

Mining 2021

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Mining 2021

Contributing editors**Darrell Podowski, Brian Dominique, Brandon Manhas
and Lauren White****Cassels Brock & Blackwell LLP**

Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Ireland, Nigeria and Uzbekistan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.



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MINING INDUSTRY

Standing

1 | What is the nature and importance of the mining industry in your country?

Finland is dependent on mineral-based products in the construction and maintenance of housing and other buildings as well as infrastructure. Furthermore, production of machinery, vehicles and high technology rely on the availability of mineral-based materials. In addition, food production requires mineral fertilisers and machinery, that are produced from mineral-based materials.

When assessing the importance of the minerals sector to the Finnish society and its economy, it is appropriate to assess the sector as a whole.

Finland's long-term goal is to host an active minerals sector that is globally competitive, secures raw material supply while supporting regional development. The legislative framework for the mining sector aims to ensure responsible use of natural resources, a high level of environmental protection, local acceptability and influencing opportunities.

Finland's mineral resources represent a significant part of our national wealth and the minerals sector has significant direct and indirect impacts on national economy and employment. According to the latest statistics, Finland hosts a total of 46 active mines, which have a total annual turnover of approximately €2 billion. The mining sector employs approximately 5,100 people.

In 2020 there were a total of 61 active companies carrying out exploration in Finland, with a total annual expenditure of €68 million. Investments made by mining companies during 2020 totalled to €392 million, even though investments decreased by 25 per cent compared to 2019. A total amount of 48.6 million metric tonnes of ore was extracted during 2020, equalling to a 9 per cent increase compared to 2019.

According to a recent study ordered by the government, the minerals sector, covering the mining operations as well as industries that produce and supply machinery, equipment, technology and services for mining operations, has an annual total turnover of approximately €12.2 billion and with a multiplicative effect the gross return totals to €22 billion. The study was based on 2015 statistics, but the importance of the minerals sector to our economy has not since decreased.

Access to certain raw materials is a growing concern within the European Union as the supply of many critical raw materials is highly concentrated. For example, most of the European Union's supply of rare earth elements are imported from China. The production of critical raw materials provides significant opportunities for Finland, as its geological environment holds great potential in many critical raw materials.

Target minerals

2 | What are the target minerals?

The most common extracted and produced base metals in Finland are zinc (production 85,000 metric tonnes), copper (production 46,7000 metric tonnes) and nickel (production 43,600 metric tonnes), while the most common extracted precious metals are silver (production 451,506 ounces), gold (production 306,883 ounces), platinum production (55,591 ounces), and palladium (40,811 ounces) (figures based on 2018 statistics). In addition, notable quantities of lead as well as cobalt are mined in Finland. For more information regarding discovered minerals and their production in Finland, please see the table below.

In addition to exploration projects targeting base metals, gold, silver and PGE metals, many exploration projects are currently targeting raw materials for batteries as well as rare earth elements.

The European Commission has estimated that the European battery value chain will amount to an annual market value of €250 billion by 2025. Finland has good opportunity to develop its battery mineral industry as the geological potential in terms of key raw materials for batteries, mainly cobalt, nickel, lithium and graphite, is favourable in Finland. Furthermore, the production of critical raw materials for the European Union provides significant opportunities for Finland, as the Fennoscandian shield, on which Finland is located on, holds great potential in many critical raw materials.

Metal/mineral	Mining production in Finland	Discovery potential in Finland
2020 Critical Raw Materials for the EU		
Antimony	Deposits	Moderate
Baryte	No known significant deposits	Moderate
Beryllium	No known significant deposits	Moderate
Cobalt	Mining production	Good
Gallium	No known significant deposits	Low
Germanium	No known significant deposits	Low
Indium	No known significant deposits	Moderate
Lithium	Mining projects	Good
Magnesium	No known significant deposits	Low
Graphite	No known significant deposits	Moderate
Niobium	Mining projects	Good
Platinum group metals	Mining projects	Good
Rare earth metals	Deposits	Good
Tantalum	Deposits	Moderate
Titanium	Mining projects	Good
Tungsten	Deposits	Moderate
Vanadium	Mining projects	Good

Metal/mineral	Mining production in Finland	Discovery potential in Finland
Economically important or very important		
Aluminium	No known significant deposits	Low
Bentonite	No known significant deposits	Low
Boron	No known significant deposits	Low
Chromium	Mining production	Good
Clay minerals	Deposits	Moderate
Copper	Mining production	Good
Diatomite	No known significant deposits	Low
Feldspar	Mining production	Good
Fluorite	No known significant deposits	Low
Gold	Mining projects	Good discovery potential
Gypsum	No known significant deposits	Low
Iron	Mining projects	Moderate
Limestone	Mining production	Good
Magnesite	No known significant deposits	Moderate
Manganese	Mining projects	Moderate
Molybdenum	Deposits	Moderate
Nickel	Mining production	Good
Perlite	No known significant deposits	Low
Precious stones	Deposits	Moderate
Quartz	Mining production	Good
Rhenium	No known significant deposits	Low
Silver	Mining projects	Moderate
Soap stones	Mining projects	Good
Talc	Mining production	Good
Tellurium	Deposits	Good
Uranium and thorium	Exploration	Moderate
Zinc	Mining production	Good

Source: Finland's Minerals Strategy 2010 / the European Commission: Fourth list of critical raw materials for the EU of 2020

Regions

3 | Which regions are most active?

The most attractive regions in terms of exploration are currently the norther and eastern regions of Finland, the most active region being Central Lapland. Active exploration campaigns are also carried out in the western parts of Finland. Active mining operations or planned mining projects are also largely located on the above-referred regions.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

4 | Is the legal system civil or common law-based?

Finland's legal system is civil law-based.

Regulation

5 | How is the mining industry regulated?

The Finnish legal system is based on written law, which is passed by the state legislature, the Parliament. Acts passed by the Parliament, such as the diverse set of legislation applied to the mining industry is applied and enforced on a state level throughout Finland. In the region of Åland the regional parliament passes laws in matters which fall under its

autonomous status, such as permitting of exploration and exploitation of minerals within Åland's territory.

Mining agreements or comparable arrangements between the state and private entities are not used in Finland.

The municipalities have a long history of land use planning monopoly in Finland and thus municipalities play a key role in the permitting stage of mining projects as local level land use planning decisions are required to commence mining activities. In addition to local land use plans, regional councils, consisting of municipalities of the region, pass regional land use plans, which set out land use principles for the development of the region in question. According to the land use plan hierarchy, local level land use plans must be compatible with the passed regional land use plans.

6 | What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The mining industry in Finland is regulated through a diverse set of legislation, such as:

- the Mining Act (621/2011, as amended);
- the Environmental Protection Act (527/2014, as amended);
- the Water Act (587/2011, as amended);
- the Nature Conservation Act (1096/1996, as amended);
- the Environmental Impact Assessment Act (252/2017, as amended);
- the Dam Safety Act (494/2009, as amended);
- the Act on the Safety Handling of Hazardous Chemicals and Explosives (390/2005, as amended);
- the Reindeer Husbandry Act (848/1990, as amended);
- the Act on the Sámi Parliament (974/1995, as amended); and
- the Land Use and Building Act (132/1999, as amended).

Principal regulatory and supervisory bodies include:

- The Finnish Safety and Chemicals Agency, being the Mining Authority under the Mining Act, is the competent authority with regards to permitting matters relating to exploration and mining and the supervising and enforcing compliance with the Mining Act. The Finnish Safety and Chemicals Agency is also the competent authority in respect of the Act on the Safety Handling of Hazardous Chemicals and Explosives.
- The Ministry of Employment and Economic Affairs is responsible for the general guidance, monitoring and development of the Mining Act as well as the steering of mineral policy of Finland.
- The Finnish Government is a competent permitting authority under the Mining Act in matters concerning land expropriation permits, an instrument securing mining operations' access to land, and on mining permits related to the production of uranium or thorium.
- The Regional Administrative Agency is the competent permitting authority under the Water Act and the Environmental Protection Act, which implements the Directive 2010/75/EU of the European Parliament and the Council on industrial emissions into national law.
- Centres for Economic Development, Transport and the Environment (ELY Centres) are responsible for supervising adherence to the environmental and water permits. ELY Centres also have permitting and supervisory duties under Nature Conservation Act. ELY Centres also act as contact authorities in environmental impact assessments procedures carried out in accordance with the Act on Environmental Impact Assessment Procedures. ELY Centres are also competent authorities concerning dam safety issues.
- The Ministry of Environment is responsible for the overall guidance and supervision of nature and landscape conservation as well

as the general guidance, monitoring and development of activities under the Environmental Protection Act.

- Metsähallitus, a state-owned enterprise that manages state-owned land and water areas, has statutory responsibilities concerning the protection of the areas as well as a permitting role under the Nature Conservation Act concerning exploration activities within national parks and nature reserves.
- Municipalities have a long history of land use planning monopoly in Finland and thus municipalities play a key role in the permitting stage of mining projects as local level land use planning decisions are required to commence mining activities.
- Regional councils, consisting of municipalities of the region, pass regional land use plans, which set out land use principles for the development of the region in question. According to the land use plan hierarchy, local level land use plans must be compatible with the passed regional land use plans.

Major amendments

- In late December 2020 changes concerning the rules for informing of permit applications and decisions under the Mining Act took effect. The changes seek to improve access to information and increase the use of electronic means of communication. The amended rules oblige the Mining Authority to separately inform all parties concerned of lodged applications and issued decisions, in practice this means a letter or an email. According to the *travaux préparatoires* the parties concerned include *inter alia* landowners of the application area as well as owners of neighboring properties, unless deemed unnecessary due to the nature of the activity. Also, rules concerning the issuance of a permit decision have been amended. In practice, the introduced changes mean that parties entitled to challenge the decision by an appeal are considered to have been notified of the decision on the seventh day after the decision has been published. All permit decisions will be published on the Mining Authority's website.
- In September 2020, a novel Act on the Coordination of Certain Environmental Permitting Procedures entered into force. The purpose of the new act is to coordinate the diverse environmental permitting procedures enabling, subject to the applicant's discretion, a one-stop-shop regarding the permitting of major projects, such as mining projects.

The Finnish Government is looking to submit to the Parliament numerous legislative proposals during its term 2019-2023, impacting the Finnish mining industry's legislative and regulatory environment. The major currently ongoing legislative processes are:

- the Mining Act reform, aiming to improve the level of environmental protection and local acceptability as well as influencing opportunities while ensuring the operating conditions of the mining sector;
- the possible introduction of a separate mining tax and the possible raising of electricity tax rates applicable for the mining industry;
- the secondary environmental liability scheme reform, which aims to manage environmental risks and adequate restoration measures in cases where the responsible party is insolvent, unknown or unavailable; and
- the development of the collateral regulations, mainly those found in the Mining Act and the Environmental Act, so that environmental responsibilities are covered in every event.

Classification system

7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Pan-European Reserves and Resources Reporting Committee (PERC) is an organisation responsible for setting reporting standards for companies listed on markets in Europe. The PERC Reporting Standard is fully aligned with the CRIRSCO Reporting Template.

Furthermore, Finland's Financial Supervisory Authority recommends that issuers and persons responsible for prospectuses comply with the European Securities and Markets Authority guidelines on risk factors under the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. Accordingly, all relevant prospectuses should include details of mineral resources, and where applicable reserves (presented separately) and exploration results/prospects in accordance with the JORC Code, the SAMREC Code, the various standards and guidelines published and maintained by the Canadian Institute of Mining, Metallurgy and Petroleum, the SME Guide, the PERC Code, the Certification Code for Exploration Prospects, Mineral Resources and Ore Reserves as published by the Instituto de Ingenieros de Minas de Chile, Chilean and the NAEN Code.

As there are notable number of publicly listed Canadian and Australian companies carrying out exploration and mining activities in Finland through their Finnish subsidiaries, mineral resources and reserves as well as exploration results from Finland are often reported according to the JORC Code or the National Instrument 43-101.

MINING RIGHTS AND TITLE

State control over mining rights

8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The Mining Authority, a governmental authority, is the competent authority to award mineral rights in Finland, excluding mining permits concerning the production of uranium and thorium, which are subject to a mining permit awarded by the government.

Private parties may hold mineral rights provided that the prerequisites set in the Mining Act are satisfied. Accordingly, parties eligible to apply and hold mineral rights are:

- natural persons domiciled within the European Economic Area;
- legal entities incorporated under the laws of Finland; and
- foreign legal entities been established in accordance with the laws of a state belonging to the European Economic Area and having a registered branch in Finland.

Although mineral rights are issued by a governmental authority or in some cases the government, the state does not have ownership to the minerals nor does the surface rights holder. Instead, the Finnish mining legislation is based on the principle of 'discovery', where the party first staking a claim has preferential right to acquire mineral rights for the area concerned.

While the current Mining Act does not recognise the possibility to stake mining claims without authority or landowner approval, the right to exploit mining minerals may be issued to a party even if the surface rights are held by the state or a third party. An awarded mining permit

gives its holder the sole right to exploit mining minerals found in the mining area, organic and inorganic surface materials, waste rock and tailings generated as by-products of mining activities. In addition, a holder of a mining permit may exploit other materials excavated from the bedrock and soil of the mining area to the extent that their use is necessary for the purposes of mining operations in the mining area. The mining permit also entitles its holder to carry out exploration work within the mining area.

As surface rights do not follow a mining permit and as mining operations require access to land, surface rights must be obtained separately either by contractual means, for example through purchase or lease, or through a separate expropriation process governed by the Mining Act. The prerequisite for the awarding such expropriation permit is that the mining project satisfies the requirement of public need.

Access to land in terms of exploration is included in the rights conferred to the exploration permit holder through the exploration permit and thus exploration does not require a separate landowner consent to access the area or commence exploration work on another's land.

The Mining Act recognises the right to make observations and take minor samples even on another's land, whether in private or state ownership, without a permit or prior consent, provided that this does not cause damage or more than minor inconvenience or disturbance.

It is also possible to carry out exploration without a separate permit, provided that a prior consent is obtained from the landowner. However, exploration without an exploration permit does not give the operator preferential rights to the target area. A separate exploration permit is always required if exploration poses risk to people's health, general safety or other industrial and commercial activity, or any deterioration of the landscape or nature conservation. Further, an exploration permit is required if exploration is targeted for locating or exploring a deposit containing uranium or thorium.

Mining operations are always subject to a mining permit even if the operator has surface rights to the area.

Publicly available information and data

9 What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The Geological Survey of Finland (GTK), a governmental geoscience research agency, collects and maintains geoscientific data in Finland.

GTK's key activities are the mapping and evaluation of natural resources as well as research and development. GTK also provides geological expertise to the private sector offering expert, research and laboratory services for exploration and mining companies. In addition to the foregoing, GTK may also evaluate ore potential of geological formations to encourage further evaluation by the private sector. The most promising projects are tendered to the private sector through the Ministry of Employment and the Economy as the State has no role in the downstream development of mineral projects.

One of GTK's statutory duties is to arrange the geoscientific data services in Finland and to manage the said data. In addition to its own exploration campaigns, GTK receives geoscientific data from entities carrying out exploration operations in Finland as the Mining Act obliges exploration permit holders to surrender a final exploration work report, the material information pertaining to the exploration and a representative set of drill-core samples to the Mining Authority. The final exploration work reports are forwarded to GTK for verification and

saved in GTK's standardised database, while the drill cores are sent to the national drill core archive, which holds over 3.5 million metres of drill cores from 34 000 drill holes. Information on the drilling sites and their locations, from which the drill cores in the drill core archive have been collected, can be found on GTK's Mineral Deposits and Exploration map. The drill cores can be studied in GTK's facilities. Furthermore, GTK provides sampling, cutting and photography services as well as density and magnetisation measurements as well as the possibility to analyse the drill cores with a sample field analyser.

The data sets maintained by GTK are accessible to all and are made available in digital geographic information systems form and viewable on GTK's active map explorer web page (<http://gtkdata.gtk.fi/mdae/index.html>). The web service provides up-to-date information on land tenure, exploration reports, drilling, mines and undeveloped deposits, mineral indications data and bedrock age data in Finland.

The GTK's databases cover the entire country with exceptional detail and include:

- high-resolution, low-altitude airborne geophysical surveys (to a 40-metre altitude, with 200-metre line spacing);
- regional till geochemical sampling (one sample per 4km²);
- in-bedrock mapping at a 1:100,000 scale; and
- quaternary geology mapping at a 1:20,000 scale.

Acquisition of rights by private parties

10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

Everyone has the right, even on another's land, to make observations and take minor samples, provided that this does not cause damage or more than minor inconvenience or disturbance. Minor sampling on another's land is subject to a prior notification lodged with the landowner.

Private parties may lodge reservation notifications, hold exploration and mining permits as well as expropriation permits as means to acquire surface rights for the purpose of carrying out mining operations.

Permit applications are processed and permits are awarded on a first-come, first-served basis. An exception to this policy is the preferential rights system under which an exploration permit holder has preferential rights to apply for a mining permit provided that the application for a mining permit is lodged prior to the expiry or cancellation of the exploration permit. Further, operators may reserve areas through reservation notifications. A lodged reservation notification will give its holder the preferential right to apply for an exploration permit to the area covered by the reservation. A reservation is valid for a maximum period of 24 months, within which time an exploration permit application must be filed or the reservation will expire. A reservation does not entitle to carry out exploration activities provided that the landowner in question consents to such activities and there are no other requirements under the Mining Act which would make exploration subject to an exploration permit.

All mineral rights are awarded, provided that the application satisfies the conditions set out in the Mining Act and there are no impediments stipulated in the Mining Act, which would impede the awarding of a mineral right. Further, an exploration or a mining permit may be awarded, regardless of an existing impediment, if it is possible to remove said impediment through permit conditions or by decreasing the size of the permit area.

On rare occasions the government may commence a competitive bidding in order to sell exploration projects developed by the GTK. Acquiring an exploration project through such bidding process does not

entertain a legitimate expectation that the project would be awarded a mining permit in the future, in other words the party holding an exploration permit acquired through competitive bidding will not be treated more favourably than other operators and will not be promised exploitation rights as a reward. The last competitive bidding was carried out in the early 2010s. It is typical that a form of royalty arrangement is included in the asset purchase agreement between the state and the purchaser.

Exploration permit

Exploration activities in general may be carried out by obtaining landowner consent. Exploration is nevertheless subject to an exploration permit if the landowner does not consent to such activities. An exploration permit is also required if exploration could cause harm to people's health or general safety, would cause inconvenience to other commercial activity or any deterioration in nature conservation values. Further, an exploration permit is required if the target mineral is either uranium or thorium. An operator may also apply for an exploration permit in order to gain preferential right to acquire a mining permit for area in question.

A holder of an exploration permit has various statutory obligations, which include the duty to:

- carry out exploration, as the Mining Authority may decide that an exploration permit will expire if operations have been interrupted continuously for a minimum of one year;
- notify landowners in advance of all field work that may cause any damage or harm and of any temporary constructions which need to be built on the exploration area;
- inform relevant authorities on field work as stipulated in the exploration permit;
- compensate for any harm and damage arising from exploration according to the principle of full compensation;
- pay an annual exploration fee to the landowners of the exploration area. The amount of the exploration fee increases gradually from €20 to €50 / hectare as the exploration continues;
- submit an annual report to the Mining Authority regarding the exploration activities carried out during the year and the results thereof;
- deposit a collateral as stipulated in the permit decision for the purpose of offsetting potential damage and inconvenience and performing after-care measures;
- restore the exploration area to the condition required by public safety, remove all constructions and equipment placed on the exploration area, carry out required rehabilitation and clean-up measures and restore the area to its natural status as far as possible; and
- submit to the Mining Authority an exploration work report and a representative set of core samples before the permit expires.

The holder of an exploration permit is also obliged to comply with the permit-specific stipulations, which may include *inter alia* stipulations ensuring that exploration does not result in any prohibited effect such as restrictions concerning exploration work during the nesting season of a protected bird species, measures aiming to mitigate harm caused to reindeer herding, measures to ensure that exploration does not violate the rights of indigenous people and after-care measures.

Mining permit

The construction and commencement of mining activities is subject to a mining permit issued by the Mining Authority.

A mining permit holder has the right to exploit the mining minerals found in the mining area, the organic and inorganic surface materials, excess rock, and tailings and other minerals extracted from the bedrock and soil of the mining area to the extent that the use of these is necessary for the purposes of mining operations. The mining permit also entitles the holder to carry out exploration within the mining area.

The prerequisites for the awarding of a mining permit are that the target deposit is exploitable in terms of size, ore content and technical characteristics.

The decision to award a mining permit is based on a comprehensive approach, on the one hand, taking account the rights of the landowners. Moreover, the impact of activities on other livelihoods, the environment, landscape, land use and safety, the economic use of natural resources and nature conservation, radiation safety and the reconciliation of user needs in different areas need to be taken into account.

A mining permit holder is obliged to ensure that:

- the mining activities do not cause damage to people's health or danger to public safety;
- mining activities do not cause significant harm to public or private interests;
- excavation and exploitation do not entail obvious wasting of mining minerals;
- potential future use and excavation work at the mine and deposit are not endangered or encumbered; and
- the permit provisions issued together with the mining permit are complied with.

Furthermore, a mining permit holder is obliged to submit an annual report to the Mining Authority concerning the results of the exploitation of the deposit and any material changes concerning mineral resources and pay an excavation fee to the landowner of the mining area, for the areas not owned by the operator as well as compensate in full any damage or harm caused by the mining activity.

The mining permit will include a schedule for the commencement of the mining activities. If the operator fails to commence mining activities within the set schedule, the Mining Authority is obliged to order the mining permit to expire.

Once the mining activities are terminated, the mining permit holder has two years to bring the mine and any auxiliary areas up to the standards required by public safety and to make the necessary rehabilitation, cleaning and landscaping measures. This includes the measures set out in the Mining Act as well as in the mining and mining safety permits.

As mining operations are regulated through a wide set of environmental laws as well as permits issued under such laws, mining operators are always subject to further obligations in addition to those set in the Mining Act or in a mining permit.

Obtaining surface rights

Mining operations require, in addition to a mining permit various other permits and administrative processes, surface rights to the mining area, which are acquired through voluntary acquisitions, for example purchase or lease, or through expropriation subject to a separate permit issued by the government on the basis of public need, which is assessed particularly on the basis of the impact of the mining project on the local and regional economy and employment, and the social need for raw material supply.

Social licence to operate

While the Mining Act lays down statutory rights and obligations of operators carrying out prospecting, exploration or mining activities, recent years have shown the importance of obtaining and retaining a social licence to operate as examples from recent history have shown operations being blocked or significantly delayed through public opposition or lack of trust.

In addition to familiarising with the local area and its characteristics, operators should be prepared to discuss already in advance of their planned projects with local communities and have a local representative to engage in a dialogue with the relevant authorities and to address possible concerns that the planned project might raise among local and recreational residents, local businesses and other stakeholders.

Renewal and transfer of mineral licences

11 | What is the regime for the renewal and transfer of mineral licences?

Renewal of an exploration permit

An exploration permit is awarded for a fixed term of up to four years, which can be further extended up to three years at a time for a total period of 15 years. Extending the validity of an exploration permit is subject to the following requirements:

- the exploration has been effective and systematic;
- further exploration is needed in order to determine the exploitability of the deposit;
- the permit holder has complied with the terms of the permit; and
- extending the permit does not cause unreasonable harm to private or public interest.

Renewal of a mining permit

As a general rule awarded mining permits are valid until further notice. The Mining Authority may nevertheless award a mining permit for a fixed term, provided that compelling reasons for such decision exist.

The fixed term of a mining permit may not exceed 10 years, but the validity of such permit may be extended for a further period, until further notice, or for a maximum of 10 years at a time, insofar as it is still necessary in order to exploit the deposit, and in consideration of other factors that have emerged in connection with the processing of the application. The extension is subject to the following prerequisites:

- the deposit has been exploited effectively and systematically;
- the deposit remains exploitable; and
- the operator has not materially breached its obligations or permit regulations under the Mining Act.

Renewal of a mining permit due to ceased operations or inactivity

The mining permit must contain a schedule in which the mining permit holder is obliged to commence mining activities. The time limit may be, at maximum, 10 years once the mining permit becomes legally valid.

If the operator fails to commence mining operations within the specified schedule, the Mining Authority is obliged to issue a decision concerning the expiry of the mining permit. The Mining Authority must also decide that the mining permit will expire if mining activities have been ceased continuously for a minimum of five years due to factors dependent on the permit holder.

The Mining Authority may postpone the expiry of the mining permit, twice at the most, and specify a new timeframe for the commencement of mining operations or for the continuance of operations. The expiry of a permit can be postponed for a maximum of 10 years in total. A prerequisite for approval of the application is that the reason presented by the applicant is considered justified and the updated work plan sufficiently detailed, and that the decision does not cause undue inconvenience to public or private interests.

Should the mining permit holder have surface rights to the mining area, the expiry of the mining permit may be postponed without the above-mentioned limitations. A prerequisite for such postponement is that postponing the expiry of the mining permit is based on public interest or other specific reasons.

Transfer of permits

All mineral rights as well as expropriation permits issued under the Mining Act are transferrable excluding reservation notifications, which may not be assigned to another. In addition to issued permits, exploration permit applications and mining permit applications may be assigned to another.

The assignment of a permit is subject to an approval by the Mining Authority; however, the level of discretion concerning the assignment

of permits is limited as the Mining Act sets out an exhaustive list of the prerequisites for the assignment of permits. For example, the Mining Authority will not take into account the nationality of the owner of the assignee or assess the purpose or rationale of the assignment provided that all prerequisites laid down in the Mining Act are satisfied. A change of control in the permit holder is not subject to a separate approval.

In general terms, the Mining Authority is obliged to approve the assignment of a permit if the assignee fulfils the statutory requirements of a permit holder and no grounds for rejection exist. The Mining Authority may prohibit an assignment of an exploration or a mining permit if there is good cause to doubt that the assignee does not have the capacity or has no apparent intention to engage in the activities in accordance with the permit or if the assignee has previously fundamentally neglected its obligations based on the Mining Act. When assessing the nature of the above-referred negligence, the Mining Authority will take into consideration the systematic nature of said negligence, its duration and recurrence, and the damage caused by the negligence.

Assessing the capacity of the assignee is based on information provided in the assignment application lodged with the Mining Authority. A detailed record of the expertise and technical capability of the assignee are to be disclosed. The assignment application should also show that the assignee possesses sufficient resources to carry out the activity based on the permit that is being assigned.

With respect to mining operations concerning the production of uranium or thorium, a separate legally valid nuclear production permit issued under the Nuclear Energy Act is required for the assignment of the respective mining permit.

Duration of mining rights

12 | What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

Duration and renewal of an exploration permit

An exploration permit is awarded for a fixed term of up to four years, which is also a typical duration of an exploration permit, provided that there are no justified reasons which would call for a shorter validity period. The permit can be extended for up to three years at a time for a total period of 15 years. The extension is subject to the following requirements:

- the exploration has been effective and systematic;
- further exploration is needed in order to determine the exploitability of the deposit;
- the permit holder has complied with the terms of the permit; and
- extending the permit does not cause unreasonable harm to private or public interest.

Typically, operators in Finland keep exploration permits in good standing throughout their validity and are successful in extending the validity of exploration permits and execute the planned exploration campaigns.

While the Mining Act obliges the Mining Authority to issue permit provisions concerning the schedule in which the operator is required to relinquish parts of the exploration area, there is rarely need for such provisions as it is typical for the operators on their own incentive relinquish parts of exploration areas, as the annual exploration fee is raised gradually from €20 to €50 / hectare as the total validity time increases.

Duration and renewal of a mining permit

As a general rule, awarded mining permits are valid until further notice. The Mining Authority may award a mining permit for a fixed term, provided that compelling reasons support such decision.

The validity of fixed term mining permit may not exceed 10 years but the validity of such permit may be extended for a further period,

until further notice, or for a maximum of 10 years at a time, insofar as it is still necessary in order to exploit the deposit, and in consideration of other factors that have emerged in connection with handling of the application. The extension is subject to the following prerequisites:

- the deposit has been exploited effectively and systematically;
- the deposit remains exploitable in terms of size, ore content, and technical characteristics; and
- the permit holder has not materially violated the obligations or permit regulations under the Mining Act.

Renewal of a mining permit due to ceased operations or inactivity

The mining permit must specify a term in which the mining permit holder is obliged to commence mining activities. The time limit may be, at maximum, 10 years once the mining permit becomes legally valid.

If the operator fails to commence mining operations within the specified timeframe, the Mining Authority must issue a decision concerning the expiry of the mining permit. Also, the Mining Authority is obliged to order the mining permit to expire if mining activities have been ceased continuously for a minimum of five years due to factors dependent on the permit holder.

The Mining Authority may also postpone the expiry of the mining permit, twice at the most, and specify a new timeframe for the commencement of mining operations or for the continuance of the operations. The expiry of a permit can be postponed for a maximum of 10 years in total. A prerequisite for approval of the application is that the reason presented by the applicant be considered justified and the plan sufficiently detailed, and that the decision does not cause undue inconvenience to public or private interests.

Should the mining permit holder have surface rights to the mining area, the Mining Authority may postpone the expiry of the mining permit without limitations. A prerequisite for such postponement is that postponing the expiry of the mining permit is based on public interest or other specific reasons.

Amending permit conditions

The Mining Authority may alter a valid exploration permit or a mining permit, if the activities cause a consequence prohibited by the Mining Act or the detrimental impacts of the activities deviate substantially from the assessments made during permit consideration.

The holder of an exploration permit is obliged to apply for an alteration to the exploration permit if the exploration plan is altered or completed so as to render revision of the permit regulations necessary. Moreover, the permit holder can apply for amendment to the exploration permit in order to revise the permit regulations when there is a need to alter the activities under the permit. The mining permit holder is obliged to apply for an alteration to the mining permit if the mining area or a part of the mining area is no longer necessary for its operations or if any such change occurs in mining activity as renders a revision of permit regulations necessary.

Cancellation of a permit

The Mining Authority may cancel an exploration permit or a mining permit if the permit application contained incorrect information and the provided incorrect information materially affected the permit consideration, the permit holder no longer meets the requirements for awarding of a permit or the permit holder has materially neglected or violated the obligations, restrictions, or permit regulations laid down in the Mining Act.

The Mining Authority may also order an exploration permit to expire if operations have been interrupted for a reason dependent on the permit holder continuously for at least one year.

Acquisition by domestic parties versus acquisition by foreign parties

13 | Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Parties eligible to apply for mineral rights under the Mining Act are:

- natural persons domiciled within the European Economic Area;
- legal entities incorporated under the laws of Finland; and
- foreign legal entities been established in accordance with the laws of a state belonging to the European Economic Area and having a registered branch in Finland.

In practice, exploration and mining companies usually set up a Finnish subsidiary in the form of a limited liability company through which the mineral rights are held and activities in Finland carried out.

Foreign owned entities taking up exploration or mining activities in Finland are not required to have domestic partners in order to pursue activities in Finland. Furthermore, the Mining Authority does not make any distinction between operators based on the nationality of their parent company or their corporate structure.

Protection of mining rights

14 | How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Finland is a politically stable country, with a high-quality administrative and judicial system that is based on rule of law. The Constitution of Finland gives individuals strong protection of property rights and there are no cases of expropriation of mineral rights in Finland.

With only a few exceptions, all decisions issued under the Mining Act, such as cancellation decisions, can be challenged by appealing to a competent Administrative Court. An appeal against a decision of an Administrative Court to the Supreme Administrative Court requires leave to appeal. The Courts do not make any distinction between foreign or domestic parties.

Claims concerning damage as well as injunctions or other temporary procedural remedies are handled by the local district courts as the first instance. Criminal proceedings relating to the non-compliance of certain obligations set forth in the Mining Act are also handled by the district courts as the first instance.

Finland is a party to the United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), and thus generally foreign arbitration awards with respect to countries belonging to the New York Convention are enforceable in Finland.

Surface rights

15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

Commencing mining operations require mining operators to acquire surface rights, which do not follow the issued mining permit.

Surface rights to a mining area are acquired either through contractual means, for example through purchase or lease, or by applying for a separate expropriation permit under the Mining Act as the landowners of a mining area are not under an obligation to sell their property to the mining permit holder.

An expropriation permit will solely concern the right of use and thus expropriation based on an expropriation permit under the Mining

Act will not affect the ownership of the real property in question. As the mining company will not have title to such real property, the operator will be obligated to pay an excavation fee to the landowner and return the possession of the area in question to the landowner once mining operations have terminated.

An expropriation permit must be based on a public need, which is assessed on the basis of the impact of the mining project on the local and regional economy and employment and society's need for the raw material. As the holder of the expropriation permit will not gain ownership to the land in question, the operator will be liable to pay an excavation fee to the landowner. The amount of the excavation fee is €50 per hectare per year. In addition to that, the excavation fee has a variable part of 0.15 per cent of the calculated value of mining minerals included in the metal ores that are excavated and exploited in the course of the year. The calculation is based on the average price of the exploited metals included in the ore during the year and the average value of other products exploited from the ore during the year. The obligation to pay an excavation fee starts when the mining permit becomes legally valid.

A decision to award an expropriation permit may be challenged by appealing to an Administrative Court and a decision of the Administrative Court may only be challenged if the Supreme Administrative Court grants leave to appeal.

Since 2011 only two expropriation permit applications have been lodged with the government and only one expropriation permit has been awarded so far.

The principle of full compensation is applied in the event of expropriation of surface rights. Although the expropriation permit will not result in the transfer of title to the land, the compensation payable to the landowner will most likely correspond to the market value of the expropriated real property as mining operations usually prevent the use of the real property for a considerable duration of time. The final assessment of the compensation is determined in a legal cadastral survey by the National Land Survey of Finland and the decision concerning the compensation may further be challenged by appealing to the Land Court as the first instance.

If the mining area causes substantial inconvenience to the usage of the real property or if a local land use plan designates an area as an area for mining operations, the landowners concerned have the right to demand that the operator acquires the ownership of such real properties. In such cases, the amount of compensation shall be one and a half times the market value of the real property in question.

The Mining Authority is obliged to order the mining permit to expire if the mining permit holder has not acquired surface rights to the area within five years of awarding of the permit.

Participation of government and state agencies

16 | Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The government does not have any right to demand a stake in mining projects but may participate in mining projects, for example, through voluntary investments into mining companies. A possible government investment, whether direct or indirect, in a project company will not affect the outcome of any administrative procedure such as acquiring mining or surface rights.

Project companies do not have any local listing requirements.

Government expropriation of licences

17 | Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The Act on the Right of Redemption of Immovable Property and Special Rights in Order to Protect National Security (468/2019) gives the government the right to expropriate mining permits for the purpose of safeguarding national defence, territorial integrity, internal security, government administration, border security, border control, maintenance of emergency stocks of critical supplies, the continued operation of the infrastructure necessary for the vital functions of society or other equivalent public interest. Such expropriation may only take place if required by public interest.

In the event of expropriation of a mining permit, a full compensation shall be payable for the assets, which shall be equivalent to the highest fair market price.

An expropriation decision may be challenged by appealing to the Administrative Court. A decision of the Administrative Court may only be challenged if the Supreme Administrative Court grants leave to appeal.

It should, however, be pointed out that to our knowledge no such expropriation measures have occurred in modern-era Finland and it is very unlikely that the act would be applied in the case of mining sector transactions.

Investment protection provisions contained in various trade and investment agreements may further require that the host state compensates the operator for the investments lost due to expropriation.

Protected areas

18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

Mire reserves

Mire reserves are established for the conservation of mire nature and are protected under special legislation. Exploration within a mire conservation area is permitted, provided that the Ministry of Environment issues a separate permit for this activity.

Commencement of mining operations within a mire reserve requires the lifting of the conservation status of the mire reserve in question or the amendment of mire conservation legislation by introducing a possibility to seek for an exemption enabling mining operations to be carried out on a mire reserve.

Wilderness areas

Finland has established 12 wilderness areas with a combined area of approximately 15,000 km² (3,700,000 acres), with the aim to conserve wild nature, preserve Sámi culture and livelihoods, and develop the diverse use of nature. The provisions regarding the protection of wilderness areas are laid down in the Act on Wilderness Areas, which stipulates that mining permits may not be issued to wilderness areas without a separate permission issued by the government. Exploration may be carried out on wilderness areas by obtaining an exploration permit under the Mining Act.

Commencement of mining operations within a wilderness area requires the lifting of the wilderness status of the area in question or the amendment of legislation by introducing a possibility to seek for an exemption enabling mining operations within a wilderness area.

Nature reserves

The Nature Conservation Act sets out provisions for the protection of nature reserves. The Nature Conservation Act recognises three types of nature conservation areas, which may be established on state-owned land:

- national parks (40 national parks, with a total surface area of 10,000 km² or 2,500,000 acres);
- strict nature reserves (19 strict nature reserves, with a total area of about 1,500 km² or 370,000 acres); and
- other nature reserves.

Any action altering the natural surroundings is prohibited in a national park or strict nature reserve. Further, the Nature Conservation Act contains an explicit prohibition on the extraction of minerals and any action that damages the soil or bedrock in a national park or strict nature reserve.

With the permission from Metsähallitus, a state-owned enterprise managing state-owned land and water areas, geological surveys and prospecting may be carried out in a national park or strict nature reserve, provided that the conservation objectives of the site are not jeopardised.

As a rule, the above restriction concerning exploration within national parks and strict nature reserves also applies to other nature reserves.

In addition to the nature reserve areas established on state-owned land, nature conservation areas may also be established on private land. Such nature conservation areas are protected by area-specific conservation provisions, which might contain a prohibition to damage the soil or bedrock of the site. A competent environmental authority may grant derogations from these conservation provisions, provided that derogation does not jeopardise the conservation objectives of the area and is necessary for the management or use of the site or for scientific research, namely, exploration.

Natura 2000 network areas

The Nature Conservation Act sets out provisions for the protection of Natura 2000 network areas, which is a European Union-wide network of protected areas. Accordingly, if a project, either individually or in combination with other projects and plans, is likely to have significant adverse effect on the ecological value of a site included in the Natura 2000 network, the applicant is required to conduct an assessment of its impact. The obligation to conduct a Natura assessment applies also to any project outside the Natura 2000 site, if the project is likely to have a significantly harmful impact on the site.

According to the Natura 2000 provisions, a permitting authority may not grant any permit for the implementation of a project, if the Natura assessment or the competent environmental authority's opinion indicates that the project would have a significant adverse impact on the particular ecological value for the protection of which the site has been included in the Natura 2000 network. A permit may nevertheless be granted if the government decides that the said project must, in the absence of alternative solutions, be carried out for imperative reasons of overriding public interest. In some cases, an opinion is requested from the European Commission prior to the government's decision.

Natural habitats and species

Protection of natural habitats and species may restrict or limit exploration and mining operations on a site hosting protected natural habitats and species. Exploration and mining operations within such sites may require an exemption order issued by a competent environmental authority.

Restrictions imposed by the Mining Act

There are statutory limitations regarding the awarding of permit to areas that have previously been occupied by an exploration permit or mining permit.

In addition, the Mining Act lays down certain territorial and areal restrictions, which prohibit prospecting work and the awarding of an exploration permits. These areas include *inter alia* cemeteries, areas used by the Finnish Defence Forces and residential buildings with a 150-metre buffer zone.

With the exception of cemeteries, prospecting work as well as exploration may be carried out in a restricted area referred to in the Mining Act if a competent authority or a relevant rights holder gives its consent to the activity in question. Further, the Mining Act sets out certain limitations with regard to road areas, street areas and market places, airports or areas in aviation use, railway areas and canals used for public traffic.

As a general rule, a mining area may not be located in an area for which an exploration permit cannot be awarded. A mining permit may nevertheless be awarded to such area provided that the mining area cannot be otherwise implemented as to ensure, for example, mining safety.

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

19 | What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Mining companies in Finland are subject to the general corporate income tax. No mining-specific tax is levied. In addition to the general corporate income tax, mining companies are subject to real estate tax and electricity tax as well as value added tax (VAT). Operators also pay exploration and excavation fees to the landowners of the project area.

Corporate income tax

The corporate income tax is based on taxable income, which calculated in accordance with the relevant tax regulations. Currently, the tax rate for corporate income tax is 20 per cent.

Value added tax

VAT is payable on sold goods and services, unless such goods and services fall under a specific exception. The general VAT rate for goods and services is currently 24 per cent, but there are some exceptions relating to certain products and services. VAT is payable by the seller; however, the seller may deduct the input VAT of purchases of goods and services for business purposes, if another VAT taxpayer has supplied them. Should the amount of VAT paid by the VAT taxpayer for the goods and services purchased for the business operation exceed the amount of VAT payable for the sales of goods and services, the VAT taxpayer will be refunded the excess, provided that the purchased goods and services relate to business activities from the sales of which VAT is payable.

Electricity tax

The excise duty on electricity is levied according to two categories, where the category II excise duty is lower and category I is higher. The lower duty is levied on separately metered electricity used in industrial manufacturing, such as in mining operations.

Real estate tax

Buildings, facilities and the real property used for mining operations are subject to a real estate tax. As a general rule, tunnels and underground excavations are exempt from the tax as well as other constructions that are not subject to a separate building permit. The amount of real estate tax is determined by the real estate unit's value. A real estate unit includes the buildings and the ground they are built on. Their value is determined based on rules set by the Ministry of Finance and the Tax Administration. Real estate tax is calculated by multiplying the value of the real estate unit with the real estate tax rate. The municipality where the real estate is located determines the applicable tax rate.

Exploration fees

The holder of an exploration permit is obliged to pay an annual exploration fee to the landowners of the exploration area.

The annual amount of the exploration fee increases gradually from €20 to 50 per hectare as the exploration permit matures.

Excavation fees

If the mining permit holder does not own the surface rights to the mining area, the mining permit holder has to pay an annual excavation fee to the landowners.

The amount of the excavation fee per property is €50 per hectare per year. In addition to that, the excavation fee has a variable part of 0.15 per cent of the calculated value of mining minerals included in the metal ores that are excavated and exploited in the course of the year. The calculation is based on the average price of the exploited metals included in the ore during the year and the average value of other products exploited from the ore during the year. The obligation to pay an excavation fee starts when the mining permit becomes legally valid.

If the permit authority postpones the expiry of the mining permit (before mining activities have started or if they have been suspended) the excavation fee is doubled to €100 per hectare until mining activities commence or resume. The obligation to pay elevated compensation starts when the postponement decision becomes legally valid.

Tax advantages and incentives

20 | What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

The excise duty on electricity is levied according to two categories, where the category II excise duty is lower and category I is higher. The lower duty is levied on separately metered electricity used in industrial manufacturing, such as in mining operations. The government has expressed its intention to transfer mines to category I excise duty, which will be further assessed in connection with the assessment of introducing a new separate mining tax. The proposal concerning the taxation of mines is expected to be submitted to the Parliament during this government term 2019-2023.

Currently there are no other tax advantages or incentives targeted at companies carrying out exploration and mining activities or parties investing in exploration or mining companies.

Tax stabilisation

21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

The European Court of Human Rights has held that states have wide discretion in determining the types of taxes or contributions to be levied as long as this does not constitute confiscation of property. There are no tax stabilisation provisions or agreements in force.

Carried interest

22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

No. The Finnish legislation does not recognise the government's right to demand an equity interest in mining projects nor is any free equity interest granted to the government.

Transfer taxes and capital gains

23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Transfer of mineral rights is not subject to transfer tax unless the transaction is executed by acquiring the shares of the permit holder.

A share transaction is subject to a 1.6 per cent transfer tax and can result in capital gains taxation on the profit that the sellers of the shares make. Should both the seller and the purchaser in a share transaction be foreign-based companies with no permanent establishment in Finland, the share transaction is exempt from transfer tax.

Should an asset transaction include the transfer of title to any real property, the transfer tax levied is 4 per cent of the value of the real property included in the purchase price.

Capital gains made in connection with the selling of mineral rights is subject to capital gains tax, which is currently 30 per cent until the amount of €30,000 capital gains is reached and 34 per cent on the excess. Capital gains for corporations are usually taxed in connection with regular corporate taxation. The corporate tax rate is currently 20 per cent.

Distinction between domestic parties and foreign parties

24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

There is no such distinction. In general terms, the nationality of the parent company plays no role in the taxation of the Finnish entity.

In certain mineral right transactions, tax rates and tax liability may vary depending on the domicile of the parties involved. For example, should both the seller and the purchaser in a share transaction be foreign-based companies with no permanent establishment in Finland, the share transaction is exempt from transfer tax.

The annual landowner fees payable by a permit holder are same for all companies regardless of the company structure or nationality of the possible parent company.

BUSINESS STRUCTURES

Principal business structures

25 | What are the principal business structures used by private parties carrying on mining activities?

The most common business form used to carry out mining activities in Finland is a limited liability company. Foreign companies may also operate through a registered Finnish branch of a company established within the European Economic Area.

As mineral rights may only be held by one entity at a given time, joint ventures are often created through a separate limited liability company and through the division of shares of the joint venture company holding the mineral rights.

As in many other similar mining jurisdictions, it is common for junior exploration companies to carry out early-stage drilling campaigns on their own or by the support of a mining company. As the projects progress, projects or project companies are often sold to other exploration companies or companies having the access to capital and resources in order to further advance the project. Farm-in agreements as well as various royalty arrangements, such as NSRs, are often used.

Local entity requirement

26 | Is there a requirement that a local entity be a party to the transaction?

No. It should however be noted, that the Mining Act requires that the mineral rights holder is either a legal person incorporated under the laws of Finland or a natural with permanent residence within the European Economic Area or a registered Finnish branch of a company established within the European Economic Area.

The requirement applies also to entities to which the mineral rights are being assigned to.

Bilateral investment and tax treaties

27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Finland has entered into a number of tax treaties, which may affect the structuring of foreign entities' operations in Finland. There does not, however, seem to be one preferred way to structure the operations and companies have used a variety of structures.

FINANCING

Principal sources of financing

28 | What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Most of the operators in Finland are Finnish subsidiaries owned by foreign-based companies, which are funded through their parent companies raising capital from the capital markets in Australia, Canada, Sweden or the UK, or subsidiaries of international mining companies for which the funding comes from the income from the mining company's own production.

Lately, however, Finnish investors and banks have been more interested in the possibilities of investing in or financing mining operations.

Direct financing from government or major pension funds

29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

The Finnish Industry Investment, a state-owned investment company, as well as Finnish Minerals Group, a state-owned company managing the state's mining industry shareholdings, have invested in Finnish mining projects. Finnish banks as well as pension funds have recently shown an interest in mining projects as well.

Certain public funding, such as investment grants or development grants for small and medium-sized companies, may be granted by the centres for economic development, transport and the environment for exploration and mining operations. Business Finland and the state-owned financing company, Finnvera, may also provide funding or guarantees, or both, for exploration and mining companies operating in Finland.

Security regime

30 | Please describe the regime for taking security over mining interests.

A holder of an exploration permit may pledge its preferential right to a mining permit and the holder of a mining permit may pledge the right to exploit the minerals. The pledge becomes effective once the Mining Authority receives a written pledge notification lodged by the permit holder.

The information regarding the pledge rights encumbering mineral rights is public information.

If the permit holder is seeking to relinquish a pledged mineral right, a written consent from all pledgees must be appended to the relinquishment application. In addition, the Mining Authority is obliged to inform all pledgees of a permit regarding any relinquishment applications or applications seeking to amend the mineral right in question.

Companies may also pledge other assets, such as real property, facility buildings and tangible property.

RESTRICTIONS

Importation restrictions

31 | What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

Generally, there are no restrictions for the importation of mining machinery and equipment. There are certain specific laws that may affect the importation of machinery and equipment or services required in connection with mining activities such as the importation of explosives, for which a separate permit is needed.

Standard conditions and agreements

32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

Orgalime is widely recognised and used in Finland. Additionally, engineering companies use the Nordic Standard Terms of Agreement NL01 for businesses between Nordic countries, while the Orgalime S2000 and S2012 terms are used for wider international businesses.

Additionally, the Finnish general terms IT2015 ELT - Special Terms and Conditions for Deliveries of Equipment, used together with the IT2015 YSE General Terms and Conditions, are used widely for IT-related agreements in businesses between Finnish companies and sometimes also in international business.

Arbitration clauses are very common in equipment supply agreements. Arbitration under the Arbitration Rules of the Finland Chamber of Commerce is the most common form of dispute resolution when the parties are from different countries and the Finnish party can choose the dispute resolution forum.

Should equipment (or mining minerals) need to be transported, the Road Transport Contract Act (345/1979), the Railway Transport Act (1119/2000) and Sea Act (674/1994) are applicable. The Road Transport Contract Act is based on the international CRM Convention (1956). The Sea Act takes into account the Hague (1924), Hague-Visby (1968) and Hamburg (1978) Conventions. The said domestic legislation is to some extent carrier-friendly.

Mineral restrictions

33 | What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Minerals extracted and produced in Finland are generally not subject to export restrictions. Export of uranium and thorium is more specifically regulated and subject to a number of permits.

Import of funds restrictions

34 | What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

There are no specific restrictions or limitations in the mining laws of Finland concerning the import of funds for mining activities or the use of the proceeds.

ENVIRONMENT

Principal applicable environmental laws

35 | What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The mining industry in Finland is regulated through a diverse set of environmental legislation, such as:

- The Mining Act (621/2011, as amended), which sets an obligation for the permit holder to ensure that mining operations do not cause significant adverse impacts on the environment. Provisions may be included in the mining permit ensuring that the operations do not cause any prohibited impacts on the environment.
- The Environmental Protection Act (527/2014, as amended), which regulates *inter alia* industrial emissions as well as waste areas.
- The Water Act (587/2011, as amended), which regulates operations impacting water bodies.
- The Nature Conservation Act (1096/1996, as amended), which includes conservation and protection provisions, which might affect exploration and mining operations.
- The Environmental Impact Assessment Act (252/2017, as amended) implementing the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment to national law. According to the Act, mining projects are subject to an environmental impact assessment procedure, which is to be carried out prior to issuing project permits.
- The Act on the Coordination of Certain Environmental Permitting Procedures (764/2019), which enables the operator to choose a joint procedure for the various environment-related permits required for mining operations.

Principal regulatory and supervisory bodies concerning environmental matters include:

- The Finnish Safety and Chemicals Agency (being the Mining Authority under the Mining Act) is the competent authority with regards to permitting matters relating to exploration and mining. The Mining Authority also supervises and enforces compliance with the Mining Act.
- The Regional Administrative Agency is the competent permitting authority under the Environmental Protection Act, which implements the Directive 2010/75/EU of the European Parliament and the Council on industrial emissions into national law and the Water Act.

- Centres for Economic Development, Transport and the Environment (ELY Centres) are responsible for supervising adherence to the environmental and water permits. ELY Centres also have permit and supervisory duties under Nature Conservation Act. ELY Centres also act as contact authorities in impact assessments carried out in accordance with the Act on Environmental Impact Assessment Procedures and issue opinions in environmental impact assessments of plans and programmes. ELY Centres are also competent authorities concerning dam safety issues.
- Metsähallitus, a state-owned enterprise that manages state-owned land and water areas, has statutory responsibilities concerning the protection of state-owned land and water areas as well as a permitting role under the Nature Conservation Act concerning exploration activities within national parks and nature reserves.
- The Ministry of Environment is responsible for the overall guidance and supervision of nature and landscape conservation as well as the general guidance, monitoring and development of activities under the Environmental Protection Act.
- The Ministry of Employment and Economic Affairs is responsible for the general guidance, monitoring and development of the Mining Act as well as the steering of mineral policy of Finland.

Environmental review and permitting process

36 | What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

Environmental impact assessment

Mining projects are subject to an environmental impact assessment procedure under the Environmental Impact Assessment Act (252/2017, as amended), which implements the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment into national law.

Accordingly, the environmental impacts of a project must be studied in an assessment procedure before any action relevant in terms of environmental impact is taken to implement the project.

The assessment procedure is initiated by drawing up an assessment programme, which is lodged with the coordinating environmental authority. The drawing up of an assessment programme must be carried out at the earliest possible stage of planning. The programme is subject to a comprehensive stakeholder participation procedure and authority assessment. A procedure taking up to 60 days.

The actual environmental impact assessment of the planned project and its various alternatives is carried out on the basis of the assessment programme and the coordinating environmental authority's statement concerning the programme. Once completed, the environmental impact assessment report is submitted to a comprehensive stakeholder participation procedure and authority assessment. A procedure taking up to 60 days.

Once the coordinating environmental authority has received the stakeholder opinions, the coordinating environmental authority issues its own statement on the assessment report and its adequacy. The statement on the assessment report shall be delivered within two months.

Both the Mining Act and the Environmental Protection Act provide that an environmental impact assessment report is to be appended to a permit application, should the project in question be subject to an environmental impact assessment procedure. Further, both acts provide that a permit decision shall state in what way the assessment report and the coordinating environmental authority's statement on it have been taken into account.

An environmental impact assessment procedure usually takes from one to two years in total.

Environmental permit

According to the Environmental Protection Act, mining operations are subject to an environmental permit. A mining project may require the alteration of a water body and thus require also a permit which is issued under the Water Act. These permits are often applied for and handled simultaneously by the competent Regional Administrative Agency.

An environmental permit is awarded if the activity meets the requirements laid down in the Environmental Protection Act and the Waste Act (646/2011). The requirements of the Nature Conservation Act will also be taken into account in the processing of the application.

When processing an environmental permit application, the impacts of the activity are assessed, taking into account the location of the activity and the fragility of its environment. The environmental permit may also include provisions to limit the impacts of the activity as the activity must not, alone or in combination with other activities, result in:

- harm to health;
- unreasonable harm to neighbours under the Neighbour Relations Act;
- environmental pollution or risk of pollution;
- soil, groundwater or marine pollution;
- deterioration of special natural conditions; and
- risk to water supply or other important public access.

Once an application is considered to contain all relevant information, the competent Regional Administrative Agency informs other authorities and the parties concerned of the application. The competent Regional Administrative Agency will solicit the necessary authorities and other parties for their opinions on the application matter.

Once all opinions have been received, the Regional State Administrative Agency gives the applicant the option to respond to the opinions within a certain time limit.

Once the Regional State Administrative Agency has obtained all relevant information to draw up a decision, the Regional State Administrative Agency will assess whether the permit application may be awarded based on the provisions of the Environmental Protection Act. An issued decision will include permit provisions concerning emissions, emission limit values, the prevention and limitation of emissions and the location of the site of the emissions, measures preventing of soil and groundwater pollution, wastes and the reduction of their quantity and harmfulness, actions to be taken in the event of a malfunction or in other exceptional circumstances, measures to be taken after the cessation of operations, such as remediation of the area and prevention of emissions and other measures to prevent or reduce environmental pollution or the risk of it.

Obtaining an environmental permit for a novel mining project will take at least 12 months. It should be noted that the length of the environmental permitting process is highly dependent on the size and specifics of the project. Also, the processing time may also be prolonged by up to several months if the application is incomplete or details of the project are altered after the lodgement of the permit application.

Possible administrative court proceedings need to be taken into account when determining a timeline for a project.

Natura assessment

If a mining project, either individually or in combination with other projects and plans, is likely to have significant adverse effect on the ecological value of a Natura 2000 network site, the operator is required to conduct an appropriate assessment of its impact on the site. The same applies to any mining project outside the site which is likely to have a significantly harmful impact on the site.

The permitting authority is obliged to oversee that the assessment is carried out and once the assessment is complete, a written opinion shall be requested from the local ELY Centre concerning the appropriateness of the assessment. The opinion shall be given without delay and within six months at the latest.

No authority may award a permit for the implementation of a project, or to adopt or ratify a plan, if the assessment procedure or the requested opinion indicates that the project or plan would have a significant adverse impact on the particular ecological value for the protection of the site. In such case the permit can be awarded and a plan can be adopted or ratified if the government decides that said project or plan must, in the absence of alternative solutions, be carried out for imperative reasons of overriding public interest. In certain cases, a separate opinion shall be requested from the European Commission prior to the government's decision.

Depending on the impacts of the project to the ecological values of the site, a Natura assessment may take from few months up to several years, should the project require separate permission from the government.

A Natura assessment can be carried out as part of the environmental assessment procedure.

Sustainability

37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

The Finnish Accounting Act (1336/1997) requires large public-interest undertakings to report on their corporate social responsibility.

In the absence of other statutory reporting obligations, a majority of Finnish mining industry and exploration companies report voluntarily according to the Finnish Towards Sustainable Mining (TSM) Standard, a sustainability standard which is based on the Canadian TSM model. The Finnish TSM Standard contains guiding principles in terms of environmental, social and economic performance and provides mining and exploration companies with guidelines concerning sustainable operations. Companies committed to the Finnish TSM Standard report annually on their production and output, their environmental impacts and cooperation with local stakeholders, and safety and health aspects. The reports are published by the Finnish Network for Sustainable Mining.

Generally, Business Finland offers, among other things, innovation-funding services, which extend to green projects of mining companies.

Closure and remediation process

38 | What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

The mining industry in Finland is regulated through a diverse set of legislation and the closure and remediation obligations are imposed through various acts and permits, most notably the Mining Act, Environmental Protection Act, the Act on the Safety Handling of Hazardous Chemicals and Explosives and the permits issued under the referred acts.

Closure provisions under the Mining Act

Once mining activity is terminated, the mining operator must restore the mining area to a condition complying with public safety, ensure the restoration, cleaning, and landscaping of the site. Further, the operator is obliged to perform the closure measures which are specified in the mining permit and remove all excavated minerals and the buildings and other constructions on ground. The required closure measures are to be completed within two years of the termination of the mining activities.

Immediately after the closure measures have been completed but no later than two years after the termination of the activities, the mining operator shall submit a written notification to the Mining Authority, which shall include an account of the measures performed, the geological documentation concerning the site and an up-to-date mine map.

Having received the closure notification, the Mining Authority will arrange a final inspection in which it is determined whether the closure measures have been completed as required.

Once it has been established that all closure measures have been completed, the Mining Authority issues a closure decision, which will include provisions necessary to protect public and private interests and monitoring of the mining area. The mining operator's responsibility to monitor the mining area, in compliance with the orders issued in the mining permit or those in the decision to terminate mining activity, alongside the necessary corrective measures and the costs incurred shall continue as stipulated in the closure decision. The operator's responsibilities further include the obligation to inform the Mining Authority of all significant detrimental impacts on public safety detected during monitoring and the implementation of the necessary corrective measures. Further, the Mining Authority may issue orders concerning the corrective measures necessary.

Closure provisions under the Environmental Protection Act

The mine closure and remediation questions are also addressed as a part of the environmental permit process.

The environmental permit contains specific stipulations on the monitoring of emissions and of the impacts of the activity as well as the state of the environment following the cessation of the operations. The final closure and restoration activities are confirmed in a closure plan, which has to be delivered for approval to the environmental permit authority prior to closure of the mine. An environmental permit for mining operations will contain necessary stipulations on extractive waste, the waste management plan for extractive waste operations and compliance with the plan. Environmental permits concerning mining activities will also contain stipulations concerning the closure and aftercare of the waste facility, as well as regulations on an internal emergency plan for a waste facility for extractive waste posing a risk of major accident.

According to the Environmental Protection Act, mining operations are obliged to draw up a waste management plan for extractive waste, which is to be prepared so as to prevent the generation of extractive waste and to reduce its harmfulness. The waste management plan must include *inter alia* information measures related to the closure of operations.

According to the Government Decree on Extractive Waste, which implements Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries in national law, a waste facility may be considered as finally closed only after the competent environmental authority has carried out a final on-site inspection, assessed all the reports submitted by the operator, certified that the land affected by a waste facility has been rehabilitated and communicated to the operator its approval of the closure.

The closure approval will not in any way reduce the operator's obligations and the operator will continue to be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required. The operator shall, *inter alia*, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater.

Following closure of a waste facility, the operator is obliged to notify the competent environmental authority without delay of any events or developments likely to affect the stability of the waste facility, and any significant adverse environmental effects revealed by the relevant control and monitoring procedures.

Closure provisions under the Act on the Safety Handling of Hazardous Chemicals and Explosives

Once a facility or a part of it is terminated, the operator shall ensure that all facilities in question are cleaned and hazardous chemicals and explosives are handled and managed in a manner that they do not pose

risk for human health, the environment or personal property. The Act on the Safety Handling of Hazardous Chemicals and Explosives does not require operators to deposit a separate collateral for the purpose of performing after-care measures in case of insolvency.

Collateral for termination of mining activity

A mining operator is obliged to deposit a collateral for the purpose of termination and after-care measures of mining operations in accordance with the Mining Act and the Environmental Protection Act. These are two separate security instruments covering different after-care measures. While the collateral deposited under the Mining Act covers the cleaning, and landscaping of the mining area as well as restoration measures ensuring public safety and the removal of excavated mining minerals and buildings and other constructions from the mining site, the collateral deposited under the Environmental Protection Act covers measures relating to the closure and restoration obligations concerning the waste areas and costs of restoring land areas to a satisfactory state.

Currently the collaterals deposited under the Mining Act range from €1,000 to €1.5 million while the collaterals deposited under the Environmental Protection Act range from €10,000 to €127 million.

Restrictions on building tailings or waste dams

39 | What are the restrictions for building tailings or waste dams?

Waste dam safety requirements are defined in the Dam Safety Act (494/2009) and the Government Decree on Dam Safety (319/2010), which lay out the general obligation for operators to design and construct dams in a manner ensuring that its use does not constitute any safety hazard. The designer of the dam needs to be professionally qualified and the persons in charge of the operation and management of the dam need to have the necessary knowledge.

Before a dam is taken into use, the dam is classified based on a risk assessment. The construction plans as well as the risk assessment report and the surveillance programme all need to be approved by the environmental permit authority.

The owner of the dam is primarily responsible for the surveillance of the dam. Monitoring frequency depends on the dam. Monitoring can be continuous, weekly or take place over three-month intervals, for instance.

Dam inspections are regulated and the dam safety legislation requires that inspections are carried out during the construction phase and use. Statutory provisions contain obligations concerning annual inspections as well as periodic inspections. The owner of the dam must:

- inspect the condition and safety of a Class 1 and 2 dam at least once a year, and in case of a Class 1 dam, provide a written report of the annual inspection to the dam safety authority;
- organise periodic inspections for Class 1-3 dams at least every five years and, where necessary, more frequently, in which the dam safety authority and rescue authorities have the right to participate; and
- notify the dam safety authority with a written report of the periodic inspections.

The regional rescue authorities are responsible for the emergency planning for dam accidents and rescue operations in the event of an accident, as set forth in the Dam Safety Act (494/2009) and Rescue Act (379/2011).

Any requirements on alarm systems, emergency drills and responsibilities between the company and the authorities regarding the rescue of people are determined by the regional rescue authorities on a case-by-case basis. The owner of the dam must:

- notify the dam safety authority of emergency calls and exceptional situations related to dam safety;

- assist the rescue authorities in performing rescue activity together with the dam safety authority; and
- take the necessary actions to prevent accidents and limit damages caused by an accident.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

40 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Mine safety matters are regulated in the Mining Act and more specific provisions concerning a mining safety permit are laid down in the Government Decree on Mine Safety.

As a general rule, the operator is obliged to ensure mining safety. In doing so, the operator must pay particular attention to the structural and technical safety of the mine and to prevention of dangerous situations and accidents in the mine. The operator must also systematically identify elements imposing risks to mining safety and ensure that the duties and areas of responsibility of management and other personnel pertaining to mining safety are clearly defined at all levels of the organisation. By means of training, instruction, and guidance, the mining operator shall ensure that the persons operating in the mine are sufficiently informed about mining safety and the measures it requires.

The mining operator is obliged to prepare an internal rescue plan for the mine, which must specify *inter alia* foreseeable dangerous situations and accidents and the potential impact thereof, measures to prevent dangerous situations and accidents and to limit the consequences thereof, co-operation with the local rescue authority, exit routes and possibilities for protection, along with arrangements for extinguishing and rescue duties, preparation for repairing the damage caused by accidents, and clearing the environment.

The mining operator must appoint a person in charge of mining safety. The person in charge shall be employed by the operator and stationed in the mine in question. The person in charge must have required experience and expertise in regards of technology and mining safety.

The mining operator shall ensure that access to the mine and mining area is prevented for unauthorised parties and that the rescue authority managing rescue operations and local rescue services' units have access to the mine and mining area.

The mining operator shall keep an up-to-date mine map, which the operator is obliged to submit to the Mining Authority whenever so requested and once the mining operations are terminated. The mine map shall contain itemised information on the measures undertaken in the mine and other mining activity in the mining area, so that aspects of mining safety, land use in the area, and future exploitation of the deposit may be assessed when necessary.

The construction of a mine, and its productive operations are subject to a mining safety permit issued by the Mining Authority. A mining safety permit shall include the necessary provisions concerning measures required to implement mining safety as described in general terms above. The Mining Authority shall review the regulations of a fixed-term mining safety permit at a maximum interval of 10 years. The Mining Authority must include the interval for review in the permit.

The legislation on occupational safety, such as the Occupational Safety and Health Act (738/2002), are applicable to the mining industry. In addition, the Rescue Act contains provisions concerning fire safety and rescue work, the Radiation Act (859/2018) contains provisions concerning radiation safety for those working in a mine. The safe handling and storage of hazardous chemicals and explosives is

regulated under the Act on the Safety Handling of Hazardous Chemicals and Explosives. Other acts, which contain occupational safety provision are Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006), the Act on the Conformity of Certain Technical Devices to Relevant Requirements (1016/2004), the Chargeman Act (423/2016) and the Dam Safety Act.

The principle regulatory bodies concerning health and safety, and labour laws are:

- The Mining Authority as the competent authority overseeing the compliance of the Mining Act and issuing decision concerning mining safety under the Mining Act.
- The local rescue authorities, being competent in supervising *inter alia* the compliance of the Rescue Act.
- The local Regional State Administrative Agency by monitoring compliance with the regulations on occupational safety and health in inspections carried out at workplaces.
- The Radiation and Nuclear Safety Authority supervises compliance with the Radiation Act and the regulations and orders issued in connection with it.

The principal law regulating labour relations is the Employment Contracts Act (55/2001). There is also a generally binding collective bargaining agreement applicable to the mining industry.

Management and recycling of mining waste

41 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

The Government Decree on Mining Waste (391/2012), the Environmental Protection Act and Waste Act set out the principal provisions on the management and recycling of mining waste.

Relevant permit conditions on the management and recycling of mining waste are given in the environmental permit, which includes relevant provisions concerning extractive waste. Should the exploration phase include test quarrying or other measures than mere drilling and such activities generate extractive waste, the Mining Act requires that an exploration permit holder must also prepare a mining waste management plan, unless such plan is already required under the Environmental Protection Act.

A mining permit entitles the holder to exploit the tailings generated as a by-product of mining activities. However, the current mining legislation does not recognise the possible exploitation of closed or abandoned tailings ponds as a mining permit may only be awarded for the exploitation of minerals found within the bedrock. It follows that with regards to closed or abandoned tailings ponds, the primary party entitled to exploit such tailings ponds is the owner of the real property on which such tailings ponds are located on. The exploitation of closed or abandoned tailings ponds will be subject an environmental permit setting necessary provisions for the activity ensuring, for example, that the activity does not cause harm to health, environmental pollution or risk of pollution to the soil and groundwater.

Use of domestic and foreign employees

42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Generally, a non-Finnish person who intends to engage in paid employment in Finland is required to have a residence permit. A person engaged in an independent business or profession in Finland must have a residence permit for a self-employed person.

However, EU citizens and citizens of Iceland, Liechtenstein, Norway and Switzerland can freely work in Finland if the work lasts for a maximum of three months. After that, they must register their right to reside in Finland, but they do not need a special residence permit. The employee must go to the local police department to register his or her right to reside in Finland. Unless it is withdrawn, registration by a person with the right to reside in Finland is valid until further notice.

Foreign employees who are non-EU citizens and equivalent persons need a residence permit for an employed person if they intend to work in Finland. An alien who has entered the country either with or without a visa is not allowed to engage in paid employment in Finland but has to apply for a residence permit. A residence permit can be granted on the basis of either temporary work or work of a continuous nature.

In granting the permit, the needs of the labour market are taken into consideration. The policy aim of the residence permit is to support the possibility of those who are in the employment market to gain employment. Thus, the availability of the workforce in Finland is also supported. To grant a residence permit for an employed person, the foreign national's means of support must be guaranteed. The employment office will estimate both the labour requirements and the sufficiency of the means of support.

As to Finnish citizens, there are no particular mining law related restrictions in connection with mining activities.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

43 | What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Community engagement

The Constitution of Finland secures everyone's right to a healthy environment and the possibility to influence the decisions that concern their own living environment.

As a result, it is a widely recognised principle throughout Finnish environmental legislation that the legislation should ensure local communities' opportunity to influence decision-making, and the opportunities of individuals to influence decision-making involving them and their living environment.

In addition, the Constitution secures the rights of the Sámi as an indigenous people and the Finnish environmental legislation as well as the Mining Act contain provisions securing Sámi rights as well as ensuring engagement concerning decision-making affecting the Sámi.

Corporate social responsibility

On 1 January 2021 the Conflict Minerals Regulation came into force across the European Union, requiring importers of 3TG to identify and assess risks in their supply chain, carry out independent third-party audits and report annually on supply chain due diligence. The regulation requires EU importers to ensure that 3TG minerals and metals from responsible and conflict-free sources only.

Apart from the Conflict Minerals Regulation, there are no minerals sector specific CSR laws applicable in Finland. Instead, the CSR-related provisions contained in the Mining Act make it a notable CSR law applicable to the mining industry. The provisions of the Mining Act promote exploration and mining activities in a socially, economically, and ecologically sustainable manner. In doing so, the Mining Act (as well as other legislation applicable to exploration and mining) takes into consideration the rights of landowners, indigenous people and parties suffering damage, such as reindeer herders and other sources of livelihood,

environmental impacts and the economic use of natural resources. The Mining Act ensures local participation and individuals' right to influence decision-making involving them and their living environment.

The Finnish Accounting Act requires large public-interest undertakings to report on their corporate social responsibility.

On 10 March 2021, the European Parliament called on the Commission to bring forward EU-level corporate responsibility legislation that will oblige companies to detect, tackle and prevent violations of human rights, including trade union and labour rights, and environmental standards throughout their supply chains. The initiative includes liability of undertakings for any harm arising out of potential or actual adverse impacts on human rights, the environment or good governance. The Commission has committed to bring forward a draft Directive during the 2021 summer. The European Parliament's proposal is in line with the current government programme, which calls for the government to prepare a report with the objective of enacting a Corporate Social Responsibility Act based on a duty of care imposed on companies regarding their operations in Finland and abroad.

Rights of aboriginal, indigenous or disadvantaged peoples

44 | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Finland has not ratified the ILO 169 Indigenous and Tribal Peoples Convention of 1989. However, the mining legislation, other applicable legislation as well as the Constitution secure some of the rights and procedures required by the ILO Convention.

Planned activities and carried out activities affecting the rights of the Sámi

All activities governed by the Mining Act which are planned to be carried out in the Sámi Homeland must be adapted so as to secure the rights of the Sámi as an indigenous people. This requires both operators as well as permitting authorities to ensure that the permitted or carried out activities do not violate the rights of the Sámi.

The Mining Act contains various provisions ensuring the rights of the Sámi. For example, the Mining Act prohibits the awarding of mineral rights if the planned activities alone, or together with other corresponding permits and other forms of land use would, in the Sámi Homeland, substantially undermine the preconditions for engaging in traditional Sámi sources of livelihood or otherwise to maintain and develop the Sámi culture.

The Mining Act contains special provisions that help the permitting authority to determine the effects of the planned activities within the Sámi Homeland as well as in certain cases outside the Sámi Homeland. These provisions oblige the permit authority to co-operate with *inter alia* the Sámi Parliament, the local reindeer owners' association and the applicant in order to establish the impacts of the planned activity on the rights of the Sámi as an indigenous people to maintain and develop their own language and culture and shall consider measures required for decreasing and preventing damage. When assessing the impacts on the rights of the Sámi, all other valid mineral rights in the vicinity of the project area as well as other forms of usage of areas affecting the rights of the Sámi shall be taken into consideration. Further, in order to further assess the impacts of the planned activity, the permit authority may, if necessary, arrange consultation to which *inter alia* the above referred parties are invited.

Permit stipulations

Should mineral rights be awarded to the Sámi Homeland or to an area within the close proximity to Sámi Homeland, the mining permit shall include stipulations which mitigate the harm caused to reindeer herding

in a special reindeer herding area and ensure that the permitted activity will not endanger the status of the Sámi as an indigenous people in the Sámi Homeland.

The right to initiate proceedings

The Mining Act contains provisions under which the Mining Authority may on its own initiative initiate proceedings in order to prohibit an operator to continue or repeat an act or omission which is found to be in breach of the Mining Act or to issue an order obliging the operator to fulfil its statutory obligations. In addition to the Mining Authority's right to initiate the above referred proceedings, other relevant authorities, parties suffering damage as well as and the Sámi Parliament among others have the right to initiate such proceedings.

The right to appeal

In general, all decisions issued under the Mining Act may be challenged by appealing to the competent Administrative Court. The Mining Act contains a specific provision laying down the parties having the right to appeal. Accordingly, exploration and mining permit decision may be challenged by an appeal by the Sámi Parliament, on the grounds that the activity referred to in the permit undermines the rights of the Sámi as an indigenous people to maintain and develop their own language and culture.

Further, as mining operations require land use planning, other relevant permits as well as various administrative decisions and proceedings, the Act on the Sámi Parliament, sets out a general obligation for the competent authorities to negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people. This *lex generalis* is applied unless specific provisions concerning the participation rights of Sámi's are not laid down in sector-specific legislation.

International law

45 What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Finland is a signatory in all essential international treaties related to human rights, occupational health and safety, workers' rights, land rights, as well as political and civil rights. Although Finland has not ratified the ILO 169 Indigenous and Tribal Peoples Convention of 1989, the mining legislation, other applicable legislation as well as the Constitution secure some of the rights and procedures required by the ILO Convention. Also, section 8J of the UN Convention on Biological Diversity and the International Covenant on Civil and Political Rights is applicable.

In addition to the above, the following guidelines and standards concerning CSR are recognised:

- OECD Guidelines for Multinational Enterprises;
- UN Global Compact;
- ISO 26000;
- Tripartite declaration of principles concerning multinational enterprises and social policy by the International Labour Organization; and
- UN Guiding Principles on Business and Human rights.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

46 Describe any local legislation governing anti-bribery and corrupt practices.

Finland's anti-corruption legislation consist of diverse legislation laying down provisions on corruption and its prevention. Diverse anti-corruption legislation is required as corrupt activities are often investigated as offences in public office, bribery offences, fraud, embezzlement, money laundering and abuse of insider information.

For example, under the Criminal Code of Finland, the acts of bribery and the acceptance of a bribe in business are considered offences. Legal entities may be penalised by a corporate fine and individuals may be prohibited from engaging in business in connection with bribery offences to name a few penalties.

Finnish anti-corruption and anti-bribery legislation may be applied extraterritorially and hence the practices of the target company's potential foreign group companies or agents should also be reviewed.

According to Transparency International's corruption perceptions index 2020, Finland was the third least corrupt country in the world. Further, according to the Fraser Institute's Annual Survey of Mining Companies in 2020 Finland was ranked the second most attractive mining jurisdiction in terms of its legal system, which included the assessment of such as fairness concerning legal processes, transparency and corruption.

Finland actively participates in the international cooperation related to the combating and prevention of corruption through eg, OECD, the Council of Europe, the United Nations and the European Union.

Finland is a state party to anti-corruption conventions of the above-mentioned organisation and Finnish companies pay attention to the UN and EU international sanctions list concerning, among others, export and import restrictions targeted at persons and entities responsible for objectionable policies or actions.

As a result of EU legislation, according to the Act on the Disclosing of Payments Paid to Authorities by Companies in the Field of Extractive Industry and the Logging of Primeval Forests (1621/2015), all exploration and mining companies (or a group of companies) that exceed two of the following thresholds have to report if their payments to state or local authorities exceed the dam safety authority €100,000 during the financial periods:

- €40 million in revenues;
- an annual balance sheet total of €20 million; or
- an average of 250 employees.

Foreign legislation

47 Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

As the companies carrying out exploration and mining operations in Finland often belong to international groups of companies, companies are thus following anti-bribery and foreign corrupt practices based on foreign anti-bribery legislation, such as the Foreign Corrupt Practices Act and the UK Bribery Act simultaneously with the Finnish anti-corruption and anti-bribery legislation.

Disclosure of payments by resource companies

48 Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

In its efforts to create a transparent standard for the extractive sector, the European Union has adopted a directive on the annual financial statements (Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013). The directive has been implemented in Finland inter alia through the adoption the Act on the Disclosing of Payments Paid to Authorities by Companies in the Field of Extractive Industry and the Logging of Primeval Forests (1621/2015). According to the act, all exploration and mining companies (or a group of companies) that exceed two of the following thresholds have to report if their payments to state or local authorities exceed €100,000 during the financial periods:

- €40 million in revenues;
- an annual balance sheet total of €20 million; or
- an average of 250 employees.

FOREIGN INVESTMENT

Foreign ownership restrictions

49 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

The Mining Act lays down requirements set for holders of the mining rights. Accordingly, parties eligible to apply and hold mineral rights are:

- natural persons domiciled within the European Economic Area;
- legal entities incorporated under the laws of Finland; and
- foreign legal entities been established in accordance with the laws of a state belonging to the European Economic Area and having a registered branch in Finland.

Further, the Act on Monitoring of Corporate Acquisitions (172/2012, as amended) gives the government the authority to prohibit the transfer of control of companies to foreign-based entities should there be a vital national interest. The act is mainly aimed at change of control situations related to companies in the defence industry and it is very unlikely that the act would be applied in the case of mining sector transactions.

INTERNATIONAL TREATIES

Applicable international treaties

50 | What international treaties apply to the mining industry or an investment in the mining industry?

Finland is a party to international treaties that apply directly to the mining industry, such as the Convention Concerning Safety and Health in Mines. There are also several other conventions and treaties that relate to the mining industry, for example, through employment and environmental issues. Furthermore, as a EU member state, EU legislation concerning, for example, the treatment of waste, impacts on waterbodies and limitation of emissions have direct impact on Finland's national legislation, either through direct effect or an obligation to amend national legislation.

Finland either bilaterally or through the European Union is a party to numerous trade and investment treaties, which include provisions relating to the protection of foreign investments.

UPDATE AND TRENDS

Recent developments

51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

The government aims to amend the Mining Act by improving environmental protection, ensuring the operating conditions of mines and improving local acceptance and influencing opportunities. The Government Proposal concerning an amendment to the Mining Act is expected to be submitted to the Parliament in the last quarter of 2021. The government is also assessing prospects to introduce a separate mining tax.

Finland was once again ranked as a top jurisdiction in Fraser Institute's Annual Survey of Mining Companies 2020 Investment Attractiveness Index, which considers both mineral and policy perception. The report was published on 23 February 2021.

Based on annual statistics published by the Mining Authority on 26 March 2021, companies actively carrying out exploration work in Finland rose by a third in 2020, now totalling to 61. Investments related to exploration rose by 8 per cent totalling in 2020 to €68 million. Investments related to mining operations made in 2020 totalled €392 million, falling approximately 25 per cent compared to the previous year.

On 24 January 2021, the Ministry of Economic Affairs and Employment published its national battery strategy. The cornerstones of the battery strategy are the availability and processing of raw materials, vigorous production and research activities for the development of battery materials and recycling, and expertise in electrification and digitalisation.

An investment agreement of €40 million between Keliber Oy and Sibanye Stillwater Limited was signed related to bridge financing. The bridge financing will enable work for permitting, additional piloting, needed engineering and recruiting the right talent, which in turn enables Keliber to significantly advance its lithium project in Central Ostrobothnia, Finland. Keliber aims to start production in 2024. An update of the definitive feasibility study for the lithium project is scheduled in the first quarter of 2022.

BASF has initiated construction works at Harjavalta, Finland, as the first location for battery materials production serving the European automotive market.

The Finnish government capitalised the state-owned company Finnish Minerals Group through a funding package of €450 million. The funding enables the company to invest in developing the Finnish battery value chain and mining industry as well as promoting circular economy projects related to them.

Finnish Minerals Group is planning to construct a precursor cathode active materials plant in Hamina, Finland. It is estimated that the DFS will be completed in the first half of 2021. If construction works begin as anticipated, it is realistic to expect that the construction of the plant could start in 2022.

Finnish Minerals Group acquired the rights to the Sokli mining project from Yara Suomi Oy. The project is located in the municipality of Savukoski, in Northern Finland.

Production at the battery chemicals plant under construction on Terrafame's current industrial site is set to begin in early 2021. Once completed, the plant will be the world's largest nickel sulphate production plant. The plant's annual production capacity for nickel sulphate and cobalt sulphate equates to approximately one million and three-hundred thousand EVs. After the investment in the battery chemicals plant is completed, Terrafame's bioleaching-based production process will produce nickel sulphate used in EV batteries whose carbon footprint is over 60 per cent smaller than if produced by conventional production technologies. Overall, Terrafame's bioleaching-based production process uses about 90 per cent less energy than in the average production of nickel sulphate.

On 30 November 2020, Anglo American submitted the EIA Report for the Sakatti polymetallic mine for consideration by the authorities at the Lapland Centre for Economic Development, Transport and the Environment (ELY Centre) acting as the coordinating authority. The EIA Report for the mine details the proposed project, which includes the extraction of ore using an underground mine, the concentration process located distant from the mine protection area and the hauling of concentrate for further refinement. The EIA Report and its appendices comprise over a thousand pages.

Coronavirus

52 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The current Mining Act does not recognise the possibility for authorities to efficiently take into account the ceased operations of exploration companies due to covid-19 for example, by providing operators the possibility to extend the validity of the permits corresponding to the time lost due hardship stemming from covid-19. To address this issue, the latest draft of the Government Proposal regarding the amending of the Mining Act contains a proposal to introduce a force majeure style provision into the Mining Act, which would enable a permit holder to seek and the Mining Authority to extend the validity of a mineral right to make up for lost time due to for example, ceased operations due to the pandemic. It is still uncertain whether such provision will be introduced to the Mining Act and unclear whether such provision would be applicable to circumstances that have emerged prior to the introduction of such provision into law.

Since the outbreak, the Finnish government has introduced numerous measures, which seek to ensure that businesses will be able to continue operating despite the pandemic. The government offers business cost support, various guarantees as security for business finance, R&D funding and innovation loans. The government has also made available payment arrangements concerning business taxes and taken action to improve the ability of banks to provide business financing and consider payment rescheduling due to the exceptional situation caused by the covid-19 pandemic. The government has not introduced any mining sector specific relief programmes. Instead, most of the state relief programmes have been made available to businesses regardless of their industry and thus mineral sector companies have been able to seek for the state aids offered by the government to Finnish companies.

It should also be noted, that keeping exploration permits in good standing, the Finnish Mining Act requires continuous and efficient exploration to be carried out. This requirement however does not necessarily require continuous field work to be carried out. Companies should pursue to continue exploration work despite circumstances where field work is temporarily put on hold due to the pandemic.

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