



Mining

in 31 jurisdictions worldwide

2013

Contributing editors: Michael Bourassa and John Turner



Published by
Getting the Deal Through
in association with:

ÆLEX

Boga & Associates

Bowman Gilfillan

Carey

Chandler & Thong-ek Law Offices Ltd

Corpus Legal Practitioners

Esin Attorney Partnership, Baker & McKenzie Istanbul

Fasken Martineau

Foyen Advokatfirma

Gadens

Grata Law Firm

Holland & Hart LLP

Kalliolaw Asianajotoimisto Oy – Attorneys at Law

Kimathi & Partners, Corporate Attorneys

Koep & Partners

Kusaasira & Co Advocates

Martelli Abogados

Martínez Carrera & Hernández SC

McGuire Woods LLP

Miranda Correia Amendoeira & Associados –

Sociedade de Advogados, RL

Myanmar Legal Services Ltd

Nuna Law Firm

Peña Mancero Abogados

Rex Attorneys

Rubio Leguía Normand

SyCip Salazar Hernandez & Gatmaitan

Soemadipradja & Taher

Tobar & Bustamante

Veirano Advogados



Mining 2013

Contributing editors:

Michael Bourassa and John Turner
Fasken Martineau

Business development managers

Alan Lee
George Ingledew
Dan White

Account managers

Rachel Nurse
Zosia Demkowicz
Megan Friedman

Trainee account managers

Cady Atkinson
Joseph Rush

Trainee research coordinator

Robin Synnot

Admin coordinator

Sophie Hickey

Media coordinator

Parween Bains

Marketing manager – subscriptions

Rachel Nurse
subscriptions@
gettingthedealthrough.com

Head of editorial production

Adam Myers

Production coordinator

Lydia Gerges

Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Subeditors

Timothy Beaver
Davet Hyland

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

Mining 2013

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd
2013

No photocopying: copyright licences
do not apply.

ISSN 1748-3085

The information provided in this publication
is general and may not apply in a specific
situation. Legal advice should always
be sought before taking any legal action
based on the information provided. This
information is not intended to create, nor
does receipt of it constitute, a lawyer-
client relationship. No legal advice is being
given in the publication. The publishers
and authors accept no responsibility for
any acts or omissions contained herein.
Although the information provided is
accurate as of June 2013, be advised
that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law
Business
Research

Global Overview Michael Bourassa and Kevin O'Callaghan <i>Fasken Martineau</i>	3
Albania Alketa Uruçi and Blerina Fani <i>Boga & Associates</i>	7
Angola João Afonso Fialho and Hugo Moreira <i>Miranda Correia Amendoeira & Associados – Sociedade de Advogados, RL</i>	13
Argentina Hugo C Martelli and Lucrecia Frangella Saubidet <i>Martelli Abogados</i>	20
Australia Kym Livesley and Sally Weatherstone <i>Gadens</i>	26
Brazil Pedro Freitas, Pedro Garcia, Alexandre Calmon and Bruno Chedid <i>Veirano Advogados</i>	33
Canada Michael Bourassa and John Turner <i>Fasken Martineau</i>	41
Chile Rafael Vergara and Francisco Corona <i>Carey</i>	49
Colombia Gabriela Mancero <i>Peña Mancero Abogados</i>	56
Democratic Republic of the Congo Hubert André-Dumont <i>McGuireWoods LLP</i>	65
Ecuador Cesar Zumárraga and Santiago J Bustamante <i>Tobar & Bustamante</i>	72
Finland Pekka Holopainen and Panu Skogström <i>Kalliolaw Asianajotoimisto Oy – Attorneys at Law</i>	79
Ghana Michael Edem Akafia and Kimathi Kuenyehia Sr <i>Kimathi & Partners, Corporate Attorneys</i>	87
Greenland Peter Schriver <i>Nuna Law Firm</i>	94
Indonesia Rahmat Soemadipradja and Robert Reid <i>Soemadipradja & Taher</i>	100
Mexico Abdón H Hernández <i>Martínez Carrera & Hernández SC</i>	113
Mozambique João Afonso Fialho and Nuno Cabeçadas <i>Miranda Correia Amendoeira & Associados – Sociedade de Advogados, RL</i>	118
Myanmar Khin Cho Kyi, Joshua L Savey and Gil Shefer <i>Chandler & Thong-ek Law Offices Ltd and Myanmar Legal Services Ltd</i>	125
Namibia Peter Frank Koep and Hugo Meyer van den Berg <i>Koep & Partners</i>	132
Nigeria Sina Sipasi and Oluwaseun Akintola <i>ÆLEX</i>	138
Papua New Guinea Kym Livesley and Daniel Murnane <i>Gadens</i>	144
Peru Emil Ruppert <i>Rubio Leguía Normand</i>	149
Philippines Hector M de Leon Jr <i>SyCip Salazar Hernandez & Gatmaitan</i>	158
South Africa Claire Tucker <i>Bowman Gilfillan</i>	165
Sweden Peter Dyer and Pia Pehrson <i>Foyen Advokatfirma</i>	175
Tanzania Alex Thomas Nguluma <i>Rex Attorneys</i>	182
Thailand Albert T Chandler, Nuanporn Wechsuanarux and Christopher Kalis <i>Chandler & Thong-ek Law Offices Ltd</i>	188
Turkey Turker Yondem, Muge Onal and Goknil Emdi <i>Esin Attorney Partnership, Baker & McKenzie Istanbul</i>	197
Uganda Denis Kusaasira and Henry A Kaliisa <i>Kusaasira & Co Advocates</i>	203
United States Robert A Bassett and Andrew A Irvine <i>Holland & Hart LLP</i>	209
Uzbekistan Bakhodir Jabborov <i>Grata Law Firm</i>	215
Zambia Charles Mkokweza <i>Corpus Legal Practitioners</i>	222

Sweden

Peter Dyer and Pia Pehrson

Foyen Advokatfirma

Mining Industry

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

Mining has been of great importance in Sweden throughout modern history and in recent times there has been a notable rise in interest in new mining projects. The number of people employed in the mining industry is rising and there are currently almost 100 companies with exploration permits active in the search for minerals.

Sweden is one of the EU's leading producers of ores and metals. The mining industry is crucial to employment in some areas of Sweden and serves as an important basis for exports.

Mines currently in operation produce iron ore, sulphide ore and gold, but other minerals can also be found in sufficiently large quantities for profitable mining. An open-cast mine for rare earth metals is expected to start extraction in 2015. (The deposit is considered to be the fourth largest in the world.)

In 2011 a proposal for a national strategy for mineral exploitation was put forward by the Geological Survey of Sweden (SGU) to the Swedish Government. This has so far resulted in additional funding for mapping and mineral information as well as a new group within SGU with the sole task of assisting the mining industry.

Political stability, good infrastructure throughout the whole country, a solid legal system, widespread expertise among the workforce and a well-developed mining equipment industry mean that Sweden offers favourable conditions for mining operations.

Parties interested in starting mining operations in Sweden can visit SGU's website and through different databases on the site obtain basic information for the initial evaluation of suitable areas for exploration. See also question 9.

- 2 What are the target minerals?

Sweden is by far the biggest producer of iron ore in the EU and is also among the leading producers of copper, zinc, lead, gold and silver. In 2010, 60 per cent of the exploration permit applications concerned prospecting for copper, zinc, lead and nickel. Exploration for other minerals such as molybdenum, wolfram, vanadium, tellurium and lithium was of interest for some foreign prospectors. A comprehensive map of ore and mineral locations can be found online through The Mineral Resources Information Office (MINKO) (www.sgu.se/sgu/eng/produkter-tjanster/kartvisare/index.html).

- 3 Which regions are most active?

The mining industry is active in most parts of Sweden apart from the southernmost regions and the islands of Öland and Gotland, where the prospect of finding valuable mineral deposits is more limited. In those regions industrial mineral and construction material extraction is common instead. Northern Sweden is generally rich in minerals and has the highest concentration of mining operations in the coun-

try. Specific areas of interest are the Skellefteå Field in the County of Västerbotten, an area of significant mineral density, and the County of Norrbotten where the majority of iron ore production is located.

Legal and regulatory structure

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

Sweden's legal system is civil law-based.

- 5 How is the mining industry regulated?

All acts governing the mining industry are national, but decisions under these acts are taken by administrative bodies at both regional and national level. See question 6 for more detailed information. Sweden is a member of the European Union and consequently any EU legislation concerning the mining industry is applicable as well.

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

The Swedish Minerals Act (1991:45) is the principal law regulating the mining industry and it governs the procedure for acquiring exploration permits and exploitation commissions on land, irrespective of who owns the land to be explored or exploited. Detailed provisions of the application process and fees can be found in the Minerals Ordinance (1982:285).

The Swedish Environmental Code (1998:808) is relevant in many aspects. The Environmental Code is applicable in matters concerning the granting of a concession, which means that an Environmental Impact Assessment (EIA) must be appended to an application for a concession. A permit for exploitation must always be granted under both the Minerals Act and the Environmental Code. For more information about EIAs, see question 33.

The Planning and Building Act (2010:900) contains provisions that regulate building and construction.

Exploration work can be affected by the Off-road Driving Act (1975:1313) and the Cultural Heritage Act (1988:950).

Applications for exploration permits and exploitation concessions under the Minerals Act are administered by the Mineral Inspectorate. The County Administrative Board takes part in the environmental evaluation of applications for exploration permits and exploitation concessions. The Swedish Government makes decisions in matters of particular public interest. The local municipality is responsible for permissions in accordance with the Planning and Building Act. Permissions required by the Environmental Code are handled by the Land and Environmental Court. Supervision of compliance with the environmental conditions is usually carried out by the County Administrative Board and by the municipality's Environment and Health Board.

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

A stand-alone framework called the Fennoscandian Review Board Standard (FRB standard) is recommended for use by the Swedish Miners Association and has also been adopted by the corresponding organisations in Norway and Finland. The classification system is based on the international template for the public reporting of exploration results, mineral resources and mineral reserves that is created by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) with the purpose of creating mutual international standards. The FRB standard is subsidiary to national legislation. The FRB standard is similar in comparison to the CIM Standards, the JORC Code and the SAMREC Code since all the standards are based on the international template for the public reporting of exploration results, mineral resources and mineral reserves.

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?

All minerals that are covered by the Minerals Act (1991:45) are listed in the Act and what is not listed belongs to the landowner. Minerals of interest for mining are among the ones listed. The reason for this policy is that landowners in general are considered not to have the capacity needed for exploiting mineral resources on their land. The same rules apply to all types of landowners, whether it is the state, private entities or individuals. Exploration permits can be granted for exploration on land (real property) belonging to any type of landowner, both private and public.

- 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?

The Geological Survey of Sweden (SGU) collects basic geological data concerning Sweden's bedrock geology and properties of rock. Information related to prospecting obtained through government surveys and private exploration, is accessible through The Mineral Resources Information Office (MINKO). Most information is accessible online where maps can be produced on request for specific purposes and received in digital form or as hard copies. The National Drill Core Archive is located at MINKO and contains over 4000 kilometres of drill cores that can be used for analysis. The results from such analysis have to be submitted to MINKO and will be made public after a while.

When an exploration permit is terminated without the granting of an exploitation concession within the exploration area, the permit holder (if he or she is carrying on exploration work professionally) must submit a summary report within three months.

- 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? What are the requirements to convert to a mining licence?

Both exploration and exploitation permits are granted under the Minerals Act (1991:45) to qualified applicants entirely irrespective of who owns the land to be explored or exploited.

An exploration permit is granted for a specific area of land where there is some likelihood of a successful discovery being made. The area covered by the permit must be of a suitable shape and size and no larger than can be explored by the permit holder in an appropriate manner. An exploration permit gives access to land for exploration work that does not harm the environment or prejudice the use of the land and entails a preferential right to an exploitation concession. The rule is such that the party that applies first is given priority and therefore it is required that the first application is complete and will not need to be supplemented at a later time, as this can result in complications for the assessment of which party that applied first.

If there is a possibility of the exploration work having a significant impact on the environment, a notice of consultation in accordance with the Environmental Code (1998:808) must be sent to the supervisory authority (The County Administrative Board). Before exploration work begins, the permit holder must prepare a work plan. The plan must contain a description of the work planned, a timetable, and an assessment of any impact on private rights and public interests. The plan must be communicated with all landowners and any other affected parties. A work plan enters into force if there are no objections. It will also enter into force if the applicant and the objecting party agree to the contents of a revised plan. If they cannot agree, the matter may be adjudicated by the Mining Inspectorate, who in some cases also can establish conditions for the exploration work.

Before any work may be commenced, the exploring party is obligated to provide security for the compensation of any damage and encroachment of rights that the exploration work might inflict. An applicant for an exploration permit is required to pay an application fee as well as an exploration fee. The amount is decided according to the extent of the area subjected to exploration.

To commence mining activities an exploitation concession has to be acquired. As a cardinal rule, concessions are valid for 25 years, but can be extended. Furthermore, a concession is valid for a specific area, which is determined on the basis of the shape and extent of the deposit, the purpose of the concession, and other circumstances. Concession is granted if the discovered mineral deposit shows a probability of profitable exploitation and if the location and nature of the deposit does not render it inappropriate to grant the requested concession. The Environmental Code is applicable in matters concerning the granting of a concession. The holder of an exploration permit is not entitled to an automatic but rather a preferential right to acquire an exploitation concession.

In order for the holder of an exploration permit to acquire an environmental permit the operation must be subject to a trial in the Land and Environmental Court. This is a process which is separated from the previously explained procedure concerning exploration permit and exploitation concession. The process to acquire an environmental permit is governed by the Environmental Code (1998:808). The environmental impact of the operation is thereby tried by the Court. The Court also sets the conditions for the operation in its decision.

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

An exploration right is valid for a period of three years, and can be prolonged for a maximum of 15 years under special conditions. When an exploration permit expires a new application can be filed in order to renew an exploration right. The new application can be filed no earlier than a year after the previous exploration right expired, but exceptions can be made from the one year rule if special conditions apply.

A transfer of an exploration right or a concession can be permitted under the Minerals Act (1991:45) after an application to the permitting authority (the Mining Inspector). The permission can be granted if the future licence holder meets the conditions set forth in the Minerals Act.

A granted concession is valid for 25 years. It can be prolonged for ten years at a time if work is performed on a regular basis on said area. If work is not performed on a regular basis on said area, the concession can still be prolonged for an additional period of ten years if the work performed meets specific criteria set up under the Minerals Act or if it is otherwise motivated by the common interest that the mineral findings should be exploited in an effective manner. The application to prolong a concession should be filed no later than six months before the valid concession expires.

Transfer of an environmental permit is permitted according to the Ordinance of Environmentally Harmful Operations and Protection of Health (1998:899), if the new holder notifies the supervisory authority about the transfer (The County Administrative Board).

12 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?

There are no restrictions on foreigners obtaining exploration permits and exploitation concessions.

An exploration permit or an exploitation concession may be transferred after consent by the issuing authority.

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

The mining inspector handles any disputes between the permit or concession holder and the landowner concerning rights and obligations connected to exploration or exploitation. Disputes regarding compensation to the landowner are handled by the mining inspector or the Land and Environmental Court.

Decisions made under the Minerals Act (1991:45) can be appealed, but the proper second instance depends on the type of decision being appealed.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), has been ratified by Sweden.

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

A legal proceeding for the designation of land is held at the request and expense of the concession holder. This procedure establishes the concession area, which is the area the concession holder may use for exploitation of the mineral deposits. In addition, any land within or outside the concession area, which the concession holder plans to use for activities related to the exploitation, may be covered by the decision. When an exploitation concession is terminated, the concession holder forfeits any rights to the land assigned to him or her at that time.

15 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?

Neither the Government nor the state agencies have a right to participate in mining projects. The project company is not required to be listed locally at any stage of the permit and concession processes.

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

It is not possible to expropriate permits or concessions related to mining, hence there are no compensation provisions regarding expropriation. On the other hand, the state is able to expropriate

land and other areas under certain premises stated in the Expropriation Act (1972:719). Reasons for expropriation are specified in the Act. The decision to expropriate land is made by the government as a main rule, but the power of authority can be transferred to the County Administrative Board under certain circumstances. The compensation provisions for expropriated land are also stated in the Expropriation Act.

17 Are any areas designated as protected areas within your jurisdiction and which (in general terms) are off-limits or specially regulated?

No exploration or exploitation is allowed in national parks and there are several other areas or proximity limitations that might affect the outlook of conducting mining operations. Mining operations are rarely permitted in:

- areas included in local plans or regional provisions under the Planning and Building Act (2010:900);
- closer than 30 metres to publicly owned transportation infrastructure;
- within 200 metres from inhabited buildings;
- areas of military interest;
- areas with electric power stations and industrial plants;
- within 200 metres of public buildings, hotels, churches and comparable establishments;
- churchyards and burial grounds; and
- certain specified undisturbed areas in the Swedish mountain range.

According to the Environmental Code (1998:808), if an activity is located near or within a 'Natura 2000' area, the operator must demonstrate that the activity will not affect the environment in a significant way. A Natura 2000 area is an ecological network of protected areas within the territory of the European Union. The Environmental Court tends to adjudicate matters affecting Natura 2000 areas quite strictly.

Exploration work that can have significant impact on the natural environment requires that a notice of consultation is sent to the County Administrative Board. If exploration work can damage land use where it is being carried out, security for compensation has to be given if the land owner has not given his or her consent.

Duties, royalties and taxes

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

Private parties conducting mining activities are required to pay an annual fee of 2 per mille of the average value of the minerals mined. The revenue is split between the landowners and the state, with landowners receiving 1.5 per mille and the state 0.5 per mille.

Normal corporate income tax, currently set at 22 per cent, applies to mining companies but there are no additional taxes for mining in particular.

For an exploration permit, certain fees have to be paid to the Mining Inspectorate by the applicant. An application fee of 500 kronor shall be paid to the mining inspector when handing in the application for every new area consisting of 2000 hectares. If permission is granted, another 20 kronor for each hectare has to be paid for the first three-year period of the permit. If an extension of the exploration permit is permitted, an additional fee of 21 kronor per hectare per year is required. Further extension of the permit is possible, but will result in even higher annual fees. All fees are required to be paid in advance for each period of time.

When applying for an exploitation concession, a fee of 80,000 kronor must be paid for each area the application concerns. There is also a fee for the designation of land proceedings.

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

The tax advantages and incentives for private parties engaged in mining activities are regulated by the Energy Tax Act (1994:1776). For example, tax relief can be obtained regarding carbon dioxide tax and energy tax for certain vehicles used in the mining activity process.

- 20** Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There is no legislation in force regarding tax stabilisation and there are no tax stabilisation agreements. There are special rules regarding the state-owned company LKAB. These rules apply to, for instance, customs regulations.

- 21** Is the government entitled to a carried interest, or a free carried interest in mining projects?

During the course of the exploitation the holder of the concession must pay an annual mineral reimbursement according to the Minerals Act. The reimbursement amounts to two per mille of the expected value of the minerals mined within the concession area for the past year. Of the total reimbursement, three quarters are reserved for the landowners within the concession area, and one quarter belongs to the government. The holder of the concession is obliged to provide the information necessary to determine the scope of the reimbursement.

Apart from the mineral reimbursement described above, the government is not entitled to any type of carried interest in mining projects.

- 22** Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

There are no special tax regulations for mining. General corporate tax law applies.

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

Foreign parties pay the same duties and royalties as domestic parties. As a main rule, they also pay the same taxes.

Business structures

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

The principal business vehicle used is the limited liability company. Joint venture agreements are common but a joint venture is not a legal person and so the actual vehicle used to operate the joint venture is still the limited liability company. Partnerships are rarely used in any larger scale or capital intensive business since they do not provide the same structure and ease in transferring shares in the case of options and earn-in clauses. In addition, the minimum capital requirement for limited liability companies was recently lowered to 50,000 kronor, making this form of company even more accessible to both Swedish and international investors. It is also possible to open a local branch that is registered in Sweden and that is not a legal person in its own right but considered part of a foreign legal entity. Trusts, however, are not recognised in the Swedish legal system.

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

There is no such requirement.

- 26** 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?

Sweden is party to a number of international tax treaties, which may have an effect on the way foreign entities choose to operate but, in general, such treaties are neutral in character and do not single out particular jurisdictions for favourable treatment.

Financing

- 27** 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?

The largest Swedish mining operators are listed on the Stockholm Stock Exchange, now named Nasdaq OMX Nordic Stockholm. Others are financed by private equity firms or banks or both. In general, all means of financing open to any industrial business are also open to the mining industry.

- 28** Please describe the regime for taking security over mining interests.

It is not possible to take out a mortgage or to pledge a mining permit or concession. It is however possible in respect of the real estate that the licence concerns.

Restrictions

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

There are no specific restrictions concerning the importation of machinery and equipment for the mining industry. All services that are operated in Sweden, including mining, must be performed according to the law and provisions on health and safety (see questions 35 and 36).

- 30** 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?

There are no restrictions on the processing, export or sale of minerals.

- 31** 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 foreign exchange controls or other restrictions on the import of funds for exploration and extraction or the use of the proceeds from the business.

Environment

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

The principal legislation is the Minerals Act (1991:45), which, with few exceptions, is applicable to exploration and exploitation on land. Two types of rights are granted under the Minerals Act: exploration permits and exploitation concessions. The Mining Inspectorate grants the permits. A permit for exploitation must always be granted under both the Minerals Act and the Environmental Code (1998:808).

If exploration work can have significant impact on the environment, it entails certain investigations of the environmental aspects. The Mining Inspectorate also hears applications for exploration per-

mits and exploitation concessions, in consultation with the County Administrative Board, which examines whether the site is acceptable from an environmental point of view. The Environmental Code is applicable in matters concerning the granting of a concession, which means that an Environmental Impact Assessment (EIA) must be appended to an application for a concession. The Environmental Code is the principal environmental law in Sweden. With respect to mining operations, permits under the Environmental Code are granted by the Land and Environmental Court.

Supervision of compliance with the environmental conditions is usually carried out by the County Administrative Board and by the municipality's Environment and Health Board.

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

The granting of a permit for mining operations under the Environmental Code (1998:808) is governed by the same rules as other business operations with an environmental impact. The details for the permit under the Environmental Code, such as noise levels, storage sites, damming up water deposits, are decided during the permit process carried out by the Land and Environmental Court. Supervision of compliance with the environmental conditions imposed is usually carried out by the County Administrative Board and by the municipality's Environment and Health Board.

The first step to acquiring a permit is the consultation process. It takes place between the company wishing to engage in activities with an environmental impact and parties environmentally affected by the operations and agencies and organisations concerned with environmental issues.

An Environmental Impact Assessment (EIA) has to be prepared. The purpose of the EIA is to describe the environmental impact that the proposed mining project will have. The description is made so that the reviewing bodies (the County Administrative Board or the Environmental Court) can assess whether the project should be allowed from an environmental point of view or not. The applicant must provide information in the EIA regarding any alternative sites for the proposed operation, together with a justification of why the proposed site was selected. The applicant must also provide a description of a zero option, the consequence of not starting the proposed operations.

After the hearing and EIA have been carried out, the application for a permit under the Environmental Code can be submitted to the Land and Environmental Court. The Land and Environmental Court determines whether the information gathered and presented in the consultation and environmental assessment phases is detailed enough to proceed with a ruling. During the initial phase of the proceedings, any affected parties may submit supplements to the application. The complete information will then be sent for review and comments to any affected party. Before the main hearing begins, the applicant will have the opportunity to address any comments made during the consultation process.

The complete process for obtaining a permit under the Environmental Code takes approximately three to five years depending on the size of the operation and where it is to be carried out.

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

The closure and remediation process is handled in the Environmental Code (1998:808) permit process through the details for the permit. If deemed necessary a security will have to be provided to cover for potential damages to the environment and closure of the mining operations. All types of security are approved as long as they are satisfactory for their purpose. The applying party must show that the

suggested security is satisfactory and if a security cannot be provided a permit will not be granted.

Health & safety, and labour issues

35 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 health and safety law is the Work Environment Act (1977:1160), which is applicable in all situations where an employee performs work for an employer. The Work Environment Act is a framework act and detailed regulations are found in the provisions issued by the Swedish Work Environment Authority, which is the principal regulatory body concerning health and safety in the workplace in Sweden. The Work Environment Act states the obligations of the employer: prevention of ill-health and accidents, for example. The provisions of the Swedish Work Environment Authority on rock and mining work and general recommendations on implementation of the provisions (AFS 2010:1) are the main provisions concerning mining. They regulate among other things what kind of investigation and risk assessments need to be done before the work in the mine can begin, what kind of working methods and equipment should be chosen, what kind of knowledge the workers in the mine need to possess, what personal protective equipment the workers shall use, required inspections, etc.

Other provisions that may be applicable to mining are:

- the Swedish Work Environment Authority's provisions on chemical hazards in the working environment, together with general recommendations on the implementation of the provision (AFS 2011:19), which regulates the employer's obligations concerning hazardous chemical substances;
- the Swedish Work Environment Authority's provisions and general recommendations on occupational exposure limit values (AFS 2011:18), which regulate the assessment and measurement of air contaminants and the employer's obligation to take action to lower exposure and reduce risk;
- the Swedish Work Environment Authority's regulations governing blasting work and general advice on the application of the regulations (AFS 2007:1), which regulates how blasting work should be planned and executed;
- provisions issued by the Swedish Work Environment Authority concerning the use of work equipment (AFS 2006:4), which regulate what kind of work equipment the employer shall provide to employees;
- provisions issued by the Swedish Work Environment Authority concerning noise together with general recommendations on the implementation of the provisions (AFS 2005:16), which regulates the permitted level of noise in a workplace and how noise shall be prevented, etc;
- provisions issued by the Swedish Work Environment Authority concerning vibrations (AFS 2005:15), which regulates the employer's obligation to perform risk assessments and investigations regarding vibrations and the employer's responsibility to educate and inform their employees about vibrations;
- the Swedish Work Environment Authority's provisions on occupational medical supervision and general recommendations for applying the provisions (AFS 2005:6), which regulate when medical examinations need to be done with employees that are or will be exposed to, for instance, quartz and vibrations;
- provisions of the Swedish Work Environment Authority on the use of personal protective equipment, together with general recommendations on the implementation of the provisions (AFS 2001:3), which mainly regulate the employer's obligation to provide sufficient personal protective equipment to the employee; and
- provisions issued by the Swedish Work Environment Authority concerning quartz (AFS 1992:16), which regulate the measurement and cleaning of quartz.

Update and trends

First of all a new National Strategy Plan for Mining has been published by the government. In short, the propositions from the Strategy Plan will, carried out as intended, lead to a shorter environmental permit process and a better business climate for the mining industry.

Secondly, there is currently a proposition for changes in the Mineral Act (1991:45) and Mineral Ordinance (1982:285), relating to exploration permits and work plans. If the changes are implemented there is a risk that landowners and right holders need to be involved to a greater extent in the exploration permit and work plan process.

In addition, a change in the Work Environment Act (1977:1160) is entering into force shortly, potentially affecting the mining industry as well as other industries. The change regards a transformation of certain provisions from criminal law handled by the criminal system to administrative provisions with penalties handled by the administrative authorities. The aim is to impose more efficient sanctions on infringements of the Work Environment Act. This should result in shorter lead times from infringement to penalty and in general more efficient handling by the authorities.

If the different sections in the provisions are in conflict with each other, the rules in the provisions of the Swedish Work Environment Authority on rock and mining work and general recommendations on implementation of the provisions (AFS 2010:1) will prevail. Note that only the most common provisions that can be applicable concerning mining are mentioned above. There are additional provisions that regulate all Work Environments.

The general labour laws in Sweden are applicable to the mining industry such as the Working Hours Act (1982:673), the Co-determination Act (1976:580), the Discrimination Act (2008:567), Parental Leave Act (1995:584) and Annual Leave Act (1977:480). However labour provisions in Sweden also exist in collective agreements and private employment agreements.

The Swedish Work Environment Authority is responsible for the supervision of the Working Hours Act. Non-compliance of the Discrimination Act is handled by the Equality Ombudsman. Violations against the remaining laws are settled through negotiations or in court.

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

The same laws and provisions apply for domestic and foreign employees concerning health and safety. An employer with domestic employees in Sweden has to follow the Swedish labour legislation. The same applies when foreign personnel are employed in Sweden. But if an employee is merely posted to Sweden, the employer is only obligated to follow some of the Swedish labour legislation, according

to the Act on Posting of Workers (1999:678), which was adopted to fulfil Sweden's obligations according to the corresponding EU Directive (96/71/EC).

Foreign employees sometimes need a work permit in order to work in Sweden. Citizens of the EU or EES countries are exempted but they need to inform the Swedish Migration Board if their residency lasts longer than three months. Any employee from a country outside the EU or EES area who is going to work more than three months in Sweden needs both a work permit and a residence permit. They may also need a visa.

Social and community issues

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

The consultation process is part of the permit process within the Environmental Code (1998:808). According to the Environmental Code, known affected parties shall have the opportunity to express their opinions on the mining application. The principal regulatory bodies are mentioned in question 32.

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

Under the Minerals Act (1991:45), rights holders to the affected land need to be involved during some stages of the granting of exploration permits and exploitation concessions. The indigenous Sami people's right to herd reindeer is such a right. Reindeer herding is exercised in vast areas of northern Sweden and if the mining operations affect the prerequisites for this right, compensation will have to be paid to the Sami. The Sami will also take part in the application for a permit under the Environmental Code (1998:808) if the mining operation is planned to be carried out within their area.

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

International treaties, conventions and protocols (and declarations) of interest are for example:

- the Law of the Sea Treaty, 1982, which regulates deep sea mining;
- the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998, concerning the right to get information and appeal Environmental Matters;
- the ILO 176 Safety and Health in Mines Convention, 1995, which regulates the working conditions in a mine (there exist additional ILO Conventions that can be applicable on mining);
- the Convention on Biological Diversity, 1992, which regulates the protection of biological diversity, sustainable use of it and

FOYEN

Peter Dyer
Pia Pehrson

peter.dyer@foyen.se
pia.pehrson@foyen.se

PO Box 7229
103 89 Stockholm
Sweden

Tel: + 46 8 506 184 00
Fax: +46 8 506 184 70
www.foyen.se

- fair and equal sharing;
- the Kyoto Protocol, 1998, concerning the decrease of emission of greenhouse gases;
 - the Rio Declaration on Environment and Development, 1992, and Stockholm Declaration on the Human Environment concerning sustainable development and environmental protection, 1972;
 - ILO Declaration on Social Justice for a Fair Globalisation, 2008 concerning social protection and human rights in the workplace; and
 - the Johannesburg Declaration concerning sustainable development, 2002.

The treaties, conventions and protocols only apply to signatory countries.

Sweden has not ratified the ILO 169 Indigenous and Tribal Peoples Convention of 1989, concerning special rights for indigenous and tribal people.

Besides the treaties, conventions and protocols there are different international codes relating to the mining industry (see question 7).

Foreign investment

- 40** Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

There are no restrictions concerning foreign ownership in the mining industry.

International treaties

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

There are no particular treaties concerning the mining industry that concern Sweden.

GETTING THE DEAL THROUGH

Annual volumes published on:

Acquisition Finance	Licensing
Air Transport	Life Sciences
Anti-Corruption Regulation	Mediation
Anti-Money Laundering	Merger Control
Arbitration	Mergers & Acquisitions
Asset Recovery	Mining
Banking Regulation	Oil Regulation
Cartel Regulation	Outsourcing
Climate Regulation	Patents
Construction	Pensions & Retirement Plans
Copyright	Pharmaceutical Antitrust
Corporate Governance	Private Antitrust Litigation
Corporate Immigration	Private Client
Data Protection and Privacy	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Investment Review	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipbuilding
Insurance & Reinsurance	Shipping
Intellectual Property & Antitrust	Tax on Inbound Investment
Labour & Employment	Telecoms and Media
	Trademarks
	Vertical Agreements



**For more information or to
purchase books, please visit:**
www.gettingthedealthrough.com



The Official Research Partner of
the International Bar Association



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Strategic research partners of
the ABA International section