminate the remaining uncertainties regarding climate change. Furthermore, Article 6(8) of the Paris Agreement recognises various approaches that can assist countries in the implementation of their NDCs, including finance, technology transfer and capacity building. Accordingly, Section 34 of the Climate Change Act establishes the Green Economy and Climate Change Fund and sets out some of the applications of the Fund.

3.3 Sustainable Development Initiatives Related to Mining

Zambia has various sustainable development goals (SDGs) as the government of Zambia is committed to the implementation of the transformative 2030 Agenda for Sustainable Development. Some of the SDGs include the following.

- The Climate Change Act transposes various provisions of the UNFCCC and the Paris Agreement into domestic law and demonstrates Zambia's commitment to taking effective climate action. The Climate Change Act has not yet been enacted into law. Once enacted, the Climate Change Act will serve as a significant piece of legislation in aligning Zambia's legal framework with international obligations in respect of climate action.
- The government of Zambia has resolved to transition the country to a green economy.

The National Green Growth Strategy 2024-2030 has been formulated to promote development pathways that lead to Zambia's transition to a low-carbon, resource efficient, resilient and socially inclusive economy by 2030.
- The Zambia UN Sustainable Development Co-operation Framework (UNSDCF) presents the collective offer of the UN system to strengthen Zambia's progress towards the SDGs and the implementation of its international legal obligations.

3.4 Energy-Transition Minerals

Zambia does not have legislative initiatives related to energy-transition minerals. However, Section 4(2)(l) of the Climate Change Act places responsibility for overseeing the revision and updating of the NDCs on the Department of Green Economy and Climate Change.

Furthermore, Zambia signed a memorandum of understanding (MoU) on a partnership on sustainable raw materials value chains with the EU represented by the European Commission on 26 October 2023. The MoU asserts that securing the supply of strategic and critical raw materials (CRMs) in a sustainable manner is an essential prerequisite for ensuring the green transition.

The availability of strategic and CRMs, such as copper, lithium, cobalt, manganese and natural graphite for batteries, or rare earth elements for permanent magnets for wind turbines, electric motors or computer data storage devices, represents an enabling factor for decarbonising energy production, connectivity, and mobility, while promoting green and digital economic transformation. It also provides for increased extraction and transformation of strategic and CRMs, as well as the development of related value chains, coupled with strong commitments to ESG standards, notably concerning transparency, traceability and the contribution to peace and stability in the region.

Another initiative is Zambia's critical minerals strategy which was launched to harness Zambia's critical mineral resources. The strategy aims to balance geopolitical interests with local impacts, ensuring that the benefits of mineral exploitation reach underserved communities.

Additionally, the government has set an objective to achieve the production of three million metric tonnes of copper by 2032 amongst other objectives in the extractive/mining industry.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

The Mines Act requires holders of mining rights and licences to pay mineral royalty tax (MRT) as consideration for the extraction of minerals from Zambia.

Classification of Minerals

The Mines Act categorises minerals into five groups, with each being subject to distinct MRT rates. These are:

- base metals: non-precious metals, such as copper, iron, cobalt, and zinc;
- energy minerals: resources like coal and uranium, used for energy generation;
- gemstones: non-metallic minerals used in jewellery, such as emeralds, rubies, and amethysts;
- industrial minerals: minerals used in raw or processed forms, such as limestone, clay, and gypsum; and

- precious metals: high-value metals, including gold, platinum, and silver.

Calculation of MRT

MRT is calculated based on either the gross value or norm value of the minerals.

- Gross value: applies to industrial minerals, energy minerals, and gemstones, calculated as the realised price of the sale free on board (FOB) at the export point or point of delivery within Zambia.
- Norm value: used for base metals (eg, copper) and precious metals, calculated based on international market prices such as the London Metal Exchange (LME) or Fastmarkets MB average monthly prices.

Incremental MRT Rates for Copper

The incremental MRT rates for copper are as follows:

- 4% of norm value when the copper price is below USD4,000 per tonne;
- 6.5% for prices between USD4,000 and USD5,000 per tonne;
- 8.5% for prices between USD5,000 and USD7,000 per tonne; and
- 10% when the price exceeds USD7,000 per tonne.

Other MRT Rates by Mineral Type

Other MRT rates by mineral type are as follows:

- base metals (excluding copper, cobalt, vanadium): 5% of norm value;
- energy and industrial minerals: 5% of gross value;
- gemstones: 6% of gross value;
- precious metals: 6% of norm value; and
- cobalt and vanadium: 8% of norm value.

The Mines Act does not differentiate between national and foreign investors in terms of taxation.

4.2 Tax Incentives for Mining Investors and Projects

Zambia provides a range of incentives aimed at attracting investment and supporting the mining sector. Key incentives include:

- guaranteed input tax claim for ten years on pre-production expenditure for mining, petroleum or gas exploration for registered suppliers in the sector;
- any mining company holding a mining licence carrying on the mining of base metals is taxed at 30%;
- dividends paid by a mining company holding a mining licence and carrying on mining operations is taxed at 0%;
- 25% mining deduction on capital expenditure on buildings, railway lines, equipment, shaft sinking or any similar works; and
- zero rating of capital equipment and machinery listed in the Second Schedule of the Value Added Tax Zero-Rating Order when supplied to a holder of a large-scale mining licence.

Stabilisation Agreements

The mining laws in Zambia do not expressly provide for stabilisation or development agreements. However, similar protections may be found under the Investment Trade and Business Development Act No 18 of 2022 (the "ITBD Act"). Under Section 6(2) of the ITBD Act, the Zambia Development Agency, with the approval of the Minister of Finance and the Attorney General, may enter into an investment protection and promotion agreement (IPPA) on behalf of the government with investors.

While IPPAs are not explicitly termed as "stabilisation agreements", they can encompass provisions traditionally found in such agreements, such as:

- tax stability;
- protection against expropriation; and
- legislative and regulatory stability.

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

Under the Property Transfer Tax Act (the "PTT Act"), mining rights are explicitly classified as taxable property. The PTT Act defines property as including mining rights or interests granted under the Mines Act.

A mining right and an interest in a mining right can be transferred. A transfer of an interest in a mining right has been interpreted to include an indirect transfer of shares that granted a person beneficial interest in a mining right.

In order to transfer a mining right or an interest in a mining right, the holder or the right or interest must obtain the approval of the Minister of Mines and must pay PTT to the Zambia Revenue Authority at the following rates:

- 10% of the realised value in respect of a mining right for a mining licence;
- 8% of the realised value in respect of a mining right for an exploration licence;
- 10% of the realised value in respect of a mineral processing licence; and
- 8% of the realised value of the interest in a mining licence, which is classified as shares under the PTT Act.

The term realised value in respect of a mining right means the actual price of the mining right or as determined by the tax authority, whichever is higher. In respect of an interest in a mining right, the term realised value is the greater of:

- the proportion that the value of the company incorporated in the Republic bears to the value of the company whose shares are being transferred multiplied by the value of the transferred shares;
- the proportion that the value of the company incorporated in the Republic bears to the value of the company whose shares are being transferred multiplied by the consideration for the transferred shares; or
- the proportion that the value of the company incorporated in the Republic bears to the value of the company whose shares are being transferred multiplied by the nominal value of the transferred shares.

Transfers Through Corporate Structures Outside Zambia

The obligation to pay PTT applies irrespective of whether the transfer occurs directly within Zambia or indirectly through corporate structures outside the jurisdiction. In these cases, the transfer is still considered a disposition of property within Zambia if it involves mining rights or interest in mining (shares), and the tax liability arises as prescribed by the PTT Act.

The Supreme Court in the recent case of Teal Minerals Barbados Incorporated v the Zambia Revenue Authority, Appeal No 4 of 2022 dealt with a transaction in which Teal Minerals Barbados (Teal Minerals) entered into a share purchase agreement with EMR for the purchase of Teal Mineral's shares in Konnoco, which held 80% of the share capital in Lubambe Zambia, a mining company in Zambia. The Supreme Court decided that an interest in a mining right may either be direct ie, legal or indirect ie, beneficial.

By virtue of Teal Mineral's shareholding in Konoco, which in turn held shares in Lubambe Zambia, Teal Minerals held an interest in Lubambe Zambia's mining right. Therefore, Teal Minerals transferred its interest in the mining right held by Lubambe Zambia to EMR. The transaction was therefore subject to PTT. Indirect acquisitions of mining rights using offshore companies will therefore also require approval of the Minister of Mines and payment of PTT in Zambia.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

Key Features of Attracting Investment in Zambia's Mining Sector

Regulatory and legal framework

Zambia's mining industry is governed by the Mines Act, which provides a robust legal framework ensuring security of tenure, transparent licensing procedures, and protection of investors' rights. Efforts to streamline bureaucratic processes enhance the ease of doing business, making the sector more accessible to both local and foreign investors.

Rich geological potential

Zambia is endowed with extensive mineral resources, with copper as the primary export earner. Other significant reserves include cobalt, gold, emeralds, and other gemstones, alongside industrial minerals. Comprehensive geological data and surveys, accessible through government and private institutions, reduce exploration risk and attract investment.

Political stability

Zambia enjoys a reputation for political stability, peaceful transitions of power, and adherence to the rule of law. Investor protection is further bolstered by robust dispute resolution mechanisms, including arbitration.

Access to regional and international markets

Zambia's membership in the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) provides access to significant regional markets. Furthermore, favourable trade agreements facilitate the export of minerals to international markets, enhancing the profitability of mining projects.

Foreign exchange controls

No foreign exchange controls and dividends may be repatriated without the need for onerous regulatory consents.

Local content requirements

There are no local content requirements for holders of large-scale mining and exploration licences.

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

Zambia generally imposes minimal restrictions on foreign investment in mining. However, specific limitations exist under the Mines Act, particularly regarding certain mining rights and operations.

Size-Based Restrictions on Mining Rights

Mining rights over areas between two cadastre units (6.68 hectares) and 120 cadastre units (400.8 hectares) are reserved for:

- citizen-influenced companies: 5% to 25% equity owned by Zambian citizens;
- citizen-empowered companies: 25% to 50% equity owned by Zambian citizens; and

- citizen-owned companies: at least 75.1% equity owned by Zambian citizens.

Artisanal Mining

Only citizens or co-operatives wholly composed of Zambian citizens are permitted to undertake artisanal mining operations.

Small-Scale Mining

Small-scale mining is restricted to citizen-owned, citizen-influenced, or citizen-empowered companies.

5.3 International Treaties Related to Exploration and Mining

Zambia is a signatory to various bilateral and multilateral treaties that promote and protect investments.

Bilateral Investment Treaties (BITs)

BITs are regulated by the Trade and Business Development Act. Zambia has entered into BITs with several countries to protect and encourage foreign investments. These treaties aim to create favourable conditions for investors by providing guarantees and protections against risks such as expropriation, unfair treatment, and restrictions on the transfer of profits.

Zambia has signed BITs with the UAE, Türkiye, Morocco, Mauritius, the UK, Finland, Italy, the Netherlands, France, Belgium, Ghana, Egypt, Cuba, China, Switzerland and Germany.

Of the 16 BITs, only those with the UAE, Mauritius, France, Germany, Switzerland, China, Türkiye, the Netherlands and Italy are currently in effect.

Multilateral Treaties

The African Growth and Opportunity Act (AGOA)

While the AGOA primarily focuses on enhancing trade between eligible African countries and the USA, it includes provisions that protect and promote foreign investments. These protections indirectly encourage US investments in Zambia's mining sector.

SADC

As a member of the SADC, Zambia adheres to protocols on trade and investment, including the SADC Protocol on Finance and Investment. This Protocol aims to promote sustainable investment flows and ensure that investors are treated equitably, which applies to mining ventures and large-scale exploration projects.

COMESA

The COMESA fosters regional economic integration and provides a framework for investment protection similar to the SADC.

The COMESA Common Investment Area Agreement includes provisions that protect cross-border investments in member states, encouraging international mining companies to operate in Zambia.

5.4 Sources of Finance for Exploration, Development and Mining

The mining industry in Zambia relies on diverse financing mechanisms to support exploration, development, and operational activities. These include the following.

Equity Financing

Private equity funds play a significant role in financing mining projects, especially in their early stages.

Loans

Public and private loans include loans from commercial banks, development banks, or international financial institutions. However, it must be noted that in terms of the Banking and Financial Services Act No 7 of 2017, banks or financial institutions cannot, directly or indirectly (except as the Bank of Zambia may prescribe) grant a credit facility or guarantee a debt of a person or common enterprise so that the total value of the credit facility and guarantee, in respect of a person or common enterprise, is more than 25% of the regulatory capital of the bank or financial institution.

Shareholders may provide loans to mining companies, especially in closely held entities, to finance specific projects or operations.

Asset Financing

Mining companies leverage asset-backed financing to purchase expensive machinery and equipment. Lenders provide financing based on the collateral value of these assets, which are essential for operations.

Offtake Agreements

These are pre-arranged contracts where a buyer agrees to purchase a portion of the mine's production in advance. Offtake agreements often come with upfront payments or financing to support project development. In Zambia, offtake agreements are particularly common for copper and cobalt, with major buyers securing long-term supply contracts to mitigate market risks.

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

The domestic securities market in Zambia, led by the Lusaka Securities Exchange (the "LuSE"), provides a regulated platform for raising capital. Despite its potential, the role of the LuSE in financing mining projects is minimal. This is primarily due to the low number of Zambian mining companies listed on the LuSE. Currently, the only mining-related entity listed is ZCCM-IH, which serves as the government's investment arm in the mining sector. The limited participation of mining companies on the LuSE restricts the domestic market's contribution to mining finance. It can be said that currently therefore the domestic securities markets plays little to no role in mining finance.

Similarly, the international securities markets play a minimal role in financing exploration, development, and mining activities in Zambia. Although mechanisms like depository receipts have been utilised to access foreign capital, their application is very rare. Depository receipts, which represent shares in a foreign company and are traded on international stock exchanges, can provide a pathway for Zambian companies to tap into global markets. However, their issuance typically involves significant compliance costs, regulatory hurdles, and the need for a robust corporate structure, making them an uncommon choice for most mining enterprises in Zambia.

5.6 Security over Mining Tenements and Related Assets

Creation of Security Interests

Mining tenements

Security interests can be created over mining tenements under Section 66 of the Mines Act. A mining right holder may encumber their tenement, provided they obtain prior consent from the Minister of Mines. In practice, this takes the form of a lender to the licence holder taking a charge over the mining right or taking a charge over the shares of the licence holder. Where the licence holder is also the legal owner of the land over which the mining right exists, the licence

holder may also create a mortgage over the land on which the mining right subsists.

On enforcement of the security created over the mining right or the licence holder, the lender can, among other powers of enforcement, take possession of the mining rights and resulting products, including residue deposits and mineral products.

Related assets

Security interests can also be created over movable property under the Movable Property (Security Interest) Act No 3 of 2016 (the "MPSI Act"). The MPSI Act allows for the creation of security interests in tangible and intangible movable assets, such as machinery, equipment, exploration data, or receivables, to secure the payment of a debt or the performance of an obligation. To establish a security interest:

- the secured creditor and debtor (eg, a mining company) must execute a security agreement detailing the terms of the security interest, the collateral, and the obligations secured; and
- the security interest is perfected by registering a financing statement in the collateral registry maintained under the MPSI Act.

Priority of security interests

A perfected security interest takes precedence over an unperfected one. Where two or more security interests are perfected, priority is determined by the chronological order of their creation and perfection.

Licence holders can also create fixed and floating charges over their mining assets. These charges must be registered.

Enforcement of security interests

In the event of debtor default, secured creditors have several enforcement rights, including the following.

- Repossession or disposal: creditors may seize or sell the encumbered mining tenements and related assets to recover their debts.
- The disputes arising from enforcement actions are resolved through legal processes in line with Zambian law.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

The mining sector in Zambia is poised for significant growth over the next two years, both in terms of exploration and mineral production.

From a legislative perspective, it is anticipated that Zambia will have a new Act that regulates the mining sector. The new law is likely to place responsibility for the regulation of minerals in a separate entity. As a result, the Ministry of Mines will not be responsible for issuing and regulating mining licences issued under the new Act.

On the exploration front, activity is expected to surge, particularly in the western, northern, and north-western provinces, which remain largely underexplored. Advancements in technology, especially the integration of AI into exploration processes, have sparked renewed interest in these previously untapped regions. The focus will extend beyond traditional minerals like copper to include critical resources such as manganese, lithium, and cobalt, driven by rising global demand for these materials to support the green energy transition.

In terms of production, Zambia is set to increase its copper output from approximately 800,000 metric tonnes to over one million metric tonnes. This growth is attributed to the revitalisation of key mining assets such as Mopani Copper Mines, Kansanshi Copper Mines, and Luanshya 28 Mine, which were previously dormant but are now gearing up for operations. Additionally, major players like First Quantum Minerals (FQM) and Barrick Lumwana have made substantial investments to expand their copper production capacities.

Trends and Developments

Contributed by:
Harriet Mdala, Maloba Nalomba, Chilufya Sinkala and Hlezipe Halwiindi
MAY and Company

MAY and Company is an innovative full-service corporate law firm committed to providing comprehensive legal solutions to businesses of all sizes. The firm brings a fresh perspective, innovative approaches, and a passion for delivering exceptional client service. It has highly regarded partners who are known within the Zambian market as being among the best in their practice areas. The team brings together key expertise in corporate and commercial work which enables clients to access the full spectrum of legal services within the commercial space.

Authors

Harriet Mdala of MAY and Company focuses on mergers and acquisitions, energy, extractives and infrastructure within the Zambian market. She also serves as the key relationship partner for the Zambia Association of Manufacturers (ZAM) and is a member of the board of the French Business Circle.

Maloba Nalomba of MAY and Company is recognised her experience in the mining and natural resources sector. Her experience also encompasses managing mergers and acquisitions involving mining companies, offering commercial and corporate advisory services, and addressing risk and compliance issues specific to the mining industry.

Chilufya Sinkala of MAY and Company has experience in mergers and acquisitions, infrastructure development projects and data protection. In mergers and acquisitions, she has extensive experience in managing significant deals, overseeing negotiations, conducting due diligence and finalising agreements. In project development, she provides strategic advice on infrastructure development projects, such as road projects and social and industrial infrastructure projects, negotiating complex legal arrangements to ensure agreements are bankable and acceptable to her clients. On the data protection front, she assists her clients with meeting privacy and security regulations which are essential in today's digital landscape. By aligning legal expertise with a deep understanding of business goals, she consistently delivers practical solutions that drive success. She offers comprehensive legal guidance to both her international and local clients.

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Hlezipe Halwiindi of MAY and Company has expertise in corporate and commercial law, specialising in areas critical to the mining sector. Her extensive experience includes advising clients on complex mining-related transactions, such as structuring deals, reviewing commercial agreements and navigating intricate regulatory frameworks. She has significant expertise in managing competition law matters relevant to the mining sector, including addressing anti-competitive practices and ensuring merger control compliance. In the banking and finance domain, she assists mining clients with financing arrangements, loan structuring, risk management and compliance with sector-specific regulations. She has a strong background in environmental law and has specialised training in climate change.

MAY and Company

759 Glasshouse Independence Avenue
Woodlands Roundabout
Lusaka
Zambia

Tel: +26 021 125 0580
Email: info@mayandco.co.zm
Web: www.mayandco.law

Contributed by: Harriet Mdala, Maloba Nalomba, Chilufya Sinkala and Hlezipe Halwiindi, **MAY and Company**

Introduction

Zambia's mining industry is currently undergoing significant transformation which is intended to increase investment in the sector and encourage more sustainable practices. The key trends in the sector are as follows.

Enhanced Geological Surveys

The Ministry of Finance allocated ZMW198 million for a nationwide geological survey, initially covering southern, north-western, western, and central provinces. The survey aims to enhance Zambia's understanding of its mineral resources and will be expanded to the entire country within two years.

We understand that the survey's initial focus is on the western and north-western provinces, with plans to expand to other areas afterwards. By 31 December 2024, surveys in the Chavuma, Zambezi, Lukulu, and Kalabo districts had been completed, covering 8% of the total surface area of the country expected to be surveyed.

Additionally, the geophysical airborne survey is currently taking place along the southern border of Zambia, covering areas such as Mongu, Senanga, and Sesheke, including parts of Kazungula and Livingstone. The survey is also being conducted around the Luangwa/Zambezi River confluence, focusing on the Luangwa, Siavonga, and Chirundu districts, to assess the subsurface geological structures in these regions.

The enhanced geological surveys are necessary for identifying mineral resources for future mining activities and ensuring that resources are extracted in an efficient and sustainable way. This data will be key for potential investors as it will inform their decisions on whether or not a site is suitable for development into a large-scale mining project.

Anticipated Legislative Changes

In terms of legal developments, the government is in the process of enacting new legislation in the mining sector. This consists of the Geological Minerals Development Act of 2024, the Minerals Regulation Commission Act No 14 of 2024 and a statutory instrument on local content, the Mines and Minerals Development (Local Content) Regulations 2020.

The key change in the proposed Minerals Regulation Commission Act is the establishment of the Minerals Regulation Commission. This change is aimed at passing the regulatory function in the mining sector to the Commission and responsibility for handling policy-related matters to the Ministry of Mines.

The proposed Geological Minerals Development Act among others, seeks to provide for geological surveys, mapping and exploration activities and establish an artisanal and small-scale mining fund.

The Mines and Minerals Development (Local Content) Regulations seek to enhance the participation of Zambians across the mining value chain.

A recent public address by the Minister of Mines suggests that the Minerals Regulation Commission Act is expected to enhance regulatory oversight in the mining sector. The implementation process is underway and the Commission is expected to be fully functional by the end of the first quarter of 2025.

Additionally, the Geological and Minerals Development Act is currently at the first reading stage in Parliament. With regard to the draft Mines and Minerals Development (Local Content) Regulations, we understand that stakeholder consulta-

tions on the draft legal framework are ongoing and once consensus is reached with key stakeholders the Regulations will be promulgated. The government is determined to finalise them before the end of 2025.

The Minerals Regulation Commission Act, 2024 was recently passed by the Parliament and will commence upon issuance of a commencement order by the Minister of Mines. Until it is, the current Mines Act remains law.

Establishment of New Mining Cadastre

The government of Zambia is in the process of transitioning from the current FlexiCadastre online platform to a new cadastre management system. The FlexiCadastre system is widely regarded as the global gold standard for transparent cadastre management and in this regard some stakeholders argue that the proposed change to a new cadastre management system could have significant negative impacts on Zambia's mining industry and economy.

The government, however, has assured stakeholders that the new system will enhance transparency, tighten control over processes and meet the country's legal requirements. It remains to be seen whether the new system will deliver the improved transparency and accountability functionality that is highly sought after in the mining sector. The official launch of the new system is imminent.

Impact of Energy Crisis on the Mining Sector

Zambia's goal to increase copper production to three million tonnes by 2032 faces challenges due to a significant power deficit. The country relies heavily on hydroelectric power, which accounts for 84% of its 3,811 MW installed capacity, but has a current deficit of 1,381 MW, leading to ongoing power rationing. Mining, the largest energy consumer, accounts for 51% of Zambia's energy use. In response, mining companies are sourcing power from neighbouring countries like Namibia and Mozambique at higher costs, impacting profits and tax contributions.

To address this, the Ministry of Energy launched the Integrated Resource Plan (IRP) in February 2024, aiming to secure a sustainable energy supply over the next three decades. However, the plan faces funding challenges, with an estimated USD14 billion required for full implementation. Timely execution of energy projects is crucial to meet growing demand and ensure Zambia can achieve its copper production target by 2032.

Additionally, the Zambian government through the Ministry of Energy enacted a statutory instrument in the form of the Electricity (Open Access) Regulations No 40 of 2024 (the "Open Access Regulations") which provide the legal framework that allows for qualified participants to access and use the electricity transmission and distribution system in Zambia for a specified period. Among other things, the Open Access Regulations specify the application process for open access, transmission and distribution charges and the functions of the Zambia Energy Supply Corporation (ZESCO) and the Energy Regulation Board. The Open Access Regulations are intended to ensure fair access to the electricity market for various stakeholders, including consumers with a consumption capacity of at least 1 MW.

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