



ICLG

The International Comparative Legal Guide to:

Mining Law 2015

2nd Edition

A practical cross-border insight into mining law

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Albania



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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The most important regulations governing the Albanian mining sector are:

- Law 10 304/2010 “On the mining sector in the Republic of Albania”;
- Law 8741/2001 “On work safety in the mining activity”;
- Decision of Council of Ministers (DCM) 7/2012 “On the determination of the required procedures and documentation in relation to the collection of the royalty tax”;
- DCM 479/2011 “On approval of the mining strategy in the Republic of Albania”;
- DCM 232/2011 “On approval of powers of the competent authorities in the mining sector in the Republic of Albania”;
- DCM 320/2011 “On approval of procedures and requirements of the bidding procedure and the deadlines of reviewing the requests in relation to the acquisition of the mining permits in competitive areas”;
- DCM 362/2011 “On approval of requirements and terms of the transfer, of the method of application for extension of deadlines and conversion of the mining permit”;
- DCM 942/2010 “On approval of procedures and documentation in relation to acquisition of mining permits in open areas”;
- Order of Minister of Industry and Energy 190/2013 “On control and discipline of the subcontracting of the exploitation right of a mining permit”; and
- Order of Minister of Industry and Energy 304/2011 “On approval of the form and the contents of the development project of the mining activity”.

1.2 Which Government body/ies administer the mining industry?

The mining industry is administered by the following Government bodies:

The Ministry of Energy and Industry (the “**Ministry**”) is the competent authority, *inter alia*, for: (i) drafting mining strategies and legislations; (ii) publishing the mining zones subject to a public competitive procedure; (iii) organising public competitive procedures and announcing the winners in the public competition procedure; and (iv) granting the reconnaissance and exploration permit, as well as exploitation mining permits (Article 8 of DCM 232/2011).

The National Agency of Natural Resources (“**NANR**”) is the competent authority, *inter alia*, for: (i) examining the fulfilment of the requirements in relation to the requests for exploitation mining permits; and (ii) supervising the compliance with the mining laws and the requirements of the relevant permit (Point 2(d), (dh) of DCM 232/2011).

The Albanian Geological Service (“**AGS**”) is responsible, *inter alia*, for: (i) examining the fulfilment of the requirements in relation to the requests for reconnaissance and exploration permits; and (ii) supervising the compliance with the mining laws and the requirements of the relevant permit (Point 4(c) of DCM 232/2011).

The National Licensing Center (“**NLC**”) is the competent authority where the request for obtaining a mining permit should be filed, and which deliver the relevant mining permit (Article 30 of Law 10 304/2010, point 10 of DCM 232/2011).

The Mines Inspection and Rescue Department (“**MIRD**”) is responsible for inspection and controlling mining permit holders in relation to compliance with the permit and the applicable mining law, as well as health and safety protection at work (Point 6 of DCM 232/2011.)

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

The main Albanian regulations affecting the mining industry are:

- Law 10448/2011 “On environmental permits”, determining the obligation of a mining permit holder to obtain an environmental permit prior to commencement of the mining activity;
- Law 10440/2011 “On environmental impact assessment”, determining the requirement, procedures, rules and regulations for the assessment of any negative impact on the environment;
- Law 10431/2011 “On environmental protection”, determining the main principles to be observed by a mining operator in relation to the protection of the environment; and
- Law 8561/1999 “On expropriation and temporary taking over of private property for public interest”, determining the procedures and criteria of expropriation for public interest.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

By virtue of the Albanian Law, reconnaissance is not treated as a separate activity. Reconnaissance and exploration rights are

granted by the same permit, i.e. a reconnaissance and exploration permit. Such permit is granted for a three-year period, extendible for one additional year for metallic, non-metallic, bitumen, coal, and radioactive minerals, while for construction minerals such permit is granted for a one-year period (Articles 11, 14, 28 of Law 10 304/2010).

2.2 What rights are required to conduct exploration?

Please see our relevant answer to question 2.1 above.

2.3 What rights are required to conduct mining?

The mining activity is carried out by any legal entity, established and registered in Albania, with a mining exploitation permit. Such permit is granted for a period of 25 years, renewable for an additional period of 10 years following the request of the holder of the permit.

Exceptionally, the exploitation permit can be granted or extended for a duration of 99 years, provided that the implementation of the investment plan is considered to be in the economic or social interest of the community. In this case, an agreement providing favourable conditions may be concluded between the holder of the permit and the relevant Ministry. The issuance of an exploitation permit for 99 years and the agreement providing favourable terms and conditions should be approved by the Albanian Parliament (Article 16, 24, 26 and 28 of Law 10 304/2010).

2.4 Are different procedures applicable to different minerals?

The Albanian law provides for four groups of minerals, namely: (a) metallic, non-metallic, coal and bitumen; (b) construction minerals; (c) precious and semi-precious minerals; and (d) radioactive minerals.

In general, the same procedure applies for the above group of minerals, however there are minor differences. For minerals of groups (a), (b), and (c), Albanian Law provides for three separate types of permits, namely: (I) the reconnaissance and exploration permit; (II) the exploitation (mining) permit; and (III) a combination of I and II.

For minerals of group (c), Albanian Law provides for a unique permit, namely the reconnaissance, exploration and exploitation (mining) permit.

Furthermore, for minerals of groups (a) and (d), the reconnaissance and exploration permit is granted for a period of three years, and extendible for one year, while for minerals of group (b), the reconnaissance and exploration permit is granted for a period of one year, and is not renewable or extendible.

The issuance of the permits for all groups of minerals should be approved by the Ministry, except for minerals of group (d), for which the relevant permit is approved by the Council of Ministers (Articles 11, 14, 19(4), 28 (1) (2) of Law 10 304/2010).

2.5 Are different procedures applicable to natural oil and gas?

Natural oil and gas are subject to the provisions of different laws, other than those regulating minerals, namely Law 7746/1993 “On hydrocarbons (exploration-production), regulating the exploration and production of hydrocarbons”, and Law 9946/2008 “On natural

gas sector”, regulating the sector of production and the commercialisation of natural gas.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

Foreign applicants are subject to the same rules for mining permits in Albania as those applied to Albanian citizens.

3.2 Are there any change of control restrictions applicable?

Albanian Law does not provide for any restriction in relation to a change of control of the company holding or application for a reconnaissance, exploration or mining permit.

The mining permits are transferable provided that a prior approval of the Minister of Energy and Industry is obtained, and that the mining activity has already started. Exceptionally, the mining permits granted following the bidding procedure as well as mining permits for which an agreement providing favourable conditions is concluded, are not transferable (Article 41 Law 10 304/2010 and Point 1 of DCM 362/2011).

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

There are no requirements for ownership by indigenous persons or entities.

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

The Albanian State is entitled to freely acquire shareholdings in a mining company.

3.5 Are there restrictions on the nature of a legal entity holding rights?

There are no restrictions on the nature of the legal entity holding rights on the mining sector (Article 29 (1) of Law 10 3014/2010).

4 Processing and Beneficiation

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

There are no specific regulatory provisions in relation to processing and further beneficiation of mined minerals. However, the Mining Strategy approved by DCM 479/2011 provides for some general guidelines regarding the processing and beneficiation strategy that should be implemented in the legislation.

To date no specific provisions have been approved.

4.2 Are there restrictions on the export of minerals?

There are no restrictions that apply to the export of minerals.

5 Transfer and Encumbrance

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

The right to conduct reconnaissance, exploration and mining may be transferred upon approval of the Ministry, provided that the transferee complies with the following requirements:

- it is a legal entity, established in accordance with Albanian Law;
- it accepts all the obligations arising from the mining permit both towards the State and third parties;
- it acknowledges that the constructions and installations supporting the primary operations of the mining activity constitute a subsidiary and integral activity of the mining rights and as such are transferred along with the latter; and
- it disposes all the required financial and professional means for the purpose of completing the investment and the environmental protection project (Point 1, 3 and 7 of DCM 362/2011).

Exceptionally, the right to conduct reconnaissance, exploration and mining granted by virtue of a public competition procedure, and the favourable condition agreement may not be transferred (Article 41 of Law 10304/2010).

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

Albanian Law does not explicitly provide for the right of the permit holder to use the permit as security interest. However, considering that in principle the reconnaissance, exploration and mining permits are not transferable without the prior approval of the Ministry, the above permit may not be used as a security interest without being approved by the Ministry. So far there is no such practice.

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 holder of a reconnaissance, exploration and mining permit is entitled to exclusively exercise the rights conferred in the relevant permit. Therefore, the above rights cannot be subdivided among two or more legal entities (Article 11 (1) of Law 10 304/2010).

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

The exploration and exploitation rights are granted to a legal entity that is personally liable towards the State as to the fulfilment of the obligations arising from the respective permit, irrespective of the fact that a joint venture or a partnership is created in order to undertake the project.

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

The holder of an exploitation mining permit is entitled to exploit only the minerals for which the relevant permit is granted (Article 15, 19, 26 of Law 10 304/2010).

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?

The rights granted in terms of the reconnaissance, exploration and mining permit may only be exercised in respect of substances considered to be “mineral”. By virtue of the Albanian Law, “mineral” is defined as any useful substance, whether in solid, liquid or gaseous form (excluding petroleum), occurring naturally in, on, or under any land and having been formed by, or subjected to, a geological process (Article 2 of Law 10 304/2010).

It may therefore be argued that substances found in residue deposits are excluded from the right granted under the above permits, as these substances no longer occur naturally.

Furthermore, the reconnaissance, exploration and mining permit may be granted following the evaluation of the rehabilitation programme of the land, including also the programme for the administration and management of residue deposits (Article 37 of Law 10 304/2010).

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

Albanian Law does not provide for any special rules in relation to offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 What are the rights of the holder of a right to conduct reconnaissance, exploration or mining to use the surface of land?

The holder of a reconnaissance, exploration or mining permit has the right:

- to access the permitted area, and to grant access to its employees, and to place all the necessary equipment and devices for the completion of the reconnaissance, exploration or mining activity;
- to perform the mining exploitation activity and to perform the necessary construction works for that purpose, including exploration wells, as well as other activities that are deemed necessary;
- to extract, move and transport from the permitted area the evidence of the minerals in the required quantities for research purposes and not for trade purposes (Article 12 of Law 10 3014/2010); and
- to have legal easement over property indicated in the relevant mining permit as well as the legal easement (right of way) in the servant property and to perform in it all necessary actions and/or works, in compliance with the relevant permit. The right of legal easement is exercised by virtue of an agreement entered into by and between the landlord of the immovable property and the holder of the permit, against the payment of a fee equal to the damage suffered by the landlord. In case the landlord fails to enter into such an agreement within 30 days from the request of the permit holder, the latter is entitled to address to the competent court for the purpose of determining the easement rights and the annual payment which is due to the landlord (Article 34, 35 of Law 10 304/2010).

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?

The holder of a reconnaissance, exploration and mining permit should pay a fee to the landlord for the use of the property. However, the rights and obligations are specified in the agreement entered into between the landowner and the permit holder.

7.3 What rights of expropriation exist?

Albanian Law provides for the expropriation of a private property, provided that the mining activity in a certain area is of a special public interest and it is object of disputes between the permit holder and the landlord in relation to the use of the relevant property.

The expropriation right is exercised for a public interest that cannot be completed or protected by other means, only for the reasons set out in the Law 8561/1999 and against fair compensation (Article 34(6) of Law 10 304/2010 and Article 5 of Law 8561/1999).

8 Environmental

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

For the purpose of conducting reconnaissance, exploration and mining operations, the holder of the relevant permit should obtain an Environmental Permit, the type of which depends on the activity to be performed (Annex 1 of Law 10 448/2011).

8.2 What provisions need to be made for the closure of mines?

For the purposes of obtaining a mining permit, the applicant should submit a rehabilitation plan, which contains as an integral part the closure plan of the mine and the waste management plan.

Moreover, a financial guarantee for the implementation of the environmental rehabilitation of the mining area, the closure of the mining activity, the rehabilitation of the mining waste deposit area and the environmental rehabilitation of the mining area should be submitted within 30 days as of the publication of the mining permit in the NLC, or the publication of the DCM, or the approval of the Parliament in the Official Journal as the case may be. Both the rehabilitation plan and the financial guarantee are subject to the prior approval of the Ministry (Articles 29 (1 d, dh), 30 (5), 31, 37 of Law 10 3014/2010).

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

The holder of a reconnaissance, exploration and/or mining right is obliged to take all the necessary measures related to the environment rehabilitation, in full compliance with the terms and conditions set out in the rehabilitation plan, and within the time limit determined in the closure plan.

The control of the implementation of the relevant rehabilitation and closure plans is supervised and approved by the Ministry.

In case the permit holder fails to comply with the rehabilitation plan, the rehabilitation will be done by a third company selected by the Ministry, executing the financial warranty delivered by the permit holder (Article 37 (4) of Law 10 304/2010).

8.4 Are there any zoning requirements applicable?

Albanian legislation provides for different procedures applicable to different zones:

- the open areas that are subject to the principle “first in time, first in rights”;
- the competitive areas, that are determined depending on the scope of their activity either by the AGS or the NANR, in which the rights are granted on the basis of a competitive procedure (Article 7.5 of DCM 320/2011);
- the concession areas that are determined by the Council of Ministers Decision and in which rights are granted on the basis of a concession agreement; and
- dangerous areas in which the mining activity is strictly prohibited (Articles 9(1), 18 1(f) of Law 10 304/2010).

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?

Albanian Law does not provide for native or other statutory surface use rights that may have any impact upon reconnaissance, exploration or mining operations.

As mentioned above in the answer to question 7.1 above, the holder of a reconnaissance and exploration or mining permit holds the easement right over the property indicated in the relevant permits.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The legislation governing health and safety in mining is as follows:

- Law 7961/1999 “On the Labour Code of the Republic of Albania”;
- Law 8741/2001 “On work safety in the mining activity”;
- DCM 37/2002 “On the organization and functioning of the MIRD”.

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

The holder of a mining permit should take the necessary measures to ensure that:

- the equipment, devices, explosives and materials used by the employees are suitable for the work, and that the health and safety of the employees is guaranteed;
- the mines or quarries, equipment, devices, explosives and materials are maintained during the exploration at a level ensuring that the fundamental requirements of the safety at work are met;
- the employees are informed and trained in relation to the use of the equipment, devices, explosives and materials and their relevant risks;
- the employees in charge of repairs and maintenance are duly qualified for carrying out such activities; and
- the MIRD is notified immediately in case of any accident in mines or quarries (Article 10, 11, 12, 13 of Law 8741/2001).

11 Administrative Aspects

11.1 Is there a central titles registration office?

The central titles registration offices that exist in Albania are the following:

- the NLC, which is responsible for the registration of the permits, licences, permits and authorisations that are granted in the Republic of Albania from the competent authorities;
- the Central Immovable Property Registration Office, which is the competent authority for the registration of the immovable property; and
- the MIRD, which keeps the register of the entities holding mining permits, and those that work with explosives (Article 15 Law 8741/2001).

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

The administrative decisions in relation to the mining sector may be appealed before the competent administrative courts, as with all other administrative decisions.

12 Constitutional Law

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

The Albanian Constitution provides that the State aims at reasonable exploitation of forests, waters, pastures and other natural resources according to the principle of sustainable development (Article 59 (dh) of Constitution).

12.2 Are there any State investment treaties which are applicable?

Albania has entered into several bilateral investment promotion and protection agreements both with EU Member States and non-EU Member States, including the USA and China.

13 Taxes and Royalties

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

Exploration and mining activities are not subject to any special rules in relation to taxation matters, except for the payment of the royalty tax.

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

Any legal entity operating in the mining sector is subject to payment of the royalty tax that is levied over the gross sales at a rate that is dependent on the type of mineral, as determined in Law 9975/2008 "On national taxes".

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?

The local or municipal laws may approve decisions if so stipulated by the National Legislation, and in such case, such local or municipal decision may not supersede the National Legislation.

The municipalities are entitled to approve specific temporary local taxes and/or fees, however these must be within the limits imposed by the National Legislation.

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?

No, there are no specific regional rules, protocols, policies or laws to be taken into account, as the National Legislation is applicable throughout the Republic of Albania.

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