



ICLG

The International Comparative Legal Guide to:

Mining Law 2016

3rd Edition

A practical cross-border insight into mining law

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Albania



Evis Jani



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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 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 the 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 requests in relation to the acquisition of mining permits in competitive areas”;
- DCM 362/2011 “On approval of requirements and terms of 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 the acquisition of mining permits in open areas”;
- Order of the Minister of Industry and Energy 190/2013 “On control and discipline of the subcontracting of the exploitation right of a mining permit”;
- Order of the Minister of Industry and Energy 304/2011 “On approval of the form and contents of development projects for 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 legislation; (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 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 compliance with the mining laws and the requirements of the relevant permit (Point 4 (c) of DCM 232/2011).
- The National Licensing Centre (“**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 safety and health 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 mining activity;
- Law 10440/2011 “On environmental impact assessments”, determining the requirements, procedures, rules and regulations for the assessment of negative impacts 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 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 the answer to question 2.1 above.

2.3 What rights are required to conduct mining?

Mining activity may be carried out by any legal entity, established and registered in Albania, being a holder of 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 an agreement providing favourable terms and conditions must 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 and on different types of land?

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 in groups (a), (b) and (c), Albanian Law provides for three separate types of permits, namely: (I) a reconnaissance and exploration permit; (II) an exploitation (mining) permit; and (III) a combination of (I) and (II).

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

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

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

The exploitation permit for minerals of group (b) may not be granted for the exploitation of agricultural land of categories I to IV.

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 the natural gas sector”, regulating the sector of production and 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 applicable for Albanian natives.

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 a company holding or applying for a reconnaissance, exploration or mining permit.

Mining permits are transferable provided that prior approval of the Minister of Energy and Industry is obtained and that the mining activity has already started. Exceptionally, mining permits granted following a 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 in the mining sector (Article 29 (1) of Law 10 304/2010).

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 and levies payable in respect thereof?

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

With regard to payable levies, Albanian legislation provides for the payment of the royalty tax, which in case of exportation is paid at the moment the customs clearance declaration is issued.

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 public competition procedure, as well as a 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, 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 has been 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 abovementioned 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?

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 whether 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 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 granted rights under the above permits, as these substances no longer occur naturally.

Furthermore, the reconnaissance, exploration and mining permit are granted following the evaluation of the rehabilitation programme of the land, as well as 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, 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; and

- 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).

The holder of a permit also has 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 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 landlord 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 the object of dispute 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, whose type 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 purposes of obtaining a mining permit, the applicant should submit a rehabilitation plan, which contains as an integral part a closure plan for the mine and a 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 10 304/2010).

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's 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:

- open areas that are subject to the principle "first in time, first in rights";
- competitive areas that are determined depending on the scope of their activity either by the AGS or the NANR, for which rights are granted on the basis of a competitive procedure (Article 7.5 of DCM 320/2011);
- concession areas that are determined by the Council of Ministers' Decision and for which rights are granted on the basis of a concession agreement; and
- dangerous areas, in which areas 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, the holder of a reconnaissance, exploration or mining permit, holds the easement right over the property indicated in the relevant permit.

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 mining activity"; and
- DCM 37/2002 "On the organisation 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 safety and the health 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 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; and
- the employees in charge of repairs and maintenance are duly qualified for carrying out such activities.

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 is responsible for the registration of the permits, licences and authorisations that are granted in the Republic of Albania by the competent authorities; and
- the Central Immovable Property Registration Office is the competent authority for the registration of immovable property.

The MIRD keeps a register of the entities holding mining permits, and which entities 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?

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 the reasonable exploitation of the forests, waters, pastures and other natural resources according to the principle of sustainable development (Article 59 (dh) of the 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 of 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 the payment of the royalty tax that is levied over the gross sales at a rate depending 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 authorities may approve decisions if so stipulated by the National Legislation, and in any case such municipal decision may not supersede the National Legislation.

The municipalities are entitled to approve specific temporary local taxes and/or fees, however, 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 across all of the Republic of Albania.

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?

The holder of an exploration right for metallic, non-metallic, coal and bitumen is entitled to partially relinquish the permitted area upon expiry of the second year of the permit and provided that it pays a fee amounting to 150,000 ALL (approx. 1,072 Euro) for each square metre (Article 13/4 of Law 10304/2010).

The holder of an exploitation right for metallic, non-metallic, coal and bitumen is entitled to terminate the production activity in the permitted area provided that it has notified the Ministry at least one-year in advance, and to temporarily terminate the exploitation activity provided that it has notified the Ministry 90 days in advance. Both aforementioned cases require the prior approval of the Minister of Energy and Industry, in which case the annual guarantee for the investment realisation is reimbursed to the holder of the rights (Article 18.1 (d), (dh), 18.3 of Law 10304/2010).

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?

See our answer under question 15.1 above.

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?

Albanian law stipulates the right of the State to cancel an exploration or mining right in case the holder of the mining permit:

- has filed documents containing false data or fails to fulfil the terms and conditions contained in the permit;
- has obtained a mining permit for an area that overlaps, partially or entirely, with another area covered by a mining permit issued earlier in accordance with the legislation in force;
- fails to start the mining activity in due time, as determined in the respective permit;
- suspends for one year or terminates the mining activity without notifying in advance the competent authorities;
- fails to submit within 30 days of each year, the following documents: the financial guarantee for the implementation of the rehabilitation plan; the financial guarantee for the implementation of the minimum working programme; and the financial guarantee for the implementation of the investment;
- fails to pay the royalty tax within the required deadlines;
- uses harmful practices for the exploitation and processing of minerals;

- fails to comply with the requirements of the rehabilitation plan, closing plan of the mining activity and the waste management plan;
- fails to realise the minimum working plan;
- fails to realise 90% of the value of the investment for two consecutive years;
- fails to fulfil the duties that the competent authorities have assigned to the holder of the permit;
- fails to submit the required information;
- fails to submit to the competent authority within 30 days as of the termination of the respective year, the financial and technical report of all the performed works and fails to fulfil the obligations arising from the permit; and/or
- fails to notify in due time the intention to reduce the amount of production by more than 20% in relation to the approved production plan.

The exploration and mining permit is also cancelled in case of revocation of the respective environmental permit by the competent authority.

Additionally, the exploration permit may also be revoked for the following reasons:

- upon request of the holder of the mining permit, provided that the latter has fulfilled all the obligations arising from the exploration permit;
- in case the geological resources are depleted, upon request of the holder of the permit;
- in case the exploitation becomes impossible, due to natural or geological reasons; and
- in case the exploitation of the mine presents a geological or environmental risk (Articles 47 and 48 of Law 10304/2010).

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Krisela Qirushi joined Gjika & Associates as an Associate when it was established, and as of January 2014 she became Senior Associate. She graduated from the Department of Political Science and Public Administration of University of Athens and the Law School of the University of Strasbourg. She holds a Master's Degree in European and International Law from the University of Strasbourg. She has extensive experience in corporate law, employment law, foreigners and concession law, providing legal assistance to Albanian and foreign companies.

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