The Mining Law Review

Third Edition

Editor
Erik Richer La Flèche

Law Business Research

The Mining Law Review

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For further information please email
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EDITOR'S PREFACE

I am pleased to have participated in the preparation of the third edition of *The Mining Law Review*. The Review is designed to be a practical, business-focused 'year in review' analysis of recent changes and development, and a look forward at expected trends.

This book gathers the views of leading mining practitioners from around the world and I once again warmly thank all the authors for their work and insights.

The first part of the book is divided into 25 country chapters, each dealing with mining in a particular jurisdiction. Countries were selected because of the importance of mining to their economies and to ensure broad geographical representation. Mining is global but the business of financing mining exploration, development and – to a lesser extent – production continues to be concentrated in a few countries, with Canada and the United Kingdom being dominant. As a result, the second part of this book includes 10 country chapters focused on financing.

The advantage of a comparative work is that knowledge of the law, developments and trends in one jurisdiction may assist those in other jurisdictions. Although the chapters are laid out uniformly for ease of comparison, each author has complete discretion as to content and emphasis.

From my vantage point, the past year was marked by two trends: first, uncertainty continues to weigh down the mining sector, and second, in Canada and a few other jurisdictions, extractive industries are being asked to share in a meaningful way the fruits of their activities with local communities and indigenous peoples.

The world economy continues to progress at a very deliberate pace. Commodity prices have come down from their lofty heights. Investor appetite for mining stocks has not returned to 2008 levels and large mining companies have publicly identified assets for divestiture. Private equity has raised substantial amounts in 2013 and 2014. Heavy industry, often encouraged by governments, remains on the lookout for opportunities to secure raw materials at competitive prices.

In previous economic cycles, the foregoing would have ushered in a period of lower valuations combined with an active M&A market, but this is not happening now. Valuations for 'quality assets' are stable. Sellers hope that the world economy will resume

a higher growth trajectory. Buyers have access to money but are cautious; they are unclear as to the direction of the world economy, including – most importantly – the US and Chinese economies, and are sceptical of current valuations. In other words, there is no consensus as to where things are going and this is inhibiting transaction activity in the mining space. Until there is clarity from the United States and China, this state of affairs is unlikely to change.

The other trend deals with 'place-based' resource development. In Canada and a few other jurisdictions, mining companies, communities and indigenous peoples are adopting local approaches to resource development.

Place-based resource development refers to a participatory process that begins early in the project life cycle. The process recognises, implicitly or explicitly, that acceptance by local communities and indigenous peoples is a condition precedent to a project. This is more often than not reinforced by laws or policies at the national, state or provincial level. A place-based development model also recognises that communities and indigenous peoples should derive substantial economic benefits from a project.

In some cases, local communities and indigenous peoples will want to invest and be partners in a project. At other times they will limit their involvement to the preferential provision of labour, goods and services. In all cases, however, local communities and indigenous peoples are no longer content merely to accommodate projects in exchange for limited social and infrastructure benefits: they want meaningful participation and greater benefits.

A place-based approach means, *inter alia*, that the promoter of a project will enter into an agreement with the local community or indigenous people. These agreements have become quite sophisticated. This type of agreement rarely has to be made public and this naturally hinders the transfer of knowledge. To remedy this, some communities and indigenous peoples have prepared negotiation and drafting guides. One of the better ones is the Walter & Duncan Gordon Foundation IBA Community Toolkit (http://gordonfoundation.ca/north/iba-community-toolkit). I strongly recommend it to anyone working on project planning, negotiation and development.

As you consult this book you will find more on topics apposite to jurisdictions of specific interest to you, and I hope that you will find this book helpful and relevant.

Erik Richer La Flèche
Stikeman Elliott LLP
Montreal
October 2014

Chapter 20

ROMANIA

Ciprian Dragomir and Bogdan Halcu[1]

I OVERVIEW

Before 1989, when the Communism regime fell, mineral resources in Romania were exploited by state-owned companies. Although these exploitations were advertised as big economic successes of the communist governments, in reality, most of them were using outdated technology and some caused significant pollution in the mining perimeters. Moreover, in the context of Romania's negotiations to join the European Union, some of the mining exploitations had to be shut down as they were far from being compliant with the European environmental standards.[2] Romanian governments became aware that some of the mining exploitations could not be further operated without capital injections necessary for financing the acquisition of new technology and environmental investments.

Recently, the Romanian government tried (unsuccessfully) to revitalise several mining projects in its effort to boost the Romanian industry and create workplaces. Some of the highlights of the government's agenda in recent years may be summarised as follows.

In 2012 the government tried to sell Cupru Min, a state-owned company operating the copper quarry at Rosia Poieni, which represents the largest copper reserve in Romania and the second largest in Europe.[3] Unfortunately, the government and the company winning the bid have not managed to sign a sale purchase agreement.

In August 2013 the government announced it was undergoing negotiations with Rosia Montana Gold Corporation to establish a calendar allowing this company to

1 Ciprian Dragomir is a partner and Bogdan Halcu is a managing associate at Ţuca Zbârcea & Asociaţii.

2 Romania joined the European Union on the 1st of January 2007.

3 According to Cupru Min's website, the mine holds over 1 billion tons of ore granting 0.36 per cent copper and 1.8 per cent sulphur.

resume exploitation of the gold and silver ores in Rosia Montana by November 2016.[4] The government submitted a legislative project to the Parliament, but this project did not get enough political support and fell short on votes.

II LEGAL FRAMEWORK

In Romania, mining activity is mainly regulated by the Mining Law (Law No. 85/2003), which regulates the regime of mining licences, as well as royalties, mining fees and reporting obligations. The mining licences are concessions of mining operations. They do not grant the licensee surface rights and they do not stand for building or operating permits. Acquisition of surface rights, urban planning or environmental impact assessments are regulated under separate laws.

Mining licences are granted by the National Authority for Mineral Resources (NAMR), which is a public authority directly subordinated to the Romanian government. They are signed by the NAMR and the mining operator in the form of concession agreements detailing the parties' rights and obligations.

III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS

i Title

Mineral resources located on the territory of Romania, in the underground of the territory (including the underground of the continental shelf in the Romanian exclusive economic zone) are the exclusive public property of the Romanian state. Nonetheless, the Romanian state does not have monopoly over mining activities, since private entities are allowed to conduct mining activities in Romania based on the mining licences granted by the NAMR. Moreover, mining licences may be transferred from one company to another, subject to the NAMR's consent.

ii Surface and mining rights

Mining rights are granted by the state through mining licences. The mining licence has the legal regime of a concession agreement entered into between the state (represented by the NAMR) and the licence beneficiary, which entitles the latter to conduct the mining activities listed in the mining licence within the boundaries of a mining perimeter, in accordance with the terms and conditions provided in the licence.

Depending on the nature of the mining activities covered by the licence, the mining licences may be broadly classified as follows: prospection permits, exploration licences and exploitation licences.

4 Rosia Montana Gold Corporation is a company owned by Gabriel Resources (80.68 per cent) and the state-owned company Minvest (19.31 per cent) and is the holder of an exploitation mining licence covering the gold and silver ore in Rosia Montana, estimated to approximately 300 tons of gold and 1,600 tons of silver.

Prospection works are statutorily defined as the studies and works conducted at the surface for identifying the possibility that mineral resources are accumulated within the relevant perimeter. The prospection works may be conducted based on a prospection permit issued by the NAMR on a non-exclusive basis, within the boundaries of a perimeter established in the permit. These permits are granted for maximum of three years and the holder is not entitled to any term extension.

The holder of a prospection permit must commit to a certain volume of prospection works to be negotiated with the NAMR upon the issuance of the permit. During the validity of the permit, the holder must present periodic reports to the NAMR covering the works conducted and the value thereof. The holder of a prospection permit will receive extra credits in the contest for obtaining the exploration licence covering the prospected perimeter (i.e., should it decide to participate in such contest).

The exploration mining activity comprises the studies and activities conducted for identification of the mineral ores, for quantitative and qualitative evaluation thereof and for assessment of the economic and technical conditions for exploitation of the respective resources.

The exploration works may be conducted based on an exploration licence issued by the NAMR, on an exclusive basis (one licence for one perimeter).[5] The exploration licence is granted for a maximum of five years and its holder may apply for an extension for an additional three years; hence, the aggregate term of the exploration licence may not exceed eight years.

The exploration licence is granted to the winner of a public contest; the applications are scored based on scoring grids established by the NAMR. As a general principle, the NAMR scores the technical and financial capacity of the applicant, the exploration programme proposed by the applicant, the project for environmental restoration as well as the prospection reports (if such are available). Anyone may ask the NAMR to launch a public contest for the grant of an exploration licence covering a specific mining perimeter. Once the contest launched, the applicants must abide by the procedural rules made available by the NAMR. Although there is no statutory duration of the public contest, usually the procedures for granting a mining exploration licence should not take more than six months.

The holder of the exploration licence must commit to a certain volume of works that must be performed until the expiration of the licence. The licence holder must submit periodic reports to the NAMR on the works performed and on the expenses incurred. The holder of an exploration licence is entitled to further apply to obtain the exploitation licence (see below) for the same mining perimeter directly, without participating in a new public contest.

Under Romanian mining laws, the exploitation is defined as the surface or underground mining works performed for the extraction of the mineral resources, processing and delivery thereof.

5 In certain situations, NAMR may grant several mining licences for the same perimeter, but for different resources. In such situations, extra licences may be granted only with the prior approval from the holder of the initial licence.

The exploitation works may be conducted based on an exploitation licence, issued by the NAMR on an exclusive basis (one licence for one perimeter).[6] This licence is granted for 20 years and its holder may apply for an extension of successive five-year periods, without any maximum aggregate term.

The exploitation licence is granted to the winner of a public contest (similar to that organised for granting the exploration licence), or, as mentioned above, directly (i.e., without any contest) to the holder of the exploration licence covering the same mining perimeter. Should a contest be launched, although there is no statutory duration thereof, usually the procedure for granting a mining exploration licence should not take more than six months.

The holder of the exploitation licence must commit to a certain volume of works that must be performed until the expiration of the licence. The licence holder must submit periodic reports to the NAMR on the works performed and on the expenses incurred. The exploitation licence must be approved by a government decision.

The mining laws and regulations do not offer the mining companies any statutory guarantees or special procedures aimed at easing the process of securing title (surface rights) over the relevant real estate. Hence, such companies must obtain due title over land as per the general legal mechanisms available in this respect: purchase of the land, exchange of land plots, land lease, expropriation, concession, association with the owner of the relevant land, etc.

In principle, the transfer of ownership over private property land is not subject to legal restrictions. However, there are certain limitations set up in consideration of the land's special status (e.g., plots confiscated by the Communist regime and under restitution procedures; forests; where the state has a right of first refusal; and *extra muros* agricultural lands, where co-owners, leaseholders, neighbours and the state have a pre-emption right).

Turning to expropriation, although such alternative is listed as a legal means available to a mining company for securing surface rights, under the current legal framework this possibility is rather theoretical. As per the Expropriation Law No. 33/1994, expropriation may be conducted by the state only for projects of public utility – which private mining projects are rarely considered.

iii Additional permits and licences

According to the provisions of Law No. 50/1991 on the authorisation of building works (Law No. 50/1991), mining works may be performed only subject to the issuance of a building permit, which shall be issued in compliance with the applicable legal provisions, upon the request of the holder of a right *in rem* over real estate.

Pursuant to the provisions of the Mining Law, the permits, approvals and other endorsements necessary for mine construction and setting operations, and other construction activities necessary for initiating and carrying out mining activities, shall be

6 In certain situations, the NAMR may grant several mining licences for the same perimeter, but for different resources. In such situations, extra licences may be granted only with the prior approval from the holder of the initial licence.

usually issued for all such constructions as a whole, and not separately for each of them, in accordance with the request submitted by the licence holders.[7]

The procedure for obtaining the building permit is integrated with the procedures prescribed by law for obtaining most of the other permits, approvals and consent needed or requirements to be fulfilled by the mining operator. Notably, the procedure starts with the applicant obtaining an urbanism certificate. The urbanism certificate clarifies the legal, economic and technical status of the real estate concerned and stipulates the conditions necessary for carrying out the construction works, including all the endorsements and approvals required to be obtained for the purpose of the issuance of the building permit. Once the urbanism certificate is obtained, the applicant must start collecting all the permits, approvals, consent or, as the case may be, must start fulfilling the requirements indicated in the certificate. Depending on the details of the mining perimeter, these may be:

a the prior approval of a zoning urbanistic plan;

b the environmental agreement (i.e., issued further to conducting an environmental impact assessment); and

c the obligation to withdraw the relevant real estate from the agricultural or, as the case may be, from the forestry fund.

If the land in relation to which the investor intends to obtain a building permit is agricultural land located *extra muros*, then the applicant must file a request to change the designation of the relevant real estate. If the land is *intra muros* no such request is necessary as the land is automatically given the appropriate designation by issuance of the building permit. Removal from the agricultural fund is subject to a tax that is calculated based on the surface of the plot.

If the land in relation to which a mining company intends to obtain a building permit is included in the forest fund, as a prior condition for the issuance of the building permit, the company must file a request to change the destination of that real estate.

In order to obtain removal from the forestry fund, the company must offer a new land plot where new trees are to be seeded (the new plot must be at least five times more expensive and at least three times bigger than the plot to be deforested); and indemnify the owner of the relevant land plot for the loss incurred (value of the plot to be deforested, plus the loss of profit due to early harvesting of the trees, plus value of other assets on the plot, plus expenses for seeding new trees and maintaining the young forest until maturity). Removal from the forestry fund is subject to a tax that is calculated based on the surface of the plot and on the quantity of wood that is to be harvested therefrom.

After having obtained all the endorsements, permits or approvals and after having fulfilled all the requirements set forth in the urbanism certificate, the relevant public authority issues the building permit based on which the execution of construction works may be legally performed.

Additional requirements may be imposed to the extent that there are historical monuments or archaeological sites on the area where the mining facilities are to be built.

7 Article 42(1) of Mining Law.

iv Closure and remediation of mining projects

Not in all situations is the termination of a mining licence followed by a mine closing. The NAMR may decide that although a mining licence was terminated, the mining perimeter remains open and a new contest for awarding a mining licence covering that perimeter is launched. If that is the case, the mining works may be resumed by the new company that wins such contest.

A mine may be closed when the mineral resources have been exhausted; when exploitation has become impossible due to natural causes (e.g., floods or gas explosions), or when the mining exploitation has become economically unfeasible. The holder of an exploitation mining licence may have the initiative for closing the mine. Should that be the case, the licence holder must serve an application to the NAMR, along with an updated version of the mine-closing plan. The application must reflect the following:

a the reason for the initiative;
b the technical programme for closing or conserving the mining exploitation;
c the programme for social protection of the dismissed personnel;
d the relevant environmental approvals for closing the mine; and
e the procedure for clearing the land.

Once the mine closure is approved, the holder of the licence must perform all the works to ensure the closing of the mine and environmental restoration, in strict compliance with the mine-closing plan. After the mine-closing plan is duly implemented, the NAMR issues a formal decision on closing the mine.

Romanian law requires mining companies to set up certain financial guarantees securing the execution of mine-closing works. However, there is no unitary approach to the financial guarantees the holder of the mining licence must set up to ensure protection of the environment. Statutory references to financial guarantees set up for environmental purposes may be found in many enactments.

According to the Mining Law (Article 39), the holder of an exploitation mining licence must set up and maintain a financial guarantee for restoring the environment. The financial guarantee may be set up as a bank deposit or under the form of an irrevocable bank letter of guarantee. The amount of the guarantee is established in the mining licence.

Through the enactment of Government Decision No. 856/2008, Romania has implemented the Mining Waste Directive 2006/21/EC, which rules that each Member State should establish statutory terms to bind the operators of mining waste facilities to lodge a financial guarantee ensuring that all the obligations flowing from the environmental permit (including those relating to the closure and after-closure of the waste facility) will be fulfilled.

Government Decision No. 856/2008 does not clarify what the exact nature of this financial guarantee is and how it is different from the financial guarantee regulated under the Mining Law. In practice, mining companies are usually not required to set up a special guarantee for the waste facilities servicing their exploitation. Based on our experience, the NAMR only requires that mining companies set up and maintain the financial guarantee regulated under the Mining Law.

Directive No. 2004/35/CE has been implemented in Romania further to enactment of Government Emergency Ordinance No. 68/2007. One of the principles of this Directive is that while operators of facilities serving activities with significant impact on the environment are liable for the environmental damages caused, they must set up guarantees covering the value of works needed to restore the environment in case of pollution.

For the purpose of ensuring recovery of these costs, Government Emergency Ordinance No. 68/2007 stipulates that the secondary legislation shall define the explicit forms for setting up financial guarantees covering the value of the works needed to restore the environment affected by pollution. However, the secondary legislation, which had to be implemented according to this text, has not yet been adopted. Therefore, in practice, authorities do not require the setting up of a special guarantee for covering the value of the works required to restore the environment in case of pollution falling under the scope of Government Emergency Ordinance No. 68/2007.

IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS

i Environmental, health and safety regulations

As underlined above, the legal framework in the mining field mainly regulates the legal regime of mining licences, focusing on the rights and obligations of mining companies, as they arise out of the concession granted by the state through the mining licence. It does not focus on the legal procedures applicable to obtaining the permits (real estate, environment, etc.) required to commission the mining activity. Mining companies must follow the standard procedures enacted in the general laws and regulations covering different areas. That is how obtaining the relevant permits to commission the mining works may encounter many obstacles until the final building permit is issued. At a high-level review, some of these obstacles could be:

a securing surface rights may be cumbersome, due to the fact that real estate property in Romania is very fragmented;

b the issuance of the building permit may be delayed or, if the permit has been issued, the works may be suspended if archaeological sites are found in the area; the works may be resumed only after an archaeological discharge certificate is obtained;

c the issuance of the building permit may be conditioned on specific protection measures to be applied for conservation of historical monuments possibly found on the site;

d the issuance of the building permit may be delayed if churches or cemeteries are identified on the site, until the relevant church or cemetery is relocated;

e the mining company might need to deforest certain land plots, which means that the company will be bound to offer a more expensive land plot in exchange and cover the losses incurred due to deforestation; and

f the mining company may need to withdraw certain real estate from the agricultural fund.

ii Environmental compliance

As a matter of principle, in Romania, the development of activities that may affect the environment need special authorisations issued by the environmental authorities. As mining activity statutorily qualifies as an activity with a potential impact on the environment, the development of mining projects is subject to obtaining environmental authorisations, permits or agreements, as the case may be.

As per law, the environmental authorisation process is two-fold. Special authorisations need to be obtained to build a project that may have a significant impact on the environment (as a matter of principle, these should be obtained prior to obtaining the building permit). However, the authorisations obtained for building the project do not set forth the conditions under which the mining activity is to be conducted; before commissioning the operation phase, separate environmental authorisations must be obtained.

For the building phase, usually a mining permit must undergo two environmental authorisation procedures (both as a prerequisite for obtaining the building permit), one for the project and one for the zoning urbanistic plan. The environmental permit (called an environmental agreement) authorising the mining project is issued further to conducting a thorough environmental impact assessment procedure in line with the provisions of the EIA Directive.[8] The procedure is quite complex and entails public debates on the environmental report, as well as cross-border consultations with neighbouring states that may potentially be affected by the mining project. An overall term for obtaining the environmental agreement may not be easily foreseen, as it would depend on many variables, such as preparing the study on an environmental impact assessment. Based on our previous experience, in many cases the EIA procedures may last more than 12 months. Nevertheless, cross-border consultations may delay the procedure for approximately 14 weeks.

In most cases, the building of a mine requires drafting and approval of new zoning urban plans, which in their turn are subject to a strategic environmental impact assessment procedure according to the SEA Directive.[9] Just as with the EIA Directive, the procedure is complex and entails public debates on the environmental report as well as cross-border consultations with neighbouring states that may potentially be affected by the new urban plan. An overall time frame for obtaining the environmental agreement cannot be easily foreseen, as it would depend on many variables, such as preparing the study on an environmental impact assessment. Based on our previous experience, a rough estimate is around 12 months. It might be worth mentioning that although this is not expressly regulated by law, we appreciate that the SEA and EIA procedures may be conducted in parallel.

As well as the above, in most cases building a mine will also require a water management permit (i.e., a permit attesting that the development of the relevant project complies with the standards in the water management field) and an agreement for the

8 Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment transposed through Government Decision No. 445/2009.

9 Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, transposed through Government Decision No. 1076/2004.

safe operation of dams (usually required for building the dams of the tailings ponds). These are issued further to technical documentation being filed by the mining company, but the procedure is not as complex as the EIA and SEA procedures.

Once they are built, operation of the mining facilities may not be commissioned until the mining company obtains an environmental authorisation (an administrative document detailing the requirements to be observed during the operation phase – technological flows, safety measures, reporting obligations, etc.), a water management authorisation (the permit that entitles the mining company to operate certain objectives that are related to the use of water resources and sets forth the operating parameters – water intake, concentrations in the water released, etc.) and an authorisation for the safe operation of dams (a permit sets out the requirements to be observed during the operation of dams). However, these operating permits are usually more easily obtained if during the construction phase, the mining company has duly observed the environmental agreement, the water management permit and the agreement for safe operation of dams.

iii Third-party rights

The public plays an important role in the authorisation process. As evidenced above, the environmental impact assessment procedures are subject to public debates where the public potentially affected and NGOs have the possibility to express their points of view regarding the project. However, the opinion of the public is not mandatory for the environmental authorities.

Although this is not mandatory by law, public administration may decide to conduct local referendums to consult the people on the development of a mining project.

Since mining is an activity with a significant impact in many fields (environmental, social, economic) approvals obtained by mining companies are quite often challenged in court. As the proceedings in court may last several months (in some cases even more than a year), this type of conduct may delay the permitting process significantly. The authorising procedure, although integrated, is very fragmented, which results in many permits and authorisations being issued by different authorities. Persons proving an interest may challenge in court (within a certain period of time) each such permit separately, which may cause significant delays.

V OPERATIONS, PROCESSING AND SALE OF MINERALS

i Processing and operations

Romania has not enacted restrictions on the import of equipment and machinery, the processing of extracted minerals or the use of foreign services. However, in some situations, foreign services rendered in Romania may be subject to a 16 per cent withholding tax. Such tax may be deducted from the taxes to be paid by the service provider in its country of residence, to the extent Romania has a double taxation convention with the service provider's country of residence allowing such deduction.

As concerns the use of a foreign labour force, the right to work in Romania for non-EU/EEA/Swiss citizens may be exercised by such citizens based on a work permit issued by the Immigration Office within the limits of the yearly contingency (i.e., the maximum number of work permits that could be issued) approved by a government decision.

ii Sale, import and export of extracted or processed minerals

Romania has not enacted direct restrictions on commerce with extracted or processed minerals.

iii Foreign investment

Although it offers no specific protection to foreign investment in the mining field, Romania is party to several investment treaties and has also passed internal regulations aimed at securing investments.

Romania has ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) through Decree No. 62/1975. Romania has signed an impressive number of bilateral investment treaties (BITs), of which approximately 82 are currently in force. Also, under Government Emergency Ordinance No. 92/1997 for the Promotion of Direct Investments (Government Emergency Ordinance No. 92/1997), Romania offers similar guarantees and facilities to those usually contained in BITs as regards direct investment made in its territory.

There are numerous substantive and procedural means of protection available to investors that are included within BITs and Government Emergency Ordinance No. 92/1997. Such guarantees refer mainly to full security of the investments, protection against expropriations and nationalisations without due process, the right of the investor to fair and equitable treatment as well as the benefit of the most-favoured-nation treatment. The investor is usually afforded access to investment arbitration by ICSID, while in some cases recourse to arbitration is an option available to the investor along with the right to initiate proceedings in the local courts of law. The most recent BITs also include the option to refer the dispute to ad-hoc arbitration under the UNCITRAL Rules.

VI CHARGES

The holder of the mining licence is required to pay the fees for prospection, exploration and exploitation activities as well as the mining royalties, which will be directed to the state budget.

i Royalties

Mining royalties vary depending on the category of the mineral resources exploited and range from €0.43 to €3.75 per mining production unit. However, for the most important category of mineral resources the royalty shall be calculated as a share of the value of the exploited materials. The share varies between 4 per cent (for coal), 5 per cent (for iron minerals, non-iron minerals, aluminium, radioactive metals, rare soils and dispersed, residual mining products, gemstones, bituminous rocks, mineral waters for therapeutic purposes, thermo-mineral waters, geothermal waters and related gases, non-combustible gases, therapeutic mud, and peat) and 6 per cent (for noble metals).

ii Taxes

The yearly fee for the prospection activity amounts to 320 lei per square kilometre multiplied by the surface of the mining perimeter.

The yearly fee for exploration activity amounts to 1,280 lei per square kilometre multiplied by the surface of the mining perimeter. This fee will be doubled after the second year of activity and will further increase resulting in five times the initial fee at the lapse of the fourth year of activity.

The yearly fee for exploitation activity amounts to 32,000 lei per square kilometre multiplied by the surface of the mining perimeter.

iii Other fees

Apart from the royalties and mining fees, there are no other fees directly linked to the mining rights derived from a mining licence. The holder of a mining licence would nevertheless be subject to income tax as well as property tax (levied on real estate, construction and vehicles) under the same conditions as any company subject to Romanian fiscal legislation.

Mining companies may be subject to indemnification payments for environmental clean-up according to the mine-closing plans. At the same time, they may be subject to the same indemnification payments whenever environmental accidents occur.

VII OUTLOOK AND TRENDS

In recent years, public authorities have shown an increasing interest in the development of several dormant mining projects. While the government seems to have realised that the existing legal framework needs to be improved in order to speed up the process of authorising mining projects, but there is as yet no political consent on improving the legal environment in this field. It is, however, expected that in the near future efforts will be taken to improve the legal framework so as to offer incentives to investors willing to resume mining activities in Romania.

Appendix 1

ABOUT THE AUTHORS

CIPRIAN DRAGOMIR

Ţuca Zbârcea & Asociaţii

Ciprian Dragomir is a partner at Ţuca Zbârcea & Asociaţii specialising in mining law and environmental law. His experience covers the full range of mining and minerals exploration, development and production agreements, as well as acquisition and disposal, advising domestic and international corporations, as well as governmental authorities. Mr Dragomir has acted as lead legal adviser on several government projects for the drafting and implementation of complex restructuring strategies for the non-ferrous mining and mineral resources industry. He has extensive experience in royalty issues, engineering, processing and refining contracts, as well as environment-related issues, including brownfield development and contaminated land liability, waste management, licensing and permitting, environmental impact assessment and greenfield development. Other areas of practice are corporate and M&A, intellectual property law and insolvency.

BOGDAN HALCU

Ţuca Zbârcea & Asociaţii

Bogdan Halcu is a managing associate at Ţuca Zbârcea & Asociaţii. He has acted for companies operating in the mining, power, chemical and metallurgy industries in relation to regulatory and compliance matters associated with the development of large-scale industrial projects in Romania. He advises on royalties and joint venture agreements, farm-in and farm-out agreements, purchase and sale agreements of mining properties, mine development, operating and production agreements, as well as environmental compliance and safety-related issues. Other areas of practice are corporate and M&A and intellectual property law.

ŢUCA ZBÂRCEA & ASOCIAŢII
4-8 Nicolae Titulescu Avenue
America House, West Wing, 8th Floor
Sector 1
Bucharest 011141
Romania
Tel: +40 21 204 88 90
Fax: +40 21 204 88 99
ciprian.dragomir@tuca.ro
bogdan.halcu@tuca.ro
www.tuca.ro