



# Mining

The regulation of exploration and extraction in 31 jurisdictions worldwide

Contributing editors: Sean Farrell and Robert McDermott

# 2010

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# Albania

Alketa Uruçi and Aulona Hazbiu

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## Mining industry

### 1 What is the nature and importance of the mining industry?

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. After 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, by considering it as a 'core industry', able to stimulate the economic development of Albania. To this end, the Albanian governments have 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.

At present, the sector shows signs of recovery. Such a change is expressed by the increased number of investments in both smaller and large-scale mines, as well as increased output and employment, and the higher capacities of downstream processing of minerals. To date, 832 mining permits have been issued in the mining sector by the Ministry of Economy, Trade and Energy. The production of non-metallic minerals has increased rapidly to 44 types of minerals, reaching the level of 5 million tonnes of production per year, which includes the production of construction materials, argil (used for the production of cement) and decorative stones. Additionally, the Albanian state has undertaken several investments related to the monitoring and rehabilitation of mines as well as prevention of mining risks (closure of unexploited mines).

Within the implementation and harmonisation of the Albanian legislation with the *acquis communautaire*, the Mining Law currently in force (No. 7796, dated 17 February 1994) is in process of being abrogated. The draft law (which will abrogate the existing Mining Law, aiming to reflect provisions of EU Directive 2006/21 dated 16 March 2006 'On Management of Waste from Extractive Industries') is being currently examined by the Commission on Production Activities, Trade and Environment of the Albanian Parliament. The draft law is expected to be approved by the Albanian Parliament very shortly. Therefore, information provided below refers to provisions of the draft law; any reference to the Mining Law implies the draft law.

## Legal and regulatory structure

### 2 Is the legal system civil or common law-based?

The Albanian jurisdiction is a civil law legal system.

### 3 How is the mining industry regulated?

From an historic 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 Economy, Trade and Energy – METE) and the entities involved in mining activities are governed by the Mining Law.

Furthermore, the Mining Law allows the stipulation of 'incentive agreements' if the mining activity consists of the exploitation of minerals under groups 1, 2, 3 (ie, metallic and non-metallic minerals, cobbles and bitumen), group 4 (ie, minerals and construction materials) or group 7 minerals (ie, minerals and radioactive substances) in a certain area. This agreement is entered into between the holders of the exploitation permit and METE 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 (CM) and the Albanian Parliament.

### 4 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 Law. 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. 10081, dated 23 February 2009). In principle, the request for obtaining the 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 METE, which issues or adopts the final decision.

### 5 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Mining 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, the mineral reserves are divided into:

- metallic minerals;
- non-metallic minerals;
- cobbles and bitumen;
- minerals and construction materials;
- precious stones;
- semi-precious stones; and
- minerals and radioactive substances.

Albania has not adopted yet the international classification standards which are common in other mineral-producing countries, although

the Albanian government is making efforts to attracting international mining companies that comply with '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 recognised reporting codes (eg, CIM or JORC).

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#### Mining rights and title

##### 6 Who has title to metallic minerals in the ground?

The Mining Law provides explicitly that all minerals detectable within the territory of the Republic of Albania are in the ownership of the Albanian state and are considered immoveable public properties independently from their origin, form or physical status, or the place where they are detected (whether under or in the ground or in or under water).

##### 7 What information and data is publicly available to private parties that wish to engage in mining activities?

The primary sources of technical information are the Mining Cadastre and the Mining Register, both publicly available. The Mining Cadastre contains details related to immoveable property (ie, ground, buildings and other installations in and under the ground) as well as details on the mining areas. The Mining Register includes data on the legal regime of the mining areas, neighbouring areas, ownership, reserves, mining production and data on the holders of mining permits.

##### 8 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have?

Under the Mining 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 groups 1, 2, 3 and 7 a separate and distinct permit is issued for each of the following activities: research, exploration or exploitation. For group 4, mining rights may be granted for performing research and exploration or exploitation activities. The permit issued with respect to groups 5 and 6 covers the rights to perform all the activities (ie, research, exploration and exploitation).

Mining rights subject to a bid procedure (ie, if the mining area is listed as the 'bid area' in the Annual Mineral Plan, which is approved by METE) is granted to the winning bidder. Such mining rights may be granted to Albanian or foreign legal entities either in pursuance with the Public Procurement Law (Law No. 9643, dated 20 November 2006) or under the legal requirements of the Concession Law (Law No. 9663, dated 18 December 2006). For the mining areas that are classified as 'opened areas', the permit is granted based on the principle 'first come, first served'.

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 for guaranteeing 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.

##### 9 Is there any distinction between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

The Mining 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 attractive for foreign investors to encourage them 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 for overcoming the challenges and problems that they have to face when conducting mining activities in Albania.

##### 10 How are mining rights protected?

Mining rights are protected by the rule of law in Albania. In practice, completion of judiciary processes takes approximately four to six years (from filing of the claims at the first instance court until issuance of a decision of the Supreme Court). This is due to the lack of experience of the judges in the civil courts and the fact that administrative courts have not yet been established.

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 be not satisfied by the decision) with the court, within 30 days after receipt of the notification of the decision of Public Procurement Commission.

##### 11 How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Not applicable.

##### 12 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 latest addressed to the owner, the permit holder may approach the court, which will decide in such regard.

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#### Duties, royalties and taxes

##### 13 What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these duties, royalties and taxes 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.

Starting from entry into force of new amendments of the Law on National Taxes (No. 9975, dated 28 July 2008) the royalty tax shall be fixed as a percentage over 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 pursuance with the Albanian tax legislation (ie, VAT, profit tax, etc).

- 14** 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 3). The Mining 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.

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

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

### Business structures

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

Considering that the Mining 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 (No. 9901, dated 14 April 2008), either by establishing a local company (a limited liability company or a joint-stock company is most commonly used form) 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.

### Financing

- 17** 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 either through 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.

### Restrictions and limitations

- 18** What restrictions and limitations are imposed on the importation of machinery and equipment or services required in connection with mining activities?

The Mining 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 machines the custom duties are zero per cent.

VAT (currently at 20 per cent rate) is applied on equipment and machinery imported for investment purposes, but the Law on VAT (No. 7928, dated 27 April 1995) establishes a VAT deferral scheme for such equipment and machinery. 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 (ie, period between importation of machinery and commencement date of supplies of goods or services) will be longer than 12 months.

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

The Mining Law does not impose any limitation or restriction with regard to the personnel engaged in mining activities; rather the Law on Foreigners (No. 9959, dated 17 July 2008) governs this matter. According to the Law on Foreigners, foreign personnel engaged in

### Update and trends

The approval of the new Mining Law in compliance with the European legislation marks another vital move in reforming the mining sector. The Albanian government intends to continue its promotion of the mining sector, especially to foreign investors. Despite these efforts, the mining sector has not yet attracted sufficient foreign investors commensurate with the resource potential of Albania and the neighbouring countries.

The Albanian Geological Survey is currently in process of digitising the geographical data maps. This database will be available to all foreign investors interested in being involved in the Albanian mining sector.

projects implemented in Albania must obtain a work permit, which is granted under consideration of the developments and needs of the Albanian employment market (ie, assessment of whether an unemployed Albanian citizen might have been engaged in the relevant function or position).

- 20** What restrictions or limitations are imposed on the processing, export or sale of metallic minerals?

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

- 21** What restrictions or limitations are imposed on the import of funds for mining activities or the use of the proceeds from the export or sale of metallic 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.

### Environment, health and safety

- 22** What are the principal environmental, health and safety 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. 8934, dated 5 September 2002) which attributes to the Agency for the Environment and Forests the function of central authority that, along with the regional agencies, is in charge of monitoring and adopting measures for the protection of the environment. 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.

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 the 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.

- 23** 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 the 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 environment impact assessment are subject to the environmental authorisation or consent issued by the local entities (municipalities or communes).

- 24** 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 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 METE. The plan on closure and monitoring is prepared by a specialist approved by METE.

Closure and monitoring of mines previously administered by private legal entities, however, is subject to approval by METE. 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.

METE 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 minister of economy, trade and energy. The amount of this annual guarantee varies according to the term of the permit, business plan, etc.

#### International treaties

- 25** 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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