



ICLG

The International Comparative Legal Guide to:

Mining Law 2018

5th Edition

A practical cross-border insight into mining law

Published by Global Legal Group, with contributions from:

Ali Budiardjo, Nugroho, Reksodiputro

Allens

Bilé-Aka, Brizoua-Bi et Associés

Claro & Cia.

Concern Dialog law firm

Engling, Stritter & Partners

Eric Silwamba, Jalasi and Linyama Legal Practitioners

Fasken Martineau

Georgi Dimitrov Attorneys

GRATA International

GTs Advocates LLP

Kieti Advocates LLP

Latournerie Wolfrom Avocats

Lawson Lundell LLP

Martínez Córdoba & Abogados Asociados

Mayer Brown International LLP

Mayer Brown JSM

Mayer Brown LLP

Melnitsky & Zakharov, Attorneys-at-Law

Project Lawyers

RB Abogados

Redcliffe Partners

Reindorf Chambers

TozziniFreire Advogados

TPLA – Taciana Peão Lopes & Advogados Associados

VdA Vieira de Almeida

Windahl Sandroos & Co.

Wolf Theiss



global legal group

Contributing Editor

Tom Eldridge, Mayer Brown International LLP

Sales Director

Florjan Osmani

Account Director

Oliver Smith

Sales Support Manager

Toni Hayward

Sub Editor

Hollie Parker

Senior Editors

Suzie Levy, Rachel Williams

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Publisher

Rory Smith

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd
September 2017

Copyright © 2017

Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-74-1

ISSN 2052-5427

Strategic Partners



General Chapter:

1	New Policies, New Priorities: A Review of Mining and Minerals Policy and Legislative Changes by Governments – Tom Eldridge, Mayer Brown International LLP	1
---	--	---

Country Question and Answer Chapters:

2	Angola	VdA Vieira de Almeida: João Afonso Fialho & Marília Frias	5
3	Armenia	Concern Dialog law firm: Aram Orbelyan & Roustam Badasyan	11
4	Australia	Allens: Gerard Woods & Daniel Knight	16
5	Brazil	TozziniFreire Advogados: Luiz Fernando Visconti & Caio Mimessi Fransani	24
6	Canada	Lawson Lundell LLP: Khaled Abdel-Barr & Karen MacMillan	31
7	Chile	Claro & Cia.: Nicolás Eyzaguirre	42
8	Colombia	Martínez Córdoba & Abogados Asociados: Adriana Martínez-Villegas	49
9	Congo – D.R.	VdA Vieira de Almeida: Matthieu Le Roux & Olivier Bustin	56
10	Ethiopia	Latournerie Wolfrom Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	62
11	Gabon	Project Lawyers: Jean-Pierre Bozec	68
12	Ghana	Reindorf Chambers: Fui S. Tsikata & Dominic Dziejornu Quashigah	75
13	Greenland	Windahl Sandroos & Co.: Bo Sandroos	81
14	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Woody Pananto & Freddy Karyadi	87
15	Ivory Coast	Bilé-Aka, Brizoua-Bi et Associés: Joachim Bilé-Aka & Moussa Traoré	99
16	Kazakhstan	GRATA International: Yerbolat Yerkebulanov & Mikhail Abdulov	105
17	Kenya	Kieti Advocates LLP: Clarice Wambua & Sammy Ndolo	113
18	Macedonia	Georgi Dimitrov Attorneys: Katarina Ginoska & Marija Jankuloska	118
19	Mauritania	Latournerie Wolfrom Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	124
20	Mexico	RB Abogados: Enrique Rodríguez del Bosque	132
21	Mongolia	GTs Advocates LLP: Zoljargal Dashnyam & Mend-Amar Narantsetseg	140
22	Mozambique	TPLA – Taciana Peão Lopes & Advogados Associados: Taciana Peão Lopes & André Cristiano José	148
23	Namibia	Engling, Stritter & Partners: Axel Stritter	156
24	Poland	Wolf Theiss: Ronald B. Given	167
25	Portugal	VdA Vieira de Almeida: Manuel Protásio & Marília Frias	174
26	Russia	Melnitsky & Zakharov, Attorneys-at-Law: Grigory Zakharov & Vadim Borodkin	180
27	Senegal	Latournerie Wolfrom Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	189
28	South Africa	Fasken Martineau: Godfrey Malesa & Nicola Jackson	196
29	Ukraine	Redcliffe Partners: Dmytro Fedoruk & Zoryana Sozanska-Matviychuk	204
30	United Kingdom	Mayer Brown International LLP: Tom Eldridge	211
31	USA	Mayer Brown LLP: Kevin L. Shaw & Daniel P. Whitmore	219
32	Vietnam	Mayer Brown JSM: Nguyen Hai Thao & David Harrison	227
33	Zambia	Eric Silwamba, Jalasi and Linyama Legal Practitioners: Joseph Alexander Jalasi, Jr. & Eric Suwlanji Silwamba, S.C.	233

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Armenia

Aram Orbelyan



Roustam Badasyan



Concern Dialog law firm

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The main law regulating relationships relating to the acquisition of subsoil rights (exploration and mining), the protection of the environment during mining works, the security of conducting works and public private cooperation is the Code on Subsoil of Armenia.

1.2 Which Government body/ies administer the mining industry?

The mining industry is regulated by the Ministry of Energy (granting permissions and supervision of activity) and the Ministry of Natural Protection (environmental issues, supervision of recultivation works).

1.3 Describe any other sources of law affecting the mining industry.

Sources of law that affect the mining industry include, among others:

- The Code on Subsoil.
- The Law on Payments for Nature Protection and Nature Usage.
- The Law on Wastes.
- The Law on Environmental Protection.
- The Land Code.
- The Water Code.

Natural protection and natural utilisation payments are payable for the protection of the environment, utilisation and other activities. The royalties payable on extracted resources are regulated by the Law on Nature Protection and nature utilisation payments.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Armenian law does not require special rights for reconnaissance. Activities that are not considered exploration or mining are normally permissible with the agreement of the respective landowners. Other activities that are regarded as exploration or mining require

respective mining rights. The only requirement of reconnaissance is the state registration of all identified minerals, mines and reconnaissance works.

2.2 What rights are required to conduct exploration?

To conduct exploration, one needs an exploration right, which consists of respective permissions, agreements, a project, a plan and a land provision act.

In order to receive permission for exploration, an application must be submitted, which must include details of the working plan, the time needed for exploration, information on the mining object, the area which has to be explored, the financial and technical abilities of the applicant, and some other information.

2.3 What rights are required to conduct mining?

To conduct mining, one needs a mining (exploration or exploitation) right, which consists of respective permissions, agreements, a project, a plan and a land provision act.

Mining permission is needed for extracting minerals. In order to receive permission, an application must be submitted, including information on the exploitation terms, how the project will operate, the confirmed list of minerals, what must be exploited, the closing programme, the financial and technical abilities of the applicant, and some other information.

2.4 Are different procedures applicable to different minerals and on different types of land?

No different procedures are prescribed.

2.5 Are different procedures applicable to natural oil and gas?

These will be regulated by another legal act (as prescribed in the Code on Subsoil), but no such legal act has been adopted and no different procedures have been prescribed yet. It should be noted that there are currently no gas or oil mines on the territory of Armenia, though there are some rumours on the availability of shale gas; however, no real economic activity is currently taking place in this subsector.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

No special rules are prescribed.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

There are no limitations based on nationality 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.

3.3 Are there any change of control restrictions applicable?

Change of control is free under mining law. Some restrictions may be applicable in competition and antitrust law, but not connected to the nationality of the owner.

3.4 Are there requirements for ownership by indigenous persons or entities?

No such requirements are prescribed.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No such rights and options are prescribed by law.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The mining proposal must include information on the methods of exploitation based on the best international practice, the formation of infrastructures, the terms of operation based on technical and economic factors, the judgment of an expert about the impact of the project on the environment, an environmental management plan, a social influence valuation, and reclamation plans.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

No such restrictions are applicable, but since Armenia joined the Eurasian Economic Union, exportation licences have been required for the exportation of precious metals.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

There are no such restrictions foreseen, as such; however, permission from the authorised governmental body is required. The authorised body shall decide on the issue within 30 days after the application is submitted. A report on the work already concluded must be submitted with the application.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The Civil Code uses the term “security interest right”, which has substituted the pledge over movables since 2015. Mortgaging (including use of security interest) is not applicable to reconnaissance, as there is no special right to it. Exploration and mining rights can be subject to security interest (mortgaged) after informing the authorised government body. The mortgage (security interest) agreement must be listed in the mining register.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The rights belong only to the owners and there is no procedure for subdivision.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

There are no such procedures or rights prescribed by law.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

All minerals must be included in the mining proposal. No other element can be mined. However, most mining rights include secondary minerals as well, if their quantity and quality allows for commercial mining.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

All such elements must be included in the mining proposal.

6.5 Are there any special rules relating to offshore exploration and mining?

No such rules are prescribed.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The subsoil is always state property, while the land on the surface can be either private or community/state-owned. The holder of the mining right can use the surface according to the land purchase, usage, lease or servitude agreement.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

All such obligations are regulated by the agreement on mining entered into with the authorised government body and the respective estate property-holder. Some environmental management issues and reclamation works are also to be prescribed by a mining proposal.

7.3 What rights of expropriation exist?

The Law on Alienation of Property for Public or State Use regulates the procedure of forced alienation (sale) of private property for public or state use; this also includes cases where the state may expropriate (by providing beforehand compensation equal to the market price plus 15%) land for legitimate purposes (this includes some cases of major investment projects), via a special procedure prescribed by law.

No special procedure on direct forced purchase by mining companies is prescribed by law.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

An expert opinion is required with regards to the impact a project may have on the environment. This impact must be assessed on an ongoing basis.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The Code on Subsoil provides that mines must have a closure plan, which must include the following:

- 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 health and safety monitoring plan for waste removal and security measures for the surrounding community;
- confirmation of the closure plan two years prior to a mine's closure; and
- financial guarantees for the mine's closure.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

There is an obligation to perform all activities mentioned in question 8.2 above for exploration or mining right-holders.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

According to the Land Code of RA, mining is not permissible in places where it may harm the health of citizens. Some restrictions are prescribed when it comes to the use of forests, wetlands, or other special lands for mining.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes, the titleholder shall enter into an agreement with the mining right-holder, in order that the latter receives a right to conduct mining on the relevant territory. Expropriation of the land based on prevailing public interest and providing it to the mine right-holder is possible under prevailing public interest law; however, the land titleholder shall receive fair compensation and special procedures shall be respected.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The relevant legislation is mainly the Labour Code and the Law on State Regulation of the Maintenance of Technical Security, and relevant sub-legislation, including technical regulations governing health and safety in mining, has been adopted based on the said laws.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

An expert opinion on technical security is required to be included in the project documents. It is unlawful to perform any activity without this document. The rights and responsibilities of employees, employers, and managers for each section are regulated by technical regulations set by government decisions (for underground mining processes, enrichment of precious metals, etc.).

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes; all information on rights of exploration or mining, personal information on companies, and information on mortgages are registered by the authorised body.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Such decisions can be brought for appeal to both the administrative body and to its superior body or to the Administrative Court of RA. The procedures are regulated by the Law on Principles of Administration and Administrative Procedure, the Code on Subsoil and the Administrative Procedure Code.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution of Armenia as amended in 2015 includes some provisions which impact mining, including: the state's ownership of the subsoil and water bodies, foreseen in article 10; protection of the environment and steady development, guaranteed under article 12; property and entrepreneurial rights; and some other regulations guaranteed by the Constitution.

12.2 Are there any State investment treaties which are applicable?

Armenia is party to more than 40 BITs (<http://bit.ly/2wcsSxI>) which contain investment guarantees. Besides, Armenia is a party to the ICSID Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), which have an impact on investment, including in the mining sector.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Aside from general taxes (e.g. VAT, income tax, etc.), entities have to pay: nature protection payments (for the pollution of the environment (air and water basin)) with harmful substances; for allotting production and consumption wastes in the environment according to the specified procedure and for goods harmful for the environment; nature utilisation fees (payments for the use of water, and payments for the use of bio-resources); and royalties (for the use of precious metals and high income derived from the supply of such goods).

A special guarantee is set in the Code on Subsoil for subsoil right-holders. In the case of any change in legislation, right-holders, during a three-year time limit which starts from the date of acquiring such right, may apply to the authorised government body and register the same legal regulations relating to utilisation fees, income tax for residents and non-residents, and applicable royalties. A similar guarantee (but for five years) is foreseen in the Law on Foreign Investment in Armenia.

13.2 Are there royalties payable to the State over and above any taxes?

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: $R = 4 + (\text{profit before taxation}) / (\text{revenue from the supply of concentrates} \times 8) \times 100$. Besides this, there is a methodology for calculation and adjustment of "Revenue from the supply of concentrates", aimed at avoiding transfer pricing.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Armenia is a unitary country, and the legislation is applicable to the whole country.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are no such rules in practice. However, if the mining operations mentioned in the project documents may impact on the territory of another country, then an environmental impact assessment should be held according to the international convention of which RA is a member (e.g. the Convention on Long-Range Transboundary Air Pollution).

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

According to article 45 of the Code on Subsoil, the holder of exploration rights may apply to the authorised state body for the right to totally or partially abandon a project with at least three months' prior notice before the planned abandonment date. The application must include information on works already performed and any documents evidencing such work. In the case of partial abandonment, an updated exploration proposal is also required. An application may be refused if the abovementioned documents were not presented or if the remaining part of the location cannot be used properly according to the contract on mining.

According to article 58 of the Code on Subsoil, the holder of the mining right may apply to the authorised state body for the right to totally or partially abandon a project with three months' prior notice before the planned abandonment date. An application must include details of the closing programme for the mine and financial guarantees for such closing. The authorised state body may propose a list of conditions for the abandonment of the project.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Article 42 of the Code on Subsoil foresees the obligation to relinquish part (which cannot be less than half of the whole area) of the territory provided for exploration if extension of the exploration term is sought. There are no rules foreseeing the relinquishing obligation for exploitation (mining) licences.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The state may terminate the contract in case of a profound breach of the contractual obligations (mining in contradiction to the proposal, not performing expertise obligations, not developing recultivation works, non-payment of taxes, etc.). After the termination, any exploration or mining rights will also be terminated.



Aram Orbelyan

Concern Dialog law firm
1 Charents str., office 207
Yerevan, 0025
Armenia

Tel: +374 93 662 726
Email: aram.orbelyan@dialog.am
URL: www.dialog.am

Aram Orbelyan is a Senior Partner at Concern Dialog law firm. He has led the litigation and arbitration practice of the firm since 2014. Aram Orbelyan holds a law degree and a Ph.D. in law from MGIMO University, and served as deputy Minister of Justice of Armenia from 2011–2014, where he was responsible for the reform of civil and civil procedure legislation, as well as the implementation of e-gov systems in Armenia.

In addition to his attorney practice, he lectures at the French university of Armenia (UFAR), the School of Advocates and the Justice Academy, and consults a number of international organisations and state agencies on reform issues (mostly justice sector, human rights, good governance issues). Aram Orbelyan is the president of the Association of Arbitrators of Republic of Armenia, arbitrator at ADR partners, panel member of ICSID and an *ad hoc* arbitrator. Aram Orbelyan has been a member of the Chamber of Advocates of RA since 2009.

Aram Orbelyan has represented mining companies in several high-level litigations and settlement negotiations connected to mining regulations and environmental issues, including extension of mining rights, invalidation of environmental fines and others, and he has consulted on investments in mining companies.



Roustam Badasyan

Concern Dialog law firm
1 Charents str., office 207
Yerevan, 0025
Armenia

Tel: +374 60 278 888
Email: roustam.badasyan@dialog.am
URL: www.dialog.am

Roustam Badasyan is a Partner at Concern Dialog, responsible for the Tax Law practice. Roustam Badasyan has former work experience at the Pre-Investigation and Legal departments of the State Revenue Committee of RA.

Roustam Badasyan has been involved in consultancy on tax optimisation matters relating to the acquisition of a major mining company in Armenia and on tax consequences relating to the issuance of Eurobonds by one of the major financial organisations. This also included consulting on the implementation of Tax Treaties. Roustam Badasyan has significant experience in representing entities in tax cases during administrative procedures and in administrative courts, including issues of royalty calculations, disputes over the methodology of depreciation, issues of implementation of double taxation elimination treaties and others.

Roustam Badasyan has been a member of the Chamber of Advocates of RA since 2015.



Concern Dialog was established in 1998 as a company specialised in civil and administrative litigation services. The company's qualified and professional team provides high-quality legal services in a wide variety of fields to its individual and corporate clients in Yerevan and in all the regions of Armenia, as well as on the international level. Concern Dialog is one of the largest and most highly appreciated law firms in Armenia. The firm has five partners and more than 25 associates and paralegals.

Concern Dialog is a member of TagLaw – the worldwide alliance of independent law firms, American Chamber of Commerce in Armenia (AmCham), German Business Association in Armenia (DWV). The firm and its Partners are ranked by *The Legal 500* and *Chambers and Partners*.

The firm is highly appreciated for its work in complex case litigation practice, labour and employment law, corporate and M&A, regulatory issues in mining, energy and telecommunications, taxes and support for transboundary transactions.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk