

<Buzescu Ca>Romanian Mining Laws<

## **LEGAL FRAMEWORK FOR MINING OPERATIONS IN ROMANIA**

The main law and regulations regarding mining operations are:

- (i) Mining Law no. 85 of 2003 (“Mining Law”), as further amended;
- (ii) Decision no. 1208 of 2003 regarding the Approval of the Norms for the Application of the Mining Law;
- (iii) Order no. 197 of 2003 for the Approval of the Methodological Norms regarding the Performance of Specialized Survey Works in the Mining Extractive Sector;
- (iv) Order no. 58/19 of 2004 for the Approval of the Technical Instructions regarding the Application and Follow-Up of the Measures Established in the Conformity Program, Environment Rehabilitation Plan and Technical Project, as well as the Regulation of the Operation Manner with the Financial Guarantee for the Rehabilitation of the Environment Affected by Mining Activities;
- (v) Order no. 144 of 2005 regarding the Approval of the Framework Template of the Minutes regarding the Ascertainment and Sanctioning of Contraventions in the Sector of Performance of Mining Activities;
- (vi) Order no. 122 of 2006 regarding the Approval of the Methodology for Attesting the Technical Competence of the Legal Entities who Draft Documentations and/or Perform Geological Research Works, Works regarding the Exploitation of Petroleum and Mineral Resources and Preparation of Expert Reports, as well as of Natural Entities who Draft Documentations and/or Perform Geological Research Works and Preparation of Expert Reports;
- (vii) Order no. 94 of 2009 for the Approval of the Technical Instructions regarding the Issuance of Production Permits;
- (viii) Order no. 198 of 2009 regarding the Method of Registration, Reporting, Calculation and Payment of the Tax on Mining Activity and Mining Royalty;
- (ix) Order no. 138 of 2010 regarding the Approval of the tariffs charged for the documents issued by the National Agency for Mineral Resources in the mining sector.

### Ownership of minerals

According to Art. 1 of the Mining Law, the Romanian State has exclusive public property rights over the mineral resources of the country.

## Procedure for the issuance of the mining permit and license

Pursuant to the Mining Law, permit/licenses are granted for coal, ferrous and non ferrous minerals, aluminum minerals and aluminiferous rocks, noble, radioactive, rare and dispersed metals minerals, haloid salts, non metallic useful substances, useful rocks, precious and semiprecious stones, peat, mud and therapeutically peat, bituminous rocks, non-combustible gas, geothermal waters, gas associated to them, natural mineral waters (gaseous and non-gaseous), mineral therapeutically waters, as well as mining residues from barren dumps and tailing ponds, underground drinkable and industrial waters.

The National Agency for Mineral Resources (“NAMR”) is the authority in charge of granting the permits and licenses. Under Romanian law, NAMR plays a dual role. On one hand, it is the main regulatory authority in the mining sector. On the other hand, it represents the State as a party to the concession agreements for mining licenses.

The Prospecting Permit is granted by NAMR within 30 days as of the fulfillment by the applicant of the conditions included in the technical instructions of NAMR.

NAMR, or the interested Romanian or foreign company may initiate the process for the award of a concession of exploration and/or exploitation activities.

The Exploration and Exploitation Licenses are granted to the winners of the tenders organized by NAMR. The list of exploration and/or exploitation blocks which will be the object of the tender is decided upon by NAMR.

In order to participate to the tender, the Romanian or foreign bidder must submit their offers and documentation required by the Tender Book issued by NAMR. The documents may include the proposed exploration and/or exploitation program (which includes the annual exploration Works Programs and related expenditures), documents regarding the technical and financial capabilities of the applicant, and other documents requested by NAMR mentioned in the Tender Book.

The offers will be reviewed by a Committee within NAMR according to the general criteria provided by the Norms for the Application of the Mining Law, and by the Tender Book.

The winner of the tender will negotiate with the Committee the conditions and the clauses of the mining license, including the development program. The Exploration License enters into effect as of the date of the publication of the Order of NAMR re the approval thereof in the Official Monitor, while the Exploitation License enters into effect as of the date of the publication in the Official Monitor of the Government Decision approving the issuance of the Exploitation License.

The Exploitation License is granted by NAMR directly to the owner of an exploration license within 90 days as of the submission to NAMR of the final exploration report for any discovered mineral resources.

The title holders of mining licenses/permits are obliged to register with the Territorial Inspection Department for the Mineral Resources of the NAMR.

## Grant of mining permits and licenses

The mining activities may be carried out by Romanian, or foreign companies, which are registered according to the law, and are specialized and certified for performing mining operations.

The foreign companies may obtain mining permits and licenses. However, according to Art. 23 of the Mining Law, within ninety (90) days as of the date when the license entered into effect, the foreign company, which obtained the right to perform mining activities, must set up and maintain a subsidiary in Romania for the whole duration of the concession.

## Type and duration of mining permits and licenses

Pursuant to the Mining Law and the Norms for the Application of the Mining Law, the following mining permit and licenses may be granted by NAMR:

### *(i) Prospecting Permit*

The Prospecting Permit is a non-exclusive permit which covers, among others, assessment and interpretation studies of pre-existent information, and works of geological classification, geochemistry, magnetometry, radiometry, electrometric analysis, seismometry, open-air excavation, laboratory analysis.

The Prospecting Permit is issued for a period of up to three (3) years, without the possibility to be extended.

### *(ii) Exploration License*

The Exploration License is an exclusive license that covers specific studies and works which are necessary for the identification of the deposits of mineral resources/reserves, quantity and quality evaluation, and technical and economic conditions for the purpose of development.

The Exploration License is issued for a period of maximum five (5) years, and may be extended for a period of maximum three (3) years.

### *(iii) Exploitation License*

The Exploitation License is an exclusive license that covers the works which are necessary for the opening of mines and open pits, i.e. construction and assembly of the plant, equipment and other specific installations, which are necessary for the extraction, processing, transportation and temporary storage of the mining products, tailings and residual products, outside and/or underground works for the extraction of the mineral resources/reserves and their processing and delivery, as well as the research works for the increase of the knowledge regarding the respective mineral resources/reserves.

The Exploitation License is issued for a period of maximum twenty (20) years, and may be extended for consecutive periods of maximum five (5) years each.

### Main obligations under mining permit/license

The obligations of the owner of the mining permit/license are provided by the license granted by NAMR, and are supplemented with the general obligations provided by Art. 39 of the Mining Law.

The owner of the mining permit/license has the following main obligations:

- (i) to comply with the provisions of the Mining Law, the norms and the instructions issued for the application thereof and with the provisions of the license/permit;
- (ii) to prepare the technical and economic documentation for carrying out the mining activities, and the documentation for environmental protection, in accordance with the provisions of the permit/license, and to submit such documentation for approval;
- (iii) to obtain, to prepare, to keep up to date and to submit to NAMR, on the scheduled dates, all data, information, and documentation mentioned in the license/permit, concerning the mining activities carried out, and the results obtained in order to be registered with the Mining Book and the Mining Cadastre;
- (iv) to keep confidential the data and information legally obtained from NAMR and the data acquired through its own operations, and to not disclose such data, except as provided in the license;
- (v) to implement, on the scheduled dates, the measures issued in writing by NAMR;
- (vi) to execute and finalize the environmental rehabilitation works of the perimeters affected by the mining works performed;
- (vii) to carry out, upon termination of the concession, the works for the care and maintenance/closure of the mine/quarry, as the case may be, including the post-closure monitoring program.
- (viii) to maintain, for the whole duration of the exploitation, the financial guarantee for environmental rehabilitation;
- (ix) to pay the fees related to the mining activities and the royalties, within the terms provided in the Mining Law;
- (x) to start performing mining activities within 210 days, as of the entering into effect of the license.

### Transfer or assignment of mining license, using the mining license for financing purpose

The owner of a license can transfer its rights and obligations under the said license to another legal entity only subject to the prior written approval of NAMR. Any transfer carried out without the written prior approval of NAMR is void.

The Norms for the Application of the Mining Law provide the conditions which must be fulfilled by the company to which the license will be transferred, and the documents which

must be submitted to NAMR for the purpose of obtaining the approval of the transfer of the license.

Also, Art. 27 of the Mining Law provides that the license owner may ask NAMR to certify in writing the existence of the license for the purpose of obtaining bank loans in order to carry out the mining activities under the license.

#### Cancellation of mining permit/license

NAMR will annul the mining permit/license upon finding that:

- (i) the permit/license owner does not fulfill its obligations regarding the authorization, and the date of commencement of the mining activities;
- (ii) the operations are interrupted for a period of more than 60 days, without the agreement of the competent authority;
- (iii) the permit/license owner uses exploitation methods or technologies other than those provided in the development plan without NAMR's approval;
- (iv) the permit/license owner conducts mining activities without the annual approval of the works program;
- (v) the authorization of the permit/license owner regarding the protection of the environment and/or the labor safety was cancelled;
- (vi) the permit/license owner willfully provides the competent authority with false data and information regarding its mining activities, or violates the confidentiality requirements provided by the license;
- (vii) the permit/license owner does not pay the taxes and royalties owed to the Romanian State within six months from the due date;
- (viii) the permit/license owner fails to fulfill the conditions and the one-year term provided regarding the suspension of the license/permit as per the provisions of the Mining Law.

#### Relationship between owner of a mining permit/license and land owners

Although the Romanian State is the exclusive owner of the mineral resources located on the territory of the country, the permit/license owner of a license has the right to dispose of the quantities of mineral resources it produces.

According to the Mining Law, the permit/license owner has a legal easement right over the land needed for accessing the exploration and production blocks and also in respect of the land, which is necessary to conduct any such exploration and production operations. The permit/license owner has a legal easement right over the land for the entire term of the mining activities.

The permit/license owner must pay an annual rent to the owners of the land for exercising its easement right, and has to conclude lease agreements with the landlords in respect thereof.

In the oil and gas sector, the practice is that the concessionaire pays to the owner of land affected by petroleum operations a rent in the range of the value of the crop that would be harvested on the land in question.

#### Attestation and authorization of the technical competence

According to NAMR Order no. 122 of 2006, the companies and the professionals working in the mining sector must obtain certificates of attestation of the technical competence. The certificates are issued by a Commission of Attestation set up by an order issued by NAMR. The above Order lists the documents which must be appended to the application for the issuance of the certificate of attestation. The documentation must include, a memorandum regarding the relevant mining operations carried within three years prior to the submission, documents attesting the technical qualifications of the personnel, and documents regarding the financial capacity of the applicant.

#### **Environmental laws and regulations**

The main environmental laws and regulations relevant for mining operations are:

- (i) Law no. 107 of 1996 on Water Protection as further amended (“**Water Law**”);
- (ii) Emergency Government Ordinance no. 78 of 2000 on Waste Regime;
- (iii) Emergency Government Ordinance no. 195 of 2005, on Environmental Protection, as further modified (“**GEO no. 195**”);
- (iv) Emergency Government Ordinance no. 152 of 2005, Concerning the Integrated Pollution Prevention and Control, as further modified;
- (v) Order no. 662 of 2006 regarding the Approval of the Procedure and Competences of Issuance of the Approvals and Authorizations for Water Management;
- (vi) Emergency Government Ordinance no. 68 of 2007 on Environmental Liability, Prevention and Remedying Environmental Damages (“**GEO no. 68**”);
- (vii) Government Decision no. 856 of 2008 regarding the Management of the Wastes from the Extraction Industries which implemented the Directive 2006/21/EC for the amendment of Directive 2004/35/EC regarding the Management of the Wastes from the Extraction Industries.
- (viii) Government Decision no. 445 of 2009 on Environmental Impact Assessment pertaining to Certain Public and Private Projects.
- (ix) Law no. 104 of 2011 on Atmosphere Protection.

### "Polluter Pays" Principle

The liability for damages caused to the environment is governed by the principle "polluter pays".

According to the provisions of GEO no. 68, the operator must promptly inform the local environmental protection agency on any damage caused to the environment, as well as on any imminent threat of such damage. In any such situation, the operator must take all necessary reparatory and/or precautionary measures. If the operator does not comply with these obligations, the relevant environmental protection agency is entitled to take all reparatory or prevention measures itself, on the account of the operator who has to bear the related costs. In order to recover the costs, the environmental protection agency may seize the assets of the operator.

In case the damage on the environment was caused by several operators, these shall jointly incur the costs of the preventive or remedial measures.

The right of the local agency for environmental protection to act against the operator for the recovery of costs is subject to the statutes of limitation of five years as of the date when those measures were taken, or the date when the responsible operator was identified.

### Use of (surface or underground) water in mining activities

Water Law provides for (i) the measures to be taken for protection of the surface and underground waters, (ii) the obligations to obtain certain permits, i.e. approvals and water management authorisations for the mining activities, and (iii) the preparation of the plans for the prevention and management of the accidental pollution.

Thus, the Water Law provides for the obligation of the water user to request and obtain at the design stage of a Water Management Approval which regulates both the regime of the works built on waters, or are water-related, and the social and economic activities with potentially negative effects on the hydraulic component of the environment. The operation or exploitation of these works is made only based on a Water Management Authorization.

### Issuance of the Integrated Environmental Authorisation

The activity of extraction and processing of mineral resources is classified as an activity with significant impact on the environment.

Consequently, in order for an operator to carry out this activity, such must obtain the Integrated Environmental Authorization, as provided by the Government Decision no. 573 of 2002, Annex 4 regarding the Approval of the Authorization Procedure of the Activities Having an Impact on the Environment.

The operator also must obtain environmental approvals for certain investment projects, during the process of obtaining the Integrated Environmental Authorization.

### Notification regarding the change in control

According to the provisions of GEO no. 195, within sixty days as of a transfer of assets or a change in control of the operator, the relevant environmental authority must be notified by the parties with regard to the taking over of the environmental obligation, by submitting a certified copy of the document mentioning the environmental obligations taken over by the new owner of the assets, or the new majority shareholder.

### Cross-border environmental impact

In the context of relations with neighbouring states, in case that the Romanian environmental protection authority ascertains that the exploitation of a mining installation may have significant negative effects on the environment of another state, or if another state likely to be significantly affected requests it, the Romanian authority will forward to the competent authority of the other state any requested information that is available.

Within the context of the bilateral relations, both states must ensure that the applications for the issuance of the integrated environmental authorization are also available for an adequate period of time to the public of the state likely to be affected, so that the said public will be allowed to exercise its right to submit comments before the issuance of the final decision.

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