

Kyrgyzstan

Niyaz Aldashev, Samara Dumanaeva and Svetlana Lebedeva

Lorenz International Law Firm

Mining industry

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

Thousands of deposits of various mineral resources have been discovered in Kyrgyzstan, namely ferrous and non-ferrous metals, rare-earth metals, coal, chemical, optical and ceramic raw materials, carbonic deposits, semi-precious and facing stones.

Among them are deposits with significant reserves, such as Kumtor (gold), Jerooy (gold), Taldy-Bulak Leftbank (gold), Khaidarkan (mercury), Kadamdjay (antimony), Kara-Korum (wollastonite), Sary-Jaz (tin and tungsten), large coalfields. Today Kyrgyzstan remains one of the largest mineral producers of mercury in the world (after China and Bolivia).

These mineral resources are considered an important part of the Kyrgyz economy.

For example, Kumtor gold mining has accounted for 15 per cent to 24 per cent of the national industrial output and 2.5 per cent to 8.5 per cent of Kyrgyzstan's GDP. Kumtor makes up more than one-third of the national exports of goods and services.

It is clear that exploration and mining of the mineral resources requires heavy capital investments; therefore, Kyrgyzstan has to appeal to and attract foreign investors.

- 2 What are the target minerals?

Gold, iron, tin, copper, vanadium, manganese, mercury, antimony, etc, are the main target minerals in Kyrgyzstan.

- 3 Which regions are most active?

The northern region of Tien Shan, the Issyk-Kul region, the Talas region and the southern regions are the most active.

Legal and regulatory structure

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

Kyrgyzstan's legal system is civil law-based.

- 5 How is the mining industry regulated?

According to the Constitution, the Jogorku Kenesh (parliament) is a representative body that exercises legislative power and controlling functions within its authority. The Jogorku Kenesh adopts laws and decrees related to the mining industry.

The main regulatory body in the mining industry is the Ministry of Natural Resources (the Ministry). The function of the Ministry is to enforce effective and rational use of natural resources (minerals, land and water), control over the compliance with environmental protection and environmental laws in the course of prospecting and

use, the implementation of state policy on mining and fuel resources. The Ministry issues, suspends and cancels licences related to the use of natural resources. Moreover, the Ministry has the authority to execute licence agreements.

- 6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The most important and principal laws that regulate the mining industry are the following:

- Constitution of 27 June 2010.
- Regulation on the Ministry of Natural Resources of Kyrgyzstan approved by Government Decree No. 734 of 4 December 2009.
- Law on Subsoil of 2 July 1997 (the Subsoil Law).
- Law on Oil and Gas of 8 June 1998.
- Law on Coal of 3 February 1999.
- Law on Licensing of 3 March 1997.
- Law on Production-Sharing Agreements of 10 April 2002 (the PSA Law).
- Law on Concession and Foreign Concessionary Enterprises in Kyrgyzstan of 6 March 1992 (the Concession Law).
- Tax Code of 17 October 2008.

The main state regulator of mineral resources is the government. According to the Subsoil Law the government develops normative and methodological provisions, rules, regulations, and technological standards of subsoil use. It shall use state funds of subsoil directly through state agencies for subsoil use. The government shall develop and implement the state policy in exploring and research of the subsoil. Also, it shall monitor the status of subsoil studies, expertise, movement of explored reserves of mineral resources, develop and manage the subsoil fund.

The Ministry is the most important regulatory body in the mining industry, controlling the activities of companies working in the mining industry. The main functions of the Ministry are geological research of the subsoil, developing present and future perspectives, state and regional programmes of improvement of the use of subsoil and controlling how subsoil users implement their rights regarding the subsoil and the environment.

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

Mineral reserves in Kyrgyzstan are categorised based on the extent to which the reserves have been explored, and Kyrgyz law provides for four categories of mineral resources of mineral reserves, which are A, B, C1, C2, and three categories of potential mineral resources, which are P1, P2, P3.

Mining rights and title

- 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?

Subsoil is the property of the state and the state therefore fully controls mining activity. Mining rights can be granted to private parties on the acquiring of a licence. The holder of mining rights will be the owner of the minerals in the ground.

Generally, Kyrgyz law does not provide a separate legal regime or process for third parties to obtain mining rights. However, the holder of mining rights can transfer his right to a licence under a pledge of licence rights to third parties with the consent of the relevant state body.

- 9 What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency 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?

Basically, all information related to the mining industry is accessible and available to the public. A geological information fund under the Ministry has information related to the mining industry. For example, if a company wants to access certain documents related to mining activities, the company can find these in the geological information fund. Moreover, the fund contains reports and maps related to the mining industry.

Neither the agency nor the government conducts geoscience surveys, which become part of the database. The Ministry has one database available online, which contains information related to the companies and their licences.

- 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 to a preferential right to acquire a mining licence?

According to the Subsoil Law, the subsoil shall be allocated for use for the following purposes:

- geological study;
- development of mineral deposits, including technogenic ones;
- building and operating underground constructions, which are not associated with mineral recovery (storage of oil, gas, other substances and materials, storage of dangerous substances, use of the heat of the earth, and others); and
- formation of specially protected objects of scientific, cultural, aesthetic, sanitary or other significance (scientific and training polygons, geological sanctuaries, caves and other subsoil hollows).

Subsoil rights can be granted in three ways:

- a licence, including a licence agreement;
- a concession; and
- a production sharing agreement.

A licence may be issued through direct negotiations between the prospective licensee and the Ministry or through a tender – for objects of national importance.

The following are the types of subsoil use licences for exploration and mining of mineral resources:

- a licence for geological exploration;

- a licence for development of mineral resources, including technogenic ones; and
- a licence for the construction and operation of subsurface structures not related to mineral resources mining.

In the case of a concession, subsoil rights are granted on a tender basis and the object of the concession must be approved by the government. Parties to the concession are the competent state body and a concessionaire, ie, an individual, a legal entity or a foreign state. A concession shall be coupled with a concession agreement, which contains all necessary information about the parties, the concession object, the concession payments, the minimum required capital investments, the quotas on volume of production, the provisions on environmental and technical safety, the local content requirements. A concession is granted for a term from five up to 50 years.

In production sharing agreements (PSAs), subsoil rights are granted through a tender or an auction. The PSA Law mainly identifies the procedure for negotiation, administration, execution and basis for termination of the production sharing agreements. The tax regime and dispute resolution mechanisms are shown in the PSA Law. This Law also defines the rights and obligations of the government and the investors. The PSA shall contain conditions related to the subsoil use: exploration, production and processing of mineral resources. The PSA is concluded for a fixed term up to 10 years with possible extensions.

Kyrgyz law provides a preferential right to the holder of exploration or reconnaissance licences to acquire a mining licence.

- 11 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?

Generally, rules and regulations do not make a difference between the mining rights of domestic parties and foreign parties (there is no restriction or prohibition of the ownership of mining rights by foreign parties. It is not necessary for a foreign party to have a domestic partner).

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

The Subsoil Law provides some conditions for mining rights protection. For example, relating to the suspension or termination of subsoil use rights. The list of circumstances in which the subsoil use rights may be suspended or terminated is indicated in the Subsoil Law. Moreover, when mining rights are violated, legal entities, commercial organisations, or companies engaged in the mining activities have alternative ways to initiate court proceedings in international arbitration tribunals or national local courts. The foreign arbitration awards in respect of domestic mining disputes are enforceable in Kyrgyzstan.

- 13 What surface rights may private parties acquire? How are these rights acquired?

Generally, according to the Subsoil Law and the Law 'On Licensing', legal entities and commercial organisations that deal with the exploration of mineral resources shall get permission from the competent bodies to obtain land rights. The competent bodies in this regard are the local state administrations that have a right to issue the adequate permissions. Moreover, the time period during which the land rights are valid should be identified by all legal entities and commercial organisations in the process of getting the permission. Land rights are granted on the basis of the mining rights.

- 14 Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

There are various natural areas in Kyrgyzstan, which are designated as protected areas and which are off-limits or specially regulated. For example, there are the following reserved areas of the first category where any economic activity is prohibited:

- Issyk-Kul State Reserved Area;
- Naryn State Reserved Area;
- Sary-Chelek State Biospheric Reserved Area;
- Besh-Aral State Reserved Area;
- Karatal-Japryk State Reserved Area;
- Karabuura State Reserved Area;
- Kulunata State Reserved Area;
- Padysha-Ata State Reserved Area;
- Surmatash State Reserved Area; and
- Sarychat-Ertash State Reserved Area.

Duties, royalties and taxes

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

According to the Subsoil Law and the Tax Code, mineral deposit exploration and development enterprises shall be subject to the tax legislation in force. Based on this legislation, the subsoil use shall be remunerated. Based on the Subsoil Law, the system of payments for subsoil use shall include the following:

- payment for the subsoil use right (bonus); and
- payment for the subsoil use (royalty).

Moreover, subsoil users shall make additional payments provided by the legislation.

Payment for subsoil use right (bonus) shall be considered as a one-off payment to the owner of subsoil resources (the government) for obtaining the right to explore the subsoil. The amount of a bonus is established by the government for all types of minerals based on the classification depending on the stage of study and the deposit extent. Based on the legislation related to the mining industry, bonuses should be paid within 30 days after obtaining the licence for subsoil use.

Payment for the subsoil use (royalty) shall be considered as current payments to the owner of the resources (the government) for used mineral stores. The royalty is paid by the mining companies at a rate set for each type of mineral resources as per the unit of physical volume or as a percentage of the proceeds. A royalty is revenue-based.

- 16 What tax advantages and incentives are available to private parties carrying on mining activities?

Stabilisation of the tax regime is provided by the Law 'On Investments' and the Tax Code. In the case of amendments and additions to the Tax Code that provide an increase in tax rates for the use of natural resources or change of their tax base, taxpaying subsoil users have the right to retain the procedure for collecting such taxes, operating on the day of issuing the licence for development of mineral deposits, during the term of such licence but no more than 20 years from the date of its issuance.

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

According to the Subsoil Law, the Tax Code and the Law 'On Licensing' the amounts payable for the issuance of a licence, bonus payments and royalties are the same for domestic and foreign mining companies.

Business structures

- 18 What are the principal business structures used by private parties carrying on mining activities?

The two types of corporate structures mostly used in Kyrgyzstan are the limited liability company and the joint-stock company. The legal form of a limited liability company allows more flexibility in corporate governance and securities legislation, and in general is easier to capitalise and maintain.

- 19 Is there a requirement that a local entity be a party to the transaction?

No, there is no requirement that a local entity be a party to the transaction.

- 20 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?

Kyrgyzstan has the bilateral investment treaties with the following countries: Armenia, Azerbaijan, Belarus, China, Finland, France, Georgia, India, Iran, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Republic of Korea, Russia, Sweden, Switzerland, Tadjikistan, Turkey, the United Kingdom, Ukraine and Uzbekistan.

Financing

- 21 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?

Mining companies in Kyrgyzstan usually use the following financing methods:

- investments from parent companies;
- loans from banks; and
- issuance of securities.

Financing is often done by the parent companies of the Kyrgyz operating companies. These parent companies can attract loans from international banks or financial institutions and can collect money on the international securities markets.

Usually mining companies establish relationships with banks that provide loans to fund mining activities. Such loans are generally secured by mortgages of immovable property, pledge of equipment, pledge of a licence, etc.

The domestic public securities market is not well developed; mining companies do not often use the practice of issuing bonds or making public offerings, or both.

Restrictions

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

In general, there is no special restriction or limitation imposed on the importation of machinery and equipment or services required in connection with the mining activities, apart from eventually import duties. However, certain machinery and equipment may be subject to restrictions, depending on the nature of such equipment (eg, equipment with integrated radio frequency devices).

- 23 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?

Generally, processing, export and sale of metallic minerals are not subject to restrictions except for precious metals and precious stones.

In case of sale or export of precious metals and precious stones the National Bank or other state authority should be notified about the sale or export, as they have the right of first refusal to acquire precious metals and precious stones.

- 24** 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?

In general, there are no special restrictions or limitations imposed on the import of funds for the mining activities or the use of the proceeds from the export or sale of metallic minerals.

Environment

- 25** What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Kyrgyzstan has various environmental laws applicable to the mining industry. One of the main laws is the Law 'On Environmental Protection' dated 16 June 1999. This Law provides for environmental rights and duties of individuals and legal entities, regulations of environmental protection, environmental impact assessment, state environmental monitoring.

Other principal laws in this area are the following:

- General Technical Regulations on Ensuring of Ecological Safety in the Kyrgyz Republic (8 May 2009);
- On Special Protected Natural Territories (28 May 1994);
- On Biospheric Territories (9 June 1999);
- On Atmospheric Air Protection (12 June 1999);
- On Ecologic Expertise (16 June 1999);
- On Radiation Safety of Population of the Kyrgyz Republic (17 June 1999);
- On Tailings and Mountain Dumps (26 June 2001);
- On Waste Products of Production and Consumption (13 November 2001);
- On Mountainous Territories of the Kyrgyz Republic (1 November 2002);
- On Sustainable Development of the Ecologic and Economic System 'Issyk-Kul' (13 August 2004);
- On Protection of Ozone Layer (18 December 2006)
- On Prohibition of Cutting, Transportation, Acquisition, Sale, Logging, Use, Export and Import of Especially Fine Woods of Nutwood and Archa (12 February 2007);
- On Pastures (26 January 2009);
- On Subsoil (2 July 1997);
- On Industrial Safety of Hazardous Industrial Facilities (19 November 2001);
- Land Code (2 June 1999);
- Forest Code (8 July 1999);
- Water Code (12 January 2005); and
- Labour Code (4 August 2004).

The state bodies that administer these laws are:

- the Ministry of Natural Resources;
- the Ministry of Emergencies; and
- the State Agency for Protection of Environment and Forestry.

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

An environmental review in Kyrgyzstan is mandatory for a mining project. Kyrgyz law requires subsoil users to obtain certain environmental licences and permits (eg, a permit (licence) to discharge waste into the atmosphere, a permit providing for limits for discharge of

waste water, etc). In practice, it can take a subsoil user several months to receive the findings of the environmental assessment and obtain all required environmental permits and licences.

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

The Law on Subsoil requires that in case of completing all the mining works or impossibility of further work for economic or other reasons mining enterprises should be liquidated or conserved at their own expense with the approval of the Ministry. Remediation should also be conducted.

The terms of closure and remediation are usually different and depend on certain environmental, operational and other external circumstances of each mining project. The Law sets out general rules on closure and remediation; more detailed and specific information and requirements should be included in the mining licences and special programmes.

All survey geological and technical information should be submitted to the Ministry.

Subsoil users are required by law to have financial guarantees for remediation of environment.

Health & safety, and labour issues

- 28** 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?

The principal laws in this area are the following:

- General Technical Regulations on Ensuring of Ecological Safety in the Kyrgyz Republic (8 May 2009);
- On Radiation Safety of Population of the Kyrgyz Republic (17 June 1999);
- On Tailings and Mountain Dumps (26 June 2001);
- On Waste Products of Production and Consumption (13 November 2001);
- On Subsoil (2 July 1997);
- On Industrial Safety of Hazardous Industrial Facilities (19 November 2001);
- Land Code (2 June 1999);
- Forest Code (8 July 1999);
- Water Code (12 January 2005);
- Labour Code (4 August 2004); and
- On Protection of Labour (1 August 2003).

The state bodies that administer these laws are:

- the Ministry of Natural Resources;
- the Ministry of Labour, Employment and Migration;
- the Ministry of Emergencies; and
- the State Agency for Protection of Environment and Forestry under the government.

- 29** What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Generally, the mining legislation does not provide special requirements for the use of domestic or foreign employees. In order to identify eventual special requirements necessary for the employment of domestic or foreign employees the content of agreement should be examined. Thus, a production sharing agreement or a concession agreement, depending on circumstances, may provide some special requirements for domestic or foreign employees. Basically, foreign nationals are allowed to work in the territory of Kyrgyzstan with the necessary work permits. Employers must obtain special permission from migration and employment bodies to employ foreign employees.

Update and trends

Since February 2011 the Ministry has been thoroughly checking the fulfilment of licensed works by mining companies. One of the results of this has been the annulment of some licences, including a licence for gold.

Social and community issues

- 30** What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

There are no principal community engagement or CSR laws applicable to the mining industry in Kyrgyzstan.

- 31** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

The acquisition or exercise of the mining rights may be affected by the rights of local population living in the relevant territory for social and economic development of their territory, for employment or use of local products and services, or both. In practice, licences may contain obligations of subsoil users to engage local population in the mining activities as well as to use local companies and raw materials in such activities.

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

Not applicable.

International treaties

- 33** What international treaties apply to the mining industry or an investment in the mining industry?

Kyrgyzstan is not a party to any international treaty with regard to the mining activities as such, with the exception of the mining activities regarding uranium, thorium, coal and cokes.

With regard to the latter activities it has to be noted that Kyrgyzstan is a party to the Energy Charter Treaty. This Treaty is applicable in matters concerning energy materials and products. These products are defined as the items included in the EM Annex to the Treaty. In this EM Annex uranium, thorium, coal and cokes are mentioned.

As uranium, thorium, coal and cokes are eventually explored through the mining activities, the provisions of the Energy Charter Treaty could be applicable in the relevant matters.

Kyrgyzstan participates in the CIS treaties on Cooperation in Study, Exploration and Use of Mineral Resources of 27 March 1997 and on Frontier Cooperation in Study, Exploration and Protection of Subsoil of 31 May 2001.

Kyrgyzstan also concluded a range of bilateral and multilateral treaties on promotion and protection of investments.

Lorenz International Law Firm

Niyaz Aldashev
Samara Dumanaeva
Svetlana Lebedeva

n.aldashev@lorenz-law.com
s.dumanaeva@lorenz-law.com
s.lebedeva@lorenz-law.com

209-A Tynystanov Street
720040 Bishkek
Kyrgyzstan

Tel: +996 312 900 100 / 622 161
Fax: +996 312 662 233
www.lorenz-law.com