

GETTING THE DEAL THROUGH

Mining

in 28 jurisdictions worldwide

2014

Contributing editors: Michael Bourassa and John Turner

Published by
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Michael Bourassa and John Turner
Fasken Martineau

Getting the Deal Through is delighted to publish the fully revised and updated tenth edition of *Mining*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 28 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen on the basis of their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editors Michael Bourassa and John Turner of Fasken Martineau for their assistance with this volume.

Getting the Deal Through

London
June 2014

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Published by
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87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd 2014
No photocopying: copyright licences do not apply.
First published 2004
Tenth edition
ISSN 1748-3085

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Mining industry

- 1** What is the nature and importance of the mining industry in your country?

The mining industry of Albania has served for the past 50 years as a supporting pillar of industrial growth and economic connections, building on underlying chrome resources that, before 1990, made it the world's third-largest producer of chrome ore, together with nickel, iron and copper. Since 1990 considerable parts of the mining sector's activities appear to have become commercially unviable, or at best marginal.

In recent years, the Albanian government has given top priority to this sector, considering it to be a core industry able to stimulate Albania's economic development. To this end, the government has undertaken several reforms such as privatisation, adoption of a legal framework for licensing mining activities, enacting policies for foreign investors consisting of incentives regarding the transfer of capital and special fiscal treatment aiming to restart production and bring the sector back to its economic potential. Therefore, mineral exploration, exploitation and processing now constitute a key component of the Albanian economy, owing to a traditional mining industry that has been a solid foundation of the country's economic sector, generating substantial revenues.

Such change in course of action is expressed by the increased number of investments in both small and large-scale mines, as well as increased output and employment, and the higher capacities of downstream processing of minerals. Up to this date, more than 752 mining permits have been issued in the mining sector by the Ministry of Economy, Trade and Energy (as per the website of the National Agency for Natural Resources). Of these, 673 were exploitation permits. The figures of exploitation permits for certain key minerals are:

- 211 permits for chrome ore;
- 231 permits for limestone;
- 32 permits for clay;
- 34 permits for iron-nickel and nickel-silicate;
- 43 permits for tabulated limestone; and
- 30 permits for massive and flaggy sandstone.

The rest of the exploitation licences belong to over 10 different kinds of minerals and rocks.

As part of the implementation and harmonisation of Albanian legislation with the *acquis communautaire*, the Albanian parliament has adopted law No. 10,304, dated 15 July 2010 (the Mining Sector Law), which abrogated the old Mining Law (No. 7,796, dated 17 February 1994). The Mining Sector Law, which entered into force as of 27 August 2010, reflects the provisions of EU Directive 2006/21 of 16 March 2006 on management of waste from extractive industries.

- 2** What are the target minerals?

The largest share of minerals produced in Albania is as follows:

- chrome ore;
- copper; and
- iron-nickel and nickel-silicate.

- 3** Which regions are most active?

Chrome ore

There are three main regions where chrome ore is located:

- the north-eastern region (Tropoja and Kukes ultrabasic massifs);
- the central region (Bulqiza and Lura ultrabasic massif); and
- the south-eastern region (Shebenik-Pogradec ultrabasic massif).

Copper

Copper deposits are located in six districts: Korça, Mirdita, Puka, Shkodra, Kukes and Has regions.

Based on the geologic conditions, their morphology, genetic and mineralogical components, three main types of copper deposits are distinguished:

- plutonic type, quartz-sulphur – this type includes deposits located in Nikoliq 1, 2, Golaj, Krume, Gdheshte, Thirre, Shemri, Eastern Tuç, Kurbnesh, Kabash, Kçire and Turec regions;
- volcanogenic type includes deposits such as Perlat, Munelle, Lak Rroshi, Tuç, Paluce, Qaf Bari, Gurth 1, 2, 3, Spaç, Kaçinar, Derven, Rehove, Geshtenja Shore, Thick Dushk, etc; and
- volcanogenic-sedimentary type includes deposits such as Gegjan, Porave, Palaj, Karma and Rubik.

Iron-nickel and nickel-silicate

Iron-nickel and nickel-silicate deposits are mainly located in:

- the north-east region (Kukes): Trull Surroi, Mamez, Nome;
- the east central region (Librazhd-Pogradec): Perrenjas, Skorske, Xixillas, Bushtrice, Gur i Kuq, Cervenake, Guri i Pergjegjur, Hudenisht and Gradisht;
- the west central region includes deposits in Liqeni i Kuq, Xhumage, Debrove; and
- the south-east region (Devoll): Bitincke, Kapshtice, Strane, Kokogllave, etc.

Legal and regulatory structure

- 4** Is the legal system civil or common law-based?

Albania is a civil law legal system.

- 5** How is the mining industry regulated?

From a historical point of view, all activities in the mining industry were conducted under the supervision of the Albanian state (centralised system).

The relationship between the Albanian state (represented by the Ministry of Energy and Industry (MEI)) and the entities involved in mining activities is governed by the Mining Sector Law.

Furthermore, the Mining Sector Law allows the stipulation of 'incentive agreements' if the mining activity consists of the exploitation of minerals of the group of metallic and non-metallic minerals, cobbles and bitumen, group of construction minerals or group of radioactive minerals in a certain area. This agreement is entered into between the holders of the exploitation permit and the MEI provided that the mining activity is considered as having a particular public interest for the area where such activity will be implemented. This agreement is subject to approval by the Council of Ministers and the Albanian parliament.

- 6** What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The principal law governing all mining activities (including underground and underwater activities) performed within the territory of Albania is the Mining Sector Law, which aims to encourage the mining activity in the Republic of Albania through ensuring transparency and fair competition in the sector; maximal growth of public benefit coming from the mining activity, and protection of environment and public health from mining and mining waste hazard. Specifically, this law gives the classification of minerals, types of permits and the terms and conditions that apply to each type of mineral permit.

The procedure and the terms for obtaining the mineral permit are defined in the Licensing Law (Law No. 10,081, dated 23 February 2009). In principle, a request for obtaining a mineral permit (or notifying any relevant changes to the existing permits) is subject to filing and notification to the National Licensing Centre (NLC). This entity conducts a preliminary examination of the documents filed and afterwards forwards the file to the MEI, which adopts or issues the final decision.

The National Agency for Natural Resources (NANR) has as a scope the development and supervision of the rational exploitation of natural resources based on government policies, and the monitoring of their post-exploitation in the mining sector. The NANR has, inter alia, the following tasks and responsibilities:

- consults, suggests to and cooperates with the relevant government bodies for the development of policies in the area of mining, and implements such policies;
- negotiates mining agreements and monitors the implementation of their development plans;
- supervises mining and post-mining activities, and monitors the exploited areas, mining risks and termination of mining activities; and
- exclusively manages primary data related to mining and post-mining activities.

- 7** What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Mining Sector Law classifies the types of minerals in groups. In addition, mining permits are issued under consideration of the group of mineral specified in the application or request. Specifically, mineral reserves are divided into:

- metallic minerals, non-metallic minerals, coal and bitumen;
- construction minerals;
- precious stones and semi-precious stones; and
- radioactive minerals.

The Albanian government has approved the decision of the Council of Ministers No. 479, dated 29 June 2011, of the new Mining Strategy of the Republic of Albania for the years 2010 to 2025, through which it undertakes to adopt the UN Framework for Fossil Energy and Minerals for the classification of all minerals, aiming to create an instrument that allows the classification of reserves and resources of raw minerals on the basis of uniformity with the

international criteria based on a market economy. The Albanian government is making efforts to attract international mining companies that comply with accepted good practice when implementing mining activities. In general, these companies are listed on international stock exchanges, and tend to use uniform rules for handling resources and reserves calculations and use recognised reporting codes (for example, CIM or JORC).

Mining rights and title

- 8** To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

According to the Mining Sector Law the minerals in natural form, located in Albania, and on the underwater surface, sea floor, under-sea floor, or under the territorial sea, determined under principles of international law and international agreements ratified by the Republic of Albania belong to the state and are public property. The rights to exploit mineral resources can be granted to private domestic or foreign persons upon the grant of mining permits, which are awarded in compliance with the procedures provided by the Mining Sector Law. The mining right is a distinct and independent right from the ownership right over the land surface. The holder of the mining permit has the legal right of mining servitude (mandatory) over the property in the area approved upon the mining permit. However, the terms of usage of the servitude should be regulated through a contract compiled in accordance with the provisions of the Albanian Civil Code.

- 9** What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The NANR and the Albanian Geological Survey (the AGS) are empowered to draw up the maps of mining activities for research, exploration, exploitation activities and to maintain the relevant database regarding such maps. Furthermore, the AGS maintains the archive of existing geological reports and the evaluation of reserves for groups of minerals as per their classification of the old Mining Law (No. 7,796, dated 17 February 1994). The AGS also prepares relevant geological and geophysical surveys for different regions and mineral types. Private parties that intend to conduct activities of research and planning for the mining sector should be equipped with the relevant licence from the NLC. Foreign entities engaged in activities of research and planning for the mining sector in their country of origin are required to perform the equivalence of their professional licence issued by the relevant and competent authorities in their country of origin. Currently the electronic database regarding mining activities which is published on the Albanian authorities' websites appears to have functionality problems and has not been updated.

- 10** What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?

Under the Mining Sector Law, Albanian or foreign legal entities may acquire the right to research, explore, exploit or perform activities

that consist of the combination of all indicated activities, depending on the mineral group. Specifically, for minerals of the metallic minerals, non-metallic minerals, coal and bitumen group; the construction minerals group; and the radioactive minerals group a separate and distinct permit is issued for each of the following activities: research-exploration and exploitation. For the precious and semi-precious stones group, mining rights may be granted which include all activities (namely, research-exploration and exploitation).

The holder of a research exploration permit has a preferential right to obtain an exploitation permit, which (right) should be exercised during the term of the research-exploration permit or within 60 days after its expiry provided that the holder of the research and exploration permit has met its financial obligation for the research exploration permit.

Mining rights subject to a bid procedure (namely, if the mining area is listed as the 'bid area' in the Annual Mineral Plan, which is approved by the MEI) is granted to the winning bidder. Such mining rights may be granted to Albanian or foreign legal entities either in accordance with the Public Procurement Law (Law No. 9,643, dated 20 November 2006) or under the legal requirements of the Concession Law (Law No. 125/2013). For the mining areas that are classified as 'opened areas', the permit is granted on a first-come, first-served basis.

The holder of the mining rights has to comply with the general obligations applicable to any type of mining permit and the specific obligations pertaining to the relevant type of permit. Specifically, the holder of mining rights shall provide a financial guarantee, which may serve to guarantee the rehabilitation of the environment, the realisation of the minimal work programme under the research, exploration or research and exploration permit and the realisation of the investment obligations under the exploitation permit. The other obligations are related to royalty tax, preparation of the rehabilitation plan and the management of mining residues, site security measures, prevention of contamination, confidentiality, submission of the relevant reports on investments, etc.

11 What is the regime for the renewal and transfer of mineral licences?

Pursuant to the Mining Sector Law an exploration permit for the group of metallic minerals, non-metallic minerals, cobbles and bitumen is valid for a period of three years. This term may be extended only once more, upon request of the permit holder. Such extension is valid only for one year. The extension will be approved only if the permit holder proves the possibility of discovering a mineral object. On the other hand the exploitation permit for the above-mentioned group is valid for a period of 25 years, with the possibility of extension only once, for a 10-year period. However, if upon request of the permit holder an investment plan is presented and the plan is deemed in the economic and social interest of the community of the respective area, the exploitation permit may be given or extended for a total validity period of 99 years; such decision is approved by the Albanian parliament.

Concerning precious stones and semi-precious stones, their exploitation permit may not be granted for more than 25 years, with a possibility of a further 10-year extension period.

With respect to the transferring of a mining right or permit, only such rights that are obtained under the Mining Law may be transferred. Mining rights which are granted under a competition procedure and those for which a facilitating agreement has been effectuated are not transferable.

Concerning the transfer procedures, the Mining Sector Law provides that the transfer is effectuated upon approval from the Minister responsible for the mining sector. Based on the Law, such approval is to be given within 60 calendar days from the submission of the request for transfer. Upon approval, the transfer is registered at the National Register of Licences and Permits. Constructions and installations in support of the main operations are considered as

facilitating activities and are transferred along with the mining right or permit.

12 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

The Mining Sector Law does not provide for any restrictions on foreigners acquiring mining rights. It should be noted that during recent years the Albanian government has been adopting policies to attract foreign investors to invest in the Albanian mining sector. In practice, foreign investors have entered into joint ventures with local companies, basically for reasons related to business planning and implementation, aiming to use the knowledge and experience of the local companies to overcome the challenges and problems that they have to face when conducting mining activities in Albania.

13 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Mining rights are protected by the rule of law in Albania. To simplify the relevant litigation procedures and execution of court decisions, subject to administrative disputes between both individuals and juridical persons and public bodies, the Albanian parliament has recently approved the Law on the Organisation and Functioning of Administrative Courts and Judgment of Administrative Disputes (No. 49/2012), which entered into force on 4 November 2013 with the establishment of administrative courts, and therefore all administrative disputes are expected to be settled in a faster and more efficient way.

Additionally, if the permit is granted within the framework of the Public Procurement Law or the Concession Law, disqualified bidders may file administrative appeals with the Albanian Public Procurement Commission. The decision of the Public Procurement Commission constitutes a final administrative decision. Afterwards, the claimant may file its claim (should the claimant not be satisfied by the decision) with the administrative court, within 45 days from receipt of the notification of the decision of Public Procurement Commission.

The Republic of Albania has ratified the Convention on the Recognition and Enforcement of Foreign Arbitration Awards (New York, 1958) and consequently foreign arbitration awards are enforceable in Albania.

14 What surface rights may private parties acquire? How are these rights acquired?

The holder of the permit enjoys the right of servitude pertaining to the area indicated in the permit. The right of servitude imposes on the owner of the land the obligation to allow the holder of the permit to use the land, and perform all relevant activities or supporting works in pursuance with the type of the permit. The right of servitude may be also granted for purposes of having access into the mining site.

When the mining area is privately owned, the parties shall enter into a servitude agreement. The term of the said agreement is linked to the duration of the relevant type of mining permit. Should the owner of the land and the permit holder not strike an agreement within 30 days from the request of the latter addressed to the owner, the permit holder may approach the court, which will decide in such regard.

15 Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The participation of government or state agencies in mining projects is not explicitly regulated.

- 16** Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

There are no provisions in the law dealing specifically with expropriation of licences. The Mining Law only mentions revocation of the licence due to any breach by the licence holder, consequently no compensation is provided for.

However, from a general point of view, pursuant to the Law on Foreign Investment (No. 7,764, dated 2 November 1993), foreign investments shall not be subject of expropriation in any direct or indirect way, or any other measure with an equivalent effect, with the exception of those cases when such expropriation is in the interest of the public good as defined by law. In such a scenario immediate compensation will follow, equal to the real market value of the expropriated investment.

- 17** Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

According to the Law on Protected Areas (No. 8,906, dated 6 June 2002) important or threatened parts of the territory are declared as protected under the following categories:

- Category I – strict natural reserve/scientific reserve (mining activities not allowed);
- Category II – national parks (mining activities not allowed);
- Category III – natural monuments (mining activities not allowed);
- Category IV – managed natural reserves (mining activities not allowed);
- Category V – protected landscape (several activities permitted if provided with environmental permit); and
- Category VI – protected areas of managed resource (several activities permitted if provided with environmental permit).

A list and the relevant map of the protected areas is published on the website of the Ministry of Environment.

Duties, royalties and taxes

- 18** What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Each permit holder shall pay the mining rent (royalty tax) to the Albanian state, levied on the minerals sold, under consideration of the type of the mining permit.

Beginning with the entry into force of the new amendments to the Law on National Taxes (No. 9,975, dated 28 July 2008), the royalty tax shall be fixed as a percentage of the sale price of minerals. The tax rate depends on the type of minerals, but in any case it does not exceed 10 per cent; in the case of metallic minerals the tax rate varies between 4 per cent and 10 per cent (depending on the specific metallic mineral), while for non-metallic minerals it is 4 per cent. Semi-precious stones and precious stones are taxed at 10 per cent of the sale price. Previously, the Law on National Taxes provided for a minimum and maximum rate of royalty tax for each mineral and the Council of Ministers was authorised to determine the specific rate applicable.

In addition, the mining activity is subject to taxation in accordance with Albanian tax legislation (namely, VAT, profit tax, etc).

- 19** What tax advantages and incentives are available to private parties carrying on mining activities?

Incentives may be granted based on an 'incentive agreement' (see question 5). The Mining Sector Law does not specifically refer to the kind of incentives to be granted to the private investors or entities engaged in the mining sector. Under the old Mining Law, incentives were granted to attract foreign investors to export-oriented activities and consisted mainly of tax exemptions.

- 20** Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There is neither any tax stabilisation legislation nor are there any tax stabilisation agreements in force.

- 21** Is the government entitled to a carried interest, or a free carried interest in mining projects?

There are no explicit regulations entitling the government to a carried interest with respect to mining projects. Pursuant to the Mining Sector Law, however, the holder of a mining permit for metallic minerals, non-metallic minerals, coal and bitumen must spend a specific amount of money for every square kilometre as declared in the mining permit. If this amount is not spent, any remaining part shall be transferred to the state budget.

- 22** Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

No. There are no transfer taxes or capital gains imposed regarding the transfer of licences.

- 23** Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

The Mining Sector Law does not provide for any distinction between domestic and foreign parties.

Business structures

- 24** What are the principal business structures used by private parties carrying on mining activities?

Considering that the Mining Sector Law does not provide for specific rules related to the business organisation form of entities applying for obtaining mining rights, each entity may decide to carry out the business activities in pursuance with the options provided for in the Commercial Companies Law (Law No. 9,901, dated 14 April 2008), either by establishing a local company (a limited liability company or a joint-stock company are the most commonly used forms) or branches. In any case, it is advisable that reference be made to the bid documents (for mining rights under a 'bid area') in order to verify any requirements in such regard.

- 25** Is there a requirement that a local entity be a party to the transaction?

No, there is no requirement that a local entity be a party to the transaction.

- 26** Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

The Republic of Albania has entered into many bilateral investment and double taxation treaties; it is, however, not possible to determine whether foreign entities commonly use any particular treaty to structure their mining operations in Albania.

Financing

- 27** What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The principal financing sources are self-financing, through either local or foreign financial institutions. To the best of our knowledge, financing of mining activities does not take place through the Albanian public securities market.

28 Please describe the regime for taking security over mining interests.

It would be possible to place a pledge on a mining licence, however in practice the enforcement of the pledge over the licence (implying a transfer of the licence to the pledgee or a third party) would be subject to approval by the Ministry provided that under the Mining Sector Law, the said transfer is permissible.

Restrictions**29** What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

The Mining Sector Law does not specifically address issues related to importation of machinery or equipment necessary for conducting mining activities. Import of equipment and machinery necessary for implementing the mining activity is not subject to any authorisation or permit. For the majority of imported equipment and machineries there are no customs duties.

VAT (currently at a 20 per cent rate) is payable on equipment and machinery imported for investment purposes, but the Law on VAT (No. 7,928, dated 27 April 1995) provides facilities in this regard. Pursuant to the VAT Law the import of machinery and equipments, for the purpose of performing an investment contract with a value of 50 million leks, is exempted from VAT. Furthermore, when the conditions for benefiting the VAT exemption are not met, the VAT Law provides also for a deferral scheme for equipment and machinery that are imported for the purpose of the economic activity of the taxable person. Accordingly, the payment of VAT is deferred for up to 12 months from the import of machinery and equipment. The deferral period can exceed 12 months upon approval of the Minister of Finance when the investment period (namely, the period between importation of machinery and commencement date of supplies of goods or services) will be longer than 12 months. Additionally, upon request of the person concerned, the unpaid VAT resulting from the above-mentioned scheme may be compensated with reimbursable VAT incurred from the same project.

30 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

There are no provisions imposing quotas, restrictions or limitations related to the processing, export or sale of metallic minerals.

31 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Income deriving from the export or sale of metallic minerals is not subject to any restriction or limitation under Albanian legislation. Profits resulting from mining activities may be repatriated, after taxation. There is no foreign currency exchange control applicable in Albania.

Environment**32** What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental law having an impact on mining activities is the Law on Environmental Protection (Law No. 10,431, dated 9 June 2011), the Law on Environment Permits (Law No. 10,448, dated 14 July 2011) and the Law on Environmental Impact Assessment (Law No. 10,440, dated 7 July 2011). Based on the above-mentioned laws, the National Agency of the Environment (formerly the Agency of the Environment and Forestry) acts as the

central authority and, along with the regional agencies, is in charge of monitoring and adopting measures for the protection of the environment, as well as assessing the impact on the environment of plans and projects submitted from public or private entities and granting of relevant permits. Apart from the said authorities, the Environment Inspectorate is the entity in charge of controlling the status of the environment as well as the implementation of the law, being at the same time entitled to impose sanctions if the law is infringed.

33 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The environmental review and permitting process involves the Ministry of Environment as well as the regional environmental agencies. Certain projects in the mining sector having a considerable environmental impact might be subject to an in-depth report on environmental impact assessment (and a requirement to obtain an environmental permit in pursuance of the Law on Environmental Impact Assessment). The said law provides no fixed terms for the assessment procedure. The duration of such procedure depends on the volume of the study for the environmental impact of the project. Those mining activities that do not fall under the in-depth environmental impact assessment are subject to the environmental authorisation or consent issued by the local government (municipalities or communes).

34 What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Pursuant to the Mining Sector Law, abandoned mines might be subject to closure or conservation.

The process of closure and monitoring of abandoned mines depends on the status of the administrators of these mines. If the mines were previously administered by the Albanian state, the closure and monitoring is subject to approval by the Council of Ministers, upon a proposal of the MEI. The plan on closure and monitoring is prepared by a specialist approved by the MEI.

Closure and monitoring of mines previously administered by private legal entities, however, is subject to approval by the MEI. In such case, closure and monitoring is performed based on the closing and monitoring plan submitted in the permit application.

Abandoned mines might fall under the conservation regime, if there is a failure to implement the closure and monitoring plan.

The MEI is entitled to call or withdraw the financial guarantee in the following circumstances: waiver by the holder of the permit from the mining rights, or termination of the activity before expiration of the permit term based on a decision of the MEI. The amount of this annual guarantee varies according to the term of the permit, business plan, etc.

Health & safety, and labour issues**35** What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Republic of Albania has ratified the ILO Convention C176, concerning safety and health in mines. The domestic labour legislation in Albania is mainly governed by the Law on the Labour Code (No. 7,961, dated 12 July 1995) as amended. The Labour Code provides for basic principles that should be complied with in order to ensure health and safety in workplaces. More specific rules and requirements for the improvement of health protection and safety at work have been established by the Law on Health and Safety at Work (No. 10,237, dated 18 February 2010), which was drafted in accordance with EU recommendations provided by the Framework

Update and trends

The government is focused on the promotion of incentive policies in order to increase the development of the extracting industries and the benefits of the local community. Recently, the Minister of Energy and Industry declared that during 2014 the government will amend the mining legislation and promote these incentive policies. He considers that the reinforcement of transparency in the extracting industry will bring new investments that will be supported by government through competitive processes. The Ministry of Energy and Industry foresees the creation of an electronic register which will reflect all the data of the concessions, the mining licences or permits at every stage of the implementations process. The creation of this electronic register aims to increase the trust of local and foreign investors in this industry.

Directive of the European Commission 89/391/EEC as well as the Law on Work Safety in Mining Activity (No. 8,741, dated 15 February 2001). Regulatory competences on the legal framework of labour in Albania are granted to the Ministry of Social Welfare and Youth. The entity engaged with the enforcement and monitoring of the aforementioned legal acts is the State Work Inspectorate.

Furthermore, each entity involved in the mining industry shall comply with the requirements of the Decision of the Council of Ministers No. 1109, dated 30 July 2008 on Insurance of the Employees Engaged in the Mining Sector Regarding Accidents at Work, as well as the secondary legislation issued in pursuance of said decision. Accordingly, each entity shall insure its employees with an Albanian insurance company against accidents at work.

The National Agency for Natural Resources and the Department for Inspection and Recovery of Mines are the authorities engaged in performing periodical technical controls on the safe operation of mines.

- 36** What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Mining Sector Law does not impose any limitation or restriction with regard to the personnel engaged in mining activities; rather the Law on Foreigners (No. 108/2013, dated 28 March 2013) governs this matter. According to the Law on Foreigners, foreign personnel engaged in projects implemented in Albania must obtain a work permit, which is granted under consideration of the developments and needs of the Albanian employment market (namely, assessment of whether an unemployed Albanian citizen might have been engaged in the relevant function or position). EU citizens, citizens of the Schengen Area and the USA, lawfully staying in Albania, are exempted from this obligation and are not required to obtain a

work permit; however, they are required to obtain a Certificate of Employment Declaration.

Social and community issues

- 37** What are the principal community engagement or CSR (corporate social responsibility) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

As of December 2011, the Business Advisory Council (an advisory body of the Council of Ministers for economic policy development and improvement of the relevant legal framework) approved the Internal Code of Conduct for Companies in Albania. This code represents a supporting and guiding document for companies, assisting them to develop an internal management framework. It consists of a model that companies are free to adopt in accordance with their needs.

- 38** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

There is no legislation concerning this matter in this jurisdiction.

- 39** What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

There are no international treaties, conventions or protocols relating to CSR issues applicable in Albania.

Foreign investment

- 40** Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

There are no foreign ownership restrictions in Albania relevant to the mining industry.

International treaties

- 41** What international treaties apply to the mining industry or an investment in the mining industry?

Albania is a candidate country of the Extractive Industries Transparency Initiative (EITI), an initiative that aims to strengthen governance by improving transparency and accountability in the extractive sector. Implementation of EITI would improve transparency and accountability in the Albanian extractive industry sector and thus will make it easier for the Albanian government to estimate its economic contribution.

Currently, negotiations for a cooperation agreement in the mining sector between Albania and Kosovo are under way.

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