

Mining in Armenia: overview

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OVERVIEW

1. What are the recent developments in the exploration and extraction of mineral resources in your jurisdiction?

Armenia's mining sector is one of the cornerstones of the national economy. Over half of the exports from Armenia are ore concentrates and metals. In the state register of mineral resources of the Republic of Armenia there are 670 mines of solid minerals (including 30 metal mines) currently registered. Armenia is rich in iron, copper, molybdenum, lead, zinc, gold, silver, antimony and aluminium.

Currently, the major mining projects in the country are the Amulsar Gold Project (carried out by Lydian Armenia CJSC) and the Teghout Mine (production operation is launched by Vallex Group).

The legislation on the mining projects (and particularly, the Subsoil Code) have undergone major changes in the preceding months. A law amending the Code entered into force on 16 August 2020 and made vital and comprehensive changes to it (see *below*). The transitional articles of that law determine gradual change of the law, including specific regulations on how and when these changes enter into force. A number of acts will be adopted by the government and the authorised body to further regulate the mining sector based on the changes already made (see *Question 14*). These changes are very comprehensive and relate to various aspects of the sector, including:

- A new set of requirements regulating the geological expertise has been added to the code.
- Changes to the period necessary to issue subsoil use permits.
- Changes to the process and the right to pledge subsoil use rights.
- In terms of suspending or terminating the subsoil use permit, changes to the grounds related to the breach of conditions of pledging the rights and other grounds.
- Comprehensive regulations in terms of mine closures, related recultivation works and the expertise (that is, the approval) of the relevant plan.

REGULATORY STRUCTURE

Regulation

2. What is the regulatory framework for the exploration and extraction of mineral resources?

Regulatory framework

The Code of Subsoil is the main source of law regulating relationships relating to the use of subsoil in Armenia. The Code of Subsoil determines both the:

- Special rights of subsoil use and how to obtain them
- Rights and obligations of the engaged parties and government authorities.

Certain environmental aspects are dealt with in the Law on Environmental Impact Assessment. Tax Code and Law on Wastes are applicable to certain aspects of the sector. Also, the Land Code and Water Code regulate the relations regarding surface rights and use of water resources. Following recent developments of the legislation on mandatory announcements of ultimate beneficiaries of Company (based on the EITI undertakings of the country), the Law on State Registration of Legal entities, registration of separated subdivisions, establishments of the legal entities, and registration of private entrepreneurs (together with the Subsoil Code) regulates the respective obligations of the subsoil users and the applicable processes.

Regulatory authorities

The mining industry is regulated by the:

- Ministry of Territorial Management and Infrastructures, which develops state policies in the mining sector and ensures compliance which these policies, grants the right of subsoil use and so on.
- Ministry of Environment, which participates in the development of state policies in the sector of environmental protection, implements the limitations determined under the environmental protection laws in the sector of environmental protection, etc.
- Natural protection and mining inspection body, which implements the state supervision to comply with environmental protection norms within the scope of subsoil use.

OWNERSHIP

3. How are rights to the mineral resources held, and who holds those rights?

The subsoil is exclusively owned by the state. Deposits of the mineral resources are subject to state registration and the resources which are extracted must be excluded from state registration. The extraction rightsholders are entitled to extract the mineral resources and manage the extracted resources. The rightsholders must pay the following fees:

- State fees.
- Nature usage fees.
- Royalties to the state budget (which are reimbursement for the mineral resources gained by the rightsholders).

Authorisation

4. What are the key features of the leases, licences or concessions that are issued under the regulatory regime? Can these rights be leased by the right-holder?

Lease/licence/concession term

Under the regulatory regime, a right of subsoil use is issued, which can be an exploration right or a mining right. These rights are

transferrable with the prior consent of the relevant authorities. However, the right to use these rights cannot be transferred in any form.

Before starting the exploration or the extraction of minerals, the rightsholder must obtain the consent of the owner of the surface or present to the Ministry of Territorial Management and Infrastructures a land usage agreement. While the subsoil is always state property, the land on the surface can be private. Therefore, the surface can be used under the land purchase, usage, lease or servitude agreement.

Term of the rights

The right of subsoil use is granted for a definite period, as follows:

- For the purpose of exploration, the period cannot be more than three years, and can be extended.
- For the purpose of exploration for calculation of the deposits of minerals, the period cannot be more than three years (if the calculation of the minerals for the same mine has been conducted more than five years ago for metal minerals and ten years ago for non-metal minerals). This provision was introduced by the 2020 amendment to the Subsoil Code.
- For the purpose of extraction of minerals based on a plan that has undergone an expertise, for a period of 25 years (which can be extended once for another 25 years). A permit for a period of less than 25 years can be issued or extended, if during that period all calculated and established deposits of the mine are going to be extracted. This amendment changes the duration of the subsoil use right from 50 years to 25 years.
- For the purpose of extracting non-solid minerals and mineral waters based on a plan that has undergone an expertise, for a period of 20 years (which can be extended for another 20 years). A permit for a period of less than 20 years can be issued or extended, if during that period all calculated and established deposits of the mine are going to be extracted. This provision was introduced by the 2020 amendment to the Subsoil Code.

(*Subsoil Code.*)

Those amendments will not apply to subsoil users whose exploration rights expire within one year of the amendment entering into force (which is 16 August 2020).

Exploration rights

The right of subsoil use can be granted for exploration operations to discover mineral resources. The right of subsoil use for exploration can be extended for three successive periods of up to two years each.

To extend the period, the rightsholder must apply to the Ministry of Territorial Management and Infrastructures and include details about:

- Why the exploration works should be extended.
- The additional works that are expected to be undertaken.
- The amended working plan.
- Grounds for continuing the exploration.

Ministry of Territorial Management and Infrastructures then reviews the application following the same procedure as the initial exploration right application review and decides whether to extend the right of use for the period requested. The definite grounds for rejection to extend the term of the exploration right overlap with the grounds for rejection of granting the initial right under the Code of Subsoil.

Extracting mineral resources

The right of subsoil use for the purpose of extracting mineral resources entitles the rightsholders to extract mineral resources and recycle the subsoil-use waste.

The rightsholder can apply to the Ministry of Territorial Management and Infrastructures for an extension of the term of the right by including:

- Data about residual or additionally explored mineral resources.
- Information regarding changes to mining methods (if foreseen).
- The amended work plan.
- Grounds to extend the right of use period.

The definite grounds for rejection to extend the term of the extraction right overlap with the grounds for rejection of granting the initial right under the Code of Subsoil.

Fees

The Law on State Duty sets out the applicable annual state fees, as follows:

- For right of subsoil use for exploration purposes, the annual state fee is AMD50,000.
- To grant a right of use in relation to:
 - precious metal mines, the annual state fee is AMD10 million;
 - fossil fuel mines, the annual state fee is AMD50,000;
 - building material mines, the annual state fee is AMD500,000;
 - gemstone mines, the annual state fee is AMD10 million; and
 - obsidian (*Vanakat*) mines, the annual state fee is AMD100,000.

Liability

The applicable state fees must be paid by the rightsholder within five working days by the rightsholder from receiving a notification that the relevant right of subsoil use is granted. If the rightsholder fails to pay on time, the decision to grant the right of subsoil use will be cancelled.

Restrictions

The Code of Subsoil defines the rightsholder as a legal entity (including a foreign state or entity) that holds subsoil use rights. Therefore, there are no nationality restrictions for obtaining the subsoil use rights. In terms of surface rights, foreign entities cannot have ownership rights towards land, they can only have a right of use (exploitation) in relation to the surface.

5. How are such leases, licences or concessions awarded?

Exploration rights

To obtain a right of subsoil exploration for the purposes of extracting minerals, an application must be submitted to the Ministry of Territorial Management and Infrastructures with the following information:

- The requested term for the works.
- A description of the territory where the exploration is expected to take place.
- The exploration work plan.
- Information regarding the financial and technical capabilities of the applicant.

If the application is being submitted for obtaining a right of exploration for the purpose of extracting metal minerals, the following must be submitted:

- A statement with the details on the ultimate beneficial owners (UBOs) of the company issued up to five days before the application is submitted.
- Any changes in the UBOs of the applicant (if these changes have occurred after the initial application has been submitted and before a decision is made in terms of the application).

The application is reviewed by the Ministry of Territorial Management and Infrastructures, which must obtain the final approval of the Ministry of Environment on the environmental impact assessment.

Extracting mineral resources

The right of extracting mineral resources can be issued only after the following two procedures are followed.

The applicant must first apply for a preliminary environmental impact assessment (EIA) before it applies for the right to extract mineral resources.

The applicant must then submit an application to the Ministry of Territorial Management and Infrastructures that includes the following information:

- Description of the relevant territory of subsoil.
- List of the confirmed mineral resources.
- Plan of extraction of mineral resources.
- Plan of closure of the mine.
- Data on the financial and technical capabilities of the applicant.
- Financial references and guarantees.
- Plan of the waste management and financial guarantees for conducting works under the plan.
- Receipt of paid state fee for the EIA (the state fee for EIA Category A objects is AMD500,000 and for Category B is AMD400,000).

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- Any changes in the UBOs of the applicant (if these changes have occurred after the initial application has been submitted and before a decision is made in terms of the application).

After the Ministry of Territorial Management and Infrastructures receives the application, it refers the case to technical expertise and assessment of the impact on the environment. After receiving the conclusions, the Ministry of Territorial Management and Infrastructures considers the application and makes a decision on the application.

Grounds for rejection

The Ministry of Territorial Management and Infrastructures can reject the application for an exploration right or right to extract mineral resources if either:

- The documents submitted or the information they contain information are false.
- The relevant section of subsoil:
 - is used under a different licence;
 - cannot be a separate object of subsoil use;
 - exceeds the territory of the works that are foreseen to undertake under the work plan of subsoil use; or

- the requested section is located in a territory in which mining is prohibited.
- The details regarding financial and technical means of the applicant:
 - do not comply with the requirements envisaged under legislation; or
 - the financial guarantee is insufficient for ensuring the waste management or the waste recycling requirements (if the latter is required under Code of Subsoil) or is issued by a different legal entity and the latter does not correspond with the requirements envisaged.
- Granting the right of use is contrary to Armenian legislation (including on grounds of national security).

If the Ministry of Territorial Management and Infrastructures decides to issue the right of exploration or extracting mineral resources, an agreement between the Ministry and rightsholder is concluded.

ENVIRONMENT

6. What are the main ongoing requirements for environmental protection?

Environmental impact assessment

To obtain a right of subsoil use for extracting mineral resources, a preliminary and initial environmental impact assessment (EIA) must be conducted (see *Question 5*). These procedures are set out in the Law of Environmental Impact Assessment. The activities of subsoil use fall under categories A or B (for exploration works only) based on the impact on the environment.

The expertise procedures are subject to public consultations to inform and engage the public. Informing the public and holding public hearings is done by the relevant state authorities, the developer of the project and the head of the affected community (usually the governor of the province or the mayor of the community or municipality). The justified comments of the public are then considered and addressed under the EIA.

Rights and obligations of the rightsholder

The Code of Subsoil determines the environmental protection obligations of the rightsholder during the course of its activities, including:

- Protection of the atmosphere, land, water and other natural resources.
- Compliance with the requirements.
 - under the EIA;
 - under the agreement with the Ministry of Territorial Management and Infrastructures; and
 - relating to waste management and monitoring to mitigate the negative effects on the environment and on subsoil use.

Recultivation works

Rightsholders must also undertake recultivation works. If the rightsholder fails to do this, the Ministry of Environment may notify the rightsholder and undertake the recultivation from the specified natural protection fund (formed from the mandatory financial contributions of the rightsholders of extraction of mineral resource). The terms of calculation of the contributions is determined by the Government of RA.

Under the Code of Subsoil, mines must have a closure plan, which is initially submitted with the application to obtain the licence. The closure plan will generally include:

- A plan for the physical closure of the mine.

- A plan for land reclamation during and after mine exploitation.
- An employees' social mitigation plan, as provided by law (at the moment no such mitigation is provided).
- A monitoring plan for the purpose of ensuring the safety and protection of public health in the territories where:
 - minerals have been extracted; or
 - industrial dumps that have emerged during extraction and in the surrounding communities.
- A confirmation of the closure plan two years before a mine's closure.
- Financial guarantees for the mine's closure.

The recent 2020 amendments to the Code require further details to be set out as part of the closure plan. In particular, the rightsholder, two years before its right to extract minerals expires, must submit an application to the authorised body for the closure plan to undergo an expertise. The application must include:

- The closure plan of the mine, which (among other things) must include:
 - the plan of reclamation of the violated lands; and
 - details on the reclamation works undertaken during the exploitation of the mine.
- The financial guarantees for the plan.
- Proof of undertaking the reclamation works during the works of the mine.
- Details about the UBOs of the company.

The process of approval (expertise) of the closure plan is similar to an application for a licence to extract minerals. Once the closure plan is approved, the authorised body adopts a decision, which includes the:

- Conditions of closing the mine.
- Requirements of the expertise.
- Conditions of complying with the decision to close the mine.

Finally, the rightsholders must pay nature utilisation fees and nature protection taxes for polluting the environment (air and water basin) with harmful substances.

However, generally reclamation works have not been undertaken in the country. This is because:

- Big mines in Armenia have not reached the stage of closure.
- The Ministry is meeting obstacles in terms of small mines with:
 - enforcing the rightsholders' obligations to undertake reclamation works; and
 - collecting the determined fees that would allow the government to conduct reclamation works itself.

In the meantime, reclamation of tailing dams has been done recently. An example of the latter is a recent reclamation which was done by creating a waterproof cover from clay on the tailing dam.

HEALTH AND SAFETY

7. What are the main ongoing requirements for compliance with health and safety regulations?

The main sources of law for health and safety regulations are the:

- Code of Subsoil and any governmental decrees under it.

- Law on the State Regulation of the Maintenance of Technical Security (Law on Technical Security) and any governmental decrees under it.
- Labour Code.

The Law on Technical Security deems mining activities to be "hazardous activities" and imposes applicable requirements in relation to such activities. The project documents must be approved by a technical expert, and it is prohibited to approve project documents and/or to take any subsequent actions without the positive conclusion of a technical expert.

FOREIGN OWNERSHIP

8. Are there any restrictions concerning the foreign investment in and ownership of companies engaged in the exploration and extraction of mineral resources?

There are no nationality limitations in the mining sector. Full national treatment is given to foreign investors and the market is open for any investor without discrimination towards nationality/origin. There are no special restrictions applicable to foreign companies.

PROCESSING AND SALE OF MINERAL RESOURCES

9. Are there any restrictions or limitations on the processing of extracted mineral resources?

There are no special restrictions on the processing of extracted mineral resources under Armenian legislation. Under the Code of Subsoil, the agreement for extracting the mineral resources must set out the term for processing extracted minerals. Also, the rightsholder must be entitled to manage the extracted minerals.

10. Are there any restrictions or limitations on the sale, export or import of extracted mineral resources?

There are generally no sale, export or import restrictions. However, as Armenia is a member of the Eurasian Economic Union, exportation licences are required for the exportation of precious metals. The Government of Armenia prohibits (except in specially-licensed cases) the transit of any nuclear material or substances emitting ionising radiation through Armenia.

TAX

11. What payments, such as taxes or royalties, are payable by interest holders to the government?

Rightsholders must pay the general taxes, such as VAT (20%), profit tax (18%), they must withhold income tax of employees as a tax agent and have to pay local taxes (such as property and land tax) and other relevant standard duties, taxes and compulsory payments established by the Tax Code.

VAT

VAT is an indirect tax, which is payable on transactions such as supply of goods and services, import of goods, free or partially free consumption. The reporting period for VAT is one month, and VAT returns must be submitted, and calculated VAT must be paid in before the 20th of the month following the reporting period.

Profit tax

Profit tax for companies is calculated on an annual basis. Relevant expenses for securing income and evidenced by certain documents

are deductible. Compulsory quarterly prepayment of a portion of the expected tax (calculated based on previous years) results is due at the end of each quarter. The tax rate for the profit tax for the mining activities is 18% (deducted from the last year).

Environmental (nature protection) tax

Environmental tax is payable for:

- Pollution of air.
- Pollution of water resources with harmful substances. Payment for pollution of environment with harmful substances is calculated on the basis of the volume of harmful substances ejected into the environment in the reporting period.
- Allotting production and consumption wastes in the environment according to the specified procedure. Payment for the allocation of production and consumption wastes according to the specified procedure in the environment is calculated based on the volumes of production and consumption wastes allocated in landfills and production areas, and the level of hazard.
- Importing or selling goods that are harmful for the environment. Payment for goods imported into Armenia that are hazardous for the environment is calculated based on the customs value of such goods.

Different types of tax rates are defined for each tax object based on the types of harmful substances, the level of hazard and so on. Certain levels are established by the law and different rates shall be applicable for breaching such levels. Reporting period is a quarter.

Nature utilisation payments

Nature utilisation payments are aimed at effective and targeted use of State-owned natural resources and providing remuneration for such use. Natural utilisation payments are intended for:

- The use of surface water (tax base is the factual amount of the extracted water).
- Extracting fresh (drinking) underground water (tax base is the factual amount of the extracted water).
- Extracting medicinal or drinking mineral water. The tax base is the factual amount of the extracted mineral water or the produced amount of carbon dioxide.
- Extracting salt (tax base is the factual amount of the extracted salt).
- Exhausted hard minerals (except metals). The tax base is the total of hard mineral resources extracted and those lost during extraction within the reporting period, excluding inevitable in-process losses.
- Royalties are payable for the use of precious metals (see *below, Royalties*).
- Exhausted bio resources.

Certain levels of extraction are established by the law for the use of natural resources and different rates apply for exceeding them (sanctions may also be applied). Such levels are being established by the permissions granted to the taxpayers under the Subsoil Code, Water Code and other legal acts.

The following payment rates are established as follows:

- Use of surface water, between AMD0 (free of charge) and AMD1.95 per cubic metre depending the use.
- Use of fresh (drinking) water, AMD1.3 per cubic metre.
- Extraction of mineral water, between AMD0 (free of charge) and AMD7,345 per cubic metre depending on the use.
- Different rates are established for the extraction of each type of hard mineral wealth supplies.

Royalties

Royalties must also be paid for the use of metals and high income derived from the supply of such goods. Royalty is paid by the producers of metal concentrate or mixture, or any final product obtained by the use of concentrate or mixture.

The base of royalties is calculated from the supply of concentrates of precious metals for the recording period. The royalty rate is decided by the following formula:

$$R = 4 + (\text{profit before taxation}) \times 100 / (\text{revenue from the supply of concentrates} \times 8).$$

There is also a methodology for calculation and adjustment of revenue from the supply of concentrates, aimed to prevent transfer pricing.

Special incentives are available for foreign investors (stabilisation clause). Rightsholders can apply to the authorised government body not to implement new tax regulations for five years from the moment of the investment. This is foreseen in the Law on Foreign Investment in Armenia.

12. Does the government derive any other economic benefits from the exploration and extraction of the mineral resources?

The government derives economic benefits in the form of received taxes, royalties and other payments, including royalties for the extraction of metals (see *Question 11*). No specific requirements applicable to joint-venture arrangements are determined.

13. What taxes and duties apply on the import and export of mineral resources?

The export of goods for the customs duty rate is set at 0%.

As a member of the World Customs Organization, the Convention of Temporary Imports and the International Convention on Harmonized Commodity Description and Coding System, Armenia must adhere to internationally accepted customs regulations and practices.

The new Customs Code developed by the Eurasian Commission has been ratified by the Armenian Government. The duties on the import of metals and minerals to the country are established by the Eurasian Economic Commission and vary from 0% to 10% (depending on the type of metal or mineral).

Finally, there are no specific tax advantages available to private parties engaged in mining activities.

REFORM

14. Are there any plans for changes to the legal and regulatory framework?

In 2017, Armenia became the 52nd country to join the Extractive Industries Transparency Initiative (EITI) as a candidate country. EITI promotes open and accountable management of oil, gas, and mineral resources. On 23 April 2019, the Parliament of Armenia adopted a set of laws determining transparency obligations for the subsoil use rightsholders in the metal mining industry. Rightsholders must submit details on the UBOs at the incorporation stage, when making an inquiry for obtaining a licence (or amending an existing licence) for subsoil use, and at other cases (see *Question 5*).

Significant changes were made to the Subsoil Code in 2020. The provisions of this change have not fully entered into force, but the

transitional provisions deem gradual change to the code. Moreover, the same amendment indicates that the government and the authorised bodies will adopt a number of acts to regulate various aspects of the mining relations. These acts that will be adopted in the near future include:

- The process of use and amounts to the capital for protection of environment (to be adopted within one year).
- The process of calculation and recalculation of the estimates of the reclamation works (to be adopted within one year).

- Guidelines for the reclamation works, including biological recovery of the affected land and closed mining waste facilities (to be adopted within one year).
- The minimal requirements in terms of the geological exploration plan and the plan of extraction of minerals (to be adopted within six months).
- The orders and methodological instructions of classification of mineral resources (to be adopted within two years).

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