



# ICLG

The International Comparative Legal Guide to:

## **Mining Law 2016**

**3rd Edition**

A practical cross-border insight into mining law

Published by Global Legal Group, with contributions from:

Agnes Advokatbyrå  
Ali Budiardjo, Nugroho, Reksodiputro  
Allens  
Bloomfield-Advocates & Solicitors  
BM&O Abogados – Attorneys At Law  
BMT Law Chambers  
CMS  
Coronel & Pérez  
Debarliev, Dameski & Kelesoska,  
Attorneys at Law  
Eric Silwamba, Jalasi and Linyama  
Legal Practitioners  
F.Kilembe Attorneys  
Geni & Kebe  
Gjika & Associates Attorneys at Law  
GRATA Law Firm LLP  
HOLT Abogados  
John W Ffooks & Co  
Kalikova & Associates Law Firm LLC  
Khan Corporate Law

Keop & Partners  
Latournerie Wolfrom Avocats  
Lawson Lundell LLP  
Mehrteab Leul & Associates Law Office  
Milbank, Tweed, Hadley & McCloy LLP  
Norton Rose Fulbright  
Osterling Abogados  
Pachiu & Associates  
Peña Mancero Abogados S.A.S.  
Prat & Roca Asociados  
Project Lawyers  
RB Abogados  
Sandroos law firm  
Scanlen & Holderness  
TPLA – Taciana Peão Lopes &  
Advogados Associados  
TozziniFreire Advogados  
Vieira de Almeida & Associados,  
Sociedade de Advogados, RL  
Werksmans Attorneys

**GLG**

Global Legal Group

**Contributing Editors**  
Christopher Ian Stevens,  
Werkmans Attorneys

**Head of Business  
Development**  
Dror Levy

**Sales Director**  
Florjan Osmani

**Commercial Director**  
Antony Dine

**Account Directors**  
Oliver Smith, Rory Smith

**Senior Account Managers**  
Maria Lopez

**Sales Support Manager**  
Toni Hayward

**Editor**  
Rachel Williams

**Senior Editor**  
Suzie Levy

**Group Consulting Editor**  
Alan Falach

**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**  
F&F Studio Design

**GLG Cover Image Source**  
iStockphoto

**Printed by**  
Ashford Colour Press Ltd.  
August 2015

Copyright © 2015  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-910083-59-8  
ISSN 2052-5427

**Strategic Partners**



**General Chapters:**

1	<b>Mining of Mixed Minerals</b> – Christopher Ian Stevens, Werkmans Attorneys	1
2	<b>Overview of the West African Mining Sector: Institutions and Outlook</b> – John Ffooks & Richard Glass, John W Ffooks & Co	5

**Country Question and Answer Chapters:**

3	<b>Albania</b>	Gjika & Associates Attorneys at Law: Evis Jani & Krisela Qirushi	9
4	<b>Argentina</b>	HOLT Abogados: Florencia Heredia & María Laura Lede Pizzurno	16
5	<b>Australia</b>	Allens: David Maloney AM & Alex Purtill	25
6	<b>Bolivia</b>	BM&O Abogados – Attorneys At Law: Adrián Barrenechea B. & Camilo Moreno O.	33
7	<b>Botswana</b>	Khan Corporate Law: Shakila Khan	41
8	<b>Brazil</b>	TozziniFreire Advogados: Luiz Fernando Visconti & Eduardo Miguel Serafini Fernandes	48
9	<b>Bulgaria</b>	CMS Bulgaria: Kostadin Sirlishtov & Jenia Dimitrova	56
10	<b>Burkina Faso</b>	John W Ffooks & Co: John Ffooks & Richard Glass	63
11	<b>Canada</b>	Lawson Lundell LLP: Khaled Abdel-Barr & Karen MacMillan	68
12	<b>Colombia</b>	Peña Mancero Abogados S.A.S.: Gabriela Mancero	78
13	<b>Congo – D.R.</b>	Geni & Kebe: Dr. Aboubacar Fall & Jocelyn Ismaël Itoua Ongagna	86
14	<b>Congo – R.</b>	John W Ffooks & Co: John Ffooks & Richard Glass	92
15	<b>Ecuador</b>	Coronel & Pérez: Daniel Pino Arroba & Paulette Ocampo Vélez	97
16	<b>Ethiopia</b>	Mehrteab Leul & Associates Law Office: Zelalem Yibrah	103
17	<b>Gabon</b>	Project Lawyers: Jean-Pierre Bozec	109
18	<b>Greenland</b>	Sandroos law firm: Bo Sandroos & Camilla Nymann Jørgensen	116
19	<b>Guinea</b>	Geni & Kebe: Mouhamed Kebe & Jocelyn Ismaël Itoua Ongagna	122
20	<b>Indonesia</b>	Ali Budiardjo, Nugroho, Reksodiputro: Woody Pananto & Freddy Karyadi	128
21	<b>Ivory Coast</b>	John W Ffooks & Co: John Ffooks & Richard Glass	139
22	<b>Kazakhstan</b>	GRATA Law Firm LLP: Yerbolat Yerkebulanov	144
23	<b>Kyrgyzstan</b>	Kalikova & Associates Law Firm LLC: Marina Lim & Jyldyz Tagaeva	152
24	<b>Macedonia</b>	Debarliev, Dameski & Kelesoska, Attorneys at Law: Dragan Dameski & Ana Hadzieva Angelovska	159
25	<b>Madagascar</b>	John W Ffooks & Co: John Ffooks & Richard Glass	165
26	<b>Malawi</b>	F.Kilembe Attorneys: Felisah Rose Kilembe	170
27	<b>Mali</b>	Latournerie Wolf from Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	175
28	<b>Mauritania</b>	Latournerie Wolf from Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	182
29	<b>Mexico</b>	RB Abogados: Enrique Rodríguez del Bosque	190
30	<b>Mozambique</b>	TPLA – Taciana Peão Lopes & Advogados Associados: Taciana Peão Lopes & André Cristiano José	197
31	<b>Namibia</b>	Koep & Partners: Hugo Meyer van den Berg & Peter Frank Koep	205
32	<b>Nigeria</b>	Bloomfield-Advocates & Solicitors: Kunle Obebe	211
33	<b>Peru</b>	Osterling Abogados: Luis Felipe Huertas del Pino	217
34	<b>Portugal</b>	Vieira de Almeida & Associados, Sociedade de Advogados, RL: Manuel Protásio & Filipa Serra	224
35	<b>Romania</b>	Pachiu & Associates: Alexandru Lefter & Ioana Iovanesc	230
36	<b>Sierra Leone</b>	BMT Law Chambers: Glenna Thompson & Drucil Taylor	238

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

**GLG**

Global Legal Group

Country Question and Answer Chapters:

37	<b>South Africa</b>	Werksmans Attorneys: Christopher Ian Stevens	244
38	<b>Spain</b>	Prat & Roca Asociados: César Utrera-Molina Gómez & Daniel Roca Vivas	250
39	<b>Sweden</b>	Agnes Advokatbyrå: Agnes Larfeldt Alvéén & Kajsa Tiderman	257
40	<b>Ukraine</b>	CMS Ukraine: Vitaliy Radchenko & Inna Antipova	263
41	<b>United Kingdom</b>	Milbank, Tweed, Hadley & McCloy LLP: John Dewar & Felicia Hanson Ofori-Quaah	271
42	<b>USA</b>	Norton Rose Fulbright: Robert D. Comer & Daniel S. Shapiro	279
43	<b>Zambia</b>	Eric Silwamba, Jalasi and Linyama Legal Practitioners: Eric Suwilanji Silwamba, SC & Joseph Alexander Jalasi	286
44	<b>Zimbabwe</b>	Scanlen & Holderness: Sternford Moyo	292

EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Mining Law*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of mining laws and regulations.

It is divided into two main sections:

Two general chapters. The first chapter discusses the mining of mixed minerals, and the second chapter provides an overview of the West African mining sector.

Country question and answer chapters. These provide a broad overview of common issues in mining laws and regulations in 42 jurisdictions. All chapters are written by leading mining lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Christopher Ian Stevens of Werksmans Attorneys, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

# Ukraine

Vitaliy Radchenko



Inna Antipova



## CMS Ukraine

### 1 Relevant Authorities and Legislation

#### 1.1 What regulates mining law?

The principal legislation governing mining activities in Ukraine is:

- (1) the Code of Ukraine on the Subsoil (the “Subsoil Code”);
- (2) the Law of Ukraine “On Production Sharing Agreements” dated 14 September 1999 (the “PSA Law”);
- (3) the Mining Law of Ukraine (the “Mining Law”) dated 6 October 1999;
- (4) the Law of Ukraine “On Coalbed Methane” dated 21 May 2009;
- (5) the Law of Ukraine “On the State Geological Service of Ukraine” dated 4 November 1999;
- (6) Resolution No. 615 of the Cabinet of Ministers of Ukraine (“CMU”) “On Approval of the Procedure for Issuance of the Special Permits for Subsoil Use” dated 30 May 2011; and
- (7) the CMU Resolution No. 594 “On Approval of the Procedure for Holding Auctions for the Sale of the Special Permits for Subsoil Use” dated 30 May 2011.

Subsoil is a layer of earth beneath the topsoil (or the bottom of water reservoirs) containing mineral resources and is accessible for geological survey, exploration and production. Legal entities and individuals may be granted special permits for subsoil use (“special permits”) which entitle their holders to carry out exploration and production of the mineral resources within the established boundaries of the subsoil plot.

The mineral resources are classified in two groups: (1) those of State importance (for example oil, gas, coal, metallic ores, etc.); and (2) those of local importance (for example gypsum, chalk stone, sand, etc.), according to the CMU Resolution No. 827 dated 12 December 1994. The deposits are also classified as those containing: (1) non-significant reserves; and (2) significant reserves, according to the quantitative criteria established by the CMU Resolution No. 1257 dated 11 August 2000.

#### 1.2 Which Government body/ies administer the mining industry?

The main State authorities involved in the development of natural gas are:

- (1) the Verkhovna Rada, the Parliament of Ukraine – which passes primary legislation;
- (2) the Cabinet of Ministers of Ukraine (“CMU”) – which passes secondary legislation implementing the primary legislation;

- (3) the Ministry of Energy and Coal Industry – which is responsible for State policy in the mining sector;
- (4) the State Service for Mining Supervision and Industrial Safety of Ukraine (the “State Service for Industrial Safety”) – which is responsible for State policy in the sphere of industrial safety and labour protection;
- (5) the Ministry for Ecology and Natural Resources – which is responsible for State environmental policy and supervision with respect to the rational use of mineral resources; and
- (6) the State Service for Geology and Subsoil of Ukraine (the “State Geology Service”) – which issues special permits (licences) to subsoil users.

#### 1.3 Describe any other sources of law affecting the mining industry.

The development of the Ukrainian mining industry is performed in accordance with the State Programme of Development of the Mineral Resources in Ukraine for the period up to 2030 (the Law of Ukraine No. 3268-VI dated 21 April 2011). The mentioned programme sets out the main goals and basic guidelines with respect to exploration and production of mineral resources in Ukraine.

The other main sources of law also include:

- (1) the Tax Code of Ukraine (taxation of the subsoil use activities);
- (2) the Land Code of Ukraine (allocation of the land plots for the subsoil use activities);
- (3) the Water Code of Ukraine (water use issues);
- (4) the Forest Code of Ukraine (protection of forest resources); and
- (5) the Commercial and Civil Codes of Ukraine (ground rules and legal basis for contractual activities of mining companies).

### 2 Mechanics of Acquisition of Rights

#### 2.1 What rights are required to conduct reconnaissance?

There is no notion of “reconnaissance” in Ukrainian law, instead the term “exploration” (see next question) is used to determine the initial stages of searching for the purpose of the discovery of deposits. The exploration stage also includes pilot development and non-commercial extraction of minerals.

## 2.2 What rights are required to conduct exploration?

Any investor (whether foreign or Ukrainian) wishing to conduct exploration and/or production activities in a particular area requires a special permit in order to obtain any further permits, authorisations, land use documents and approvals.

The special permit can be obtained from the State Geology Service under one of two different regimes for subsoil use in Ukraine: (1) licensing; and (2) production sharing. Under the licensing regime, the special permit is, as a rule, purchased by the investor at an auction held by the Government (except in the specific circumstances mentioned below). Under the PSA regime, the special permit is awarded to an investor as a result of it executing a product-sharing agreement with the Government.

### The Licensing Regime

The special permits are usually awarded via auction to the bidder offering the highest price. The following are notable exceptions to the need for an auction:

- if an investor already holds a special permit allowing exploration in a particular area and, having fulfilled its obligations under this permit, wishes to proceed to the development of the area (i.e., applies for the special permit for the production of minerals);
- extraction of non-significant reserves of mineral deposits; and
- exploration and extraction of minerals of local importance.

### The PSA Regime

Under the PSA regime, the CMU may enter into a PSA whereby the foreign investor agrees to undertake certain mining activities at its own expense, and is entitled to the reimbursement of its expenses and to a certain share of the relevant output. PSAs are executed with the winner of a competitive tender, to the investor offering the most attractive terms of cooperation with the State. If the minerals contained in a deposit are considered to be below the established threshold of significance, the CMU may decide to enter into the PSA without such a tender.

Generally, this regime is the more attractive one to foreign investors, as an investor under a PSA enjoys significant benefits and privileges, a “stability” clause protecting it from adverse changes in legislation and help from the State in obtaining the necessary permits and authorisations (including the special permit for the relevant subsoil area) to perform the PSA.

## 2.3 What rights are required to conduct mining?

Please note that there is no legal notion of “mining” in Ukrainian law, instead the terms “production” or “extraction” are used for determining the commercial development of the deposits and extraction of the minerals.

In addition to obtaining a special permit (as mentioned in the previous section) for the extraction of mineral resources, the subsoil user must obtain a “mining allotment” issued by the State Service for Industrial Safety. To obtain such mining allotment, a company will be required, among other things, to:

- (a) approve the estimated reserves of natural resources for a specific field;
- (b) prepare a detailed extraction plan (usually performed by Ukrainian scientific institutes) and an environmental impact assessment study; and
- (c) obtain the relevant special permit for extraction of the mineral resources.

## 2.4 Are different procedures applicable to different minerals and on different types of land?

No, generally the procedures are the same, save for the special licensing procedures applicable to precious metals and gem stones (according to the Law of Ukraine “On the State Regulation of the Extraction, Production and Use of the Precious Metals and Gem Stones and Control over Operations with them”, dated 18 November 1997). Our overview also does not cover the specific procedures applicable to exploration, production and disposal of radioactive ores according to the Law of Ukraine “On Extraction or Processing of Uranium Ores” dated 19 November 1997.

As a general rule, unless the land plot is designated for an industrial purpose it may not be allocated for mining activities. Procedures for changing the designated purpose differ from one type of the land to another depending on the land value. Until 1 January 2016 one also cannot change the designated purpose of agricultural land due to an ongoing moratorium.

## 2.5 Are different procedures applicable to natural oil and gas?

Generally, the same procedures are applicable to the exploration and production of natural gas and oil. However, there are a number of legal acts (including the Laws “On Oil and Gas” No. 2665-III of 12 July 2001, “On the Natural Gas Market” No. 329-VIII, dated 9 April 2015, etc.) that provide for special legal mechanisms and rules only applicable to the oil and gas industry.

## 3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

### 3.1 Are there special rules for foreign applicants?

In general, there are no specific requirements or limitations with respect to foreign companies participating in tenders for special permits. However, as a matter of practice, a non-Ukrainian entity may face a number of bureaucratic obstacles at later stages due to the fact that the legislation was mostly drafted as a result of the needs of the Ukrainian subsoil users.

### 3.2 Are there any change of control restrictions applicable?

Usually there are no change of control restrictions applicable. However, in the below-mentioned circumstances the clearance of the Antimonopoly Committee of Ukraine may be required:

- (1) for a transaction, if it would result in the market share of the parties (including their affiliates) exceeding 35 per cent; and
- (2) for the acquisition of 100 per cent of the shares in a company, if the parties to the transaction meet all of the following financial thresholds:
  - (a) the worldwide assets or sales of all of the parties to the transaction (including their group entities) exceed EUR 12 million in the financial year preceding the transaction;
  - (b) the worldwide assets or sales of at least two parties to the transaction (including their group entities) exceed EUR 1 million each in the financial year preceding the transaction; and
  - (c) the Ukrainian assets or sales of at least one party to the transaction (including its group entities) exceed EUR 1 million in the financial year preceding the transaction.

### 3.3 Are there requirements for ownership by indigenous persons or entities?

No, Ukrainian law does not provide for such requirements.

### 3.4 Does the State have free carry rights or options to acquire shareholdings?

No, Ukrainian law does not provide for such rights of the State.

### 3.5 Are there restrictions on the nature of a legal entity holding rights?

#### The Licensing Regime

Companies, enterprises, organisations, citizens of Ukraine, foreign legal entities and natural persons may be subsoil users under Article 13 of the Subsoil Code.

#### The PSA Regime

Ukrainian and foreign citizens, stateless persons, Ukrainian and foreign legal entities, associations of legal entities established in Ukraine or abroad, compliant with Ukrainian law may use the subsoil under PSAs. However, unincorporated associations may be subsoil users under PSAs only in the event that all of its participants are jointly and severally liable for their obligations under a PSA.

## 4 Processing and Beneficiation

### 4.1 Are there special regulatory provisions relating to processing and further beneficiation of mined minerals?

The fundamental document which provides detailed and all-embracing regulations for processing and beneficiation of minerals is the Labour Protection Rules for Crushing, Sorting and Processing Mineral Resources and Lumping Ores and Concentrates (Order No. 933 of the Ministry of Emergency Response dated 27 June 2012). It compiles requirements with respect to different methods of processing and beneficiation, and contains numerous references to important sector technical documents.

There are also a number of industry standards applicable to the processing and beneficiation of each particular type of mineral.

### 4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Export of precious metals (silver and gold, waste or scraps of precious metals or containing precious metals, save for the banking metals) is subject to mandatory licensing and quotas. In 2015 the relevant quotas were equal to zero.

Export of slag, waste and residues containing zinc and copper is also subject to licensing and quotas. The quotas are equal to 2700 t and 6400 t per year, respectively. The relevant licences are issued by the Ministry for Economy.

Licences for export of anthracite are also subject to the approval of the Ministry of Energy and Coal Industry, however no quotas are applicable.

Export of natural gas is also subject to licensing and should be in accordance with the relevant volumes established in the annual Prognostic Balance of Natural Gas Input and Output (as approved by CMU).

## 5 Transfer and Encumbrance

### 5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

#### The Licensing Regime

Article 16 of the Subsoil Code prohibits the holder of a special permit from any assignment or transfer of the subsoil use rights, as well as contributing them in kind either in the capital of subsidiary companies or the joint activity. These rights usually include the right to hire subcontractors, to dispose of the hydrocarbons produced and carry out plugging works.

However, special permit holders are entitled to apply for re-issuance of the special permits (as a result of introducing amendments to it) from the permit holder to a new legal entity (i.e. subsidiary company, joint venture, etc.), provided that the share of the “original” permit holder in a new entity is no less than 50 per cent and the necessary equipment, property and other assets were successfully transferred to the mentioned new entity.

#### The PSA Regime

The PSA Law allows an investor to assign its rights and obligations, subject to the State’s consent.

### 5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged to raise finance?

#### The Licensing Regime

Currently, Ukrainian law only allows for the pledge of minerals (including those which are to be produced by the subsoil user in the future) and does not allow special permit rights to be pledged or booked for accounting purposes. However, a new draft of the Subsoil Code (which is expected to be adopted in the nearest future) provides for an option of pledging the rights under special permits for financing purposes.

#### The PSA Regime

The PSA Law does not make provision for rights under a PSA to be pledged or booked. However, theoretically, it could be done with consent from the State.

## 6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

### 6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The rights to explore and produce can be granted within the same special permit ones, but they cannot be subdivided into two different special permits from the single original one.

### 6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Ukrainian law does not allow the holders of special permits to introduce their rights under the special permits in the charter funds or invest them in joint ventures. However, the situation may change once the new draft Subsoil Code is adopted, as the latter provides for such an option.

### 6.3 Is the holder of a primary mineral entitled to explore or mine for secondary minerals?

Yes, provided that the relevant special permit for exploration/production of the primary mineral also allows for exploration/production of such secondary minerals. The subsoil user shall be required to keep records of such minerals and estimate the reserves of such secondary minerals.

### 6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Ukrainian law currently does not expressly provide for rights with respect to residue deposits, however, as a matter of practice, subsoil users do exercise rights over such deposits. Moreover, the Mining Law directly requires that the special permit holders utilise the mineral wastes of the mine dumps rationally for further recycling and that they employ modern technologies for that.

### 6.5 Are there any special rules relating to offshore exploration and mining?

Ukrainian law provides for a 200-mile exclusive economic zone (“EEZ”), which has a special legal regime in compliance with the United Nations Convention on the Law of the Sea (“UNCLOS”). In particular, the Law of Ukraine “On the Exclusive (Maritime) Economic Zone of Ukraine” dated 16 May 1995 provides that Ukraine has sovereign rights with respect to exploration, development and protection of the natural resources situated in its subsoil, as well as sovereign rights with regard to management of the economic exploration and development of EEZ.

The mining activities within EEZ are performed in compliance with the Safety Rules for Performance of Exploration and Production Works at Oil and Gas Deposits in the Black and Azov Seas (Order No. 1423 of the Ministry of Emergency Response dated 14 December 2012).

## 7 Rights to Use Surface of Land

### 7.1 What are the rights of the holder of a right to conduct reconnaissance, exploration or mining to use the surface of land?

Special permits only evidence the subsoil user’s rights to use the subsoil plot, however they do not provide for any land use rights, and the latter should be procured separately.

#### The Licensing Regime

As provided by the Land Code, a land plot can be allocated to a private entity into lease or ownership for the purposes of the exploration and/or production of minerals, only after the interested investor obtains all of the required documents, certifying its rights to use the subsoil under such land plot (i.e., first of all: (i) special permit for subsoil use; and (ii) mining allotment if necessary). If the designated purpose of the land plot is other than industrial, it must first be changed to the industrial one before the production of minerals starts (i.e., this is not necessary for the exploration stage).

#### The PSA Regime

The PSA Law provides that the State ensures issuance to investors (including operators under the PSA) and/or facilitates issuance to the PSA investors of land use rights documents under the PSA.

An important privilege for PSA investors is that the moratorium on change of the designated purpose of agricultural land is non-applicable to PSA projects.

### 7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

The most important obligations are listed below:

- (1) A subsoil user (as a lessee) is obliged to pay rent and any other fees and payments (as provided by a lease agreement).
- (2) A subsoil user is obliged to conduct re-cultivation of the leased/owned land plots (as provided by a lease agreement and/or Ukrainian law).

According to the Subsoil Code, subsoil users shall bring the land plots back into a state acceptable for their further use. The land plots that have undergone changes in their surface relief structure, soil environmental condition of the country rock and hydrologic behaviour of watersheds as a result of the subsoil use performed by the subsoil user, shall be subject to re-cultivation. It shall be performed in accordance with the working land planning designs and other documentation with respect to re-cultivation of disturbed lands, which includes removal and relocation of the upper soil layer (fertile soil layer) of the land plots.

- (3) A subsoil user is obliged to comply with environmental regulations (as provided by a lease agreement and/or Ukrainian law).

In particular, the subsoil user shall comply with the established maximum permissible concentrations of pollutants in the soil, as approved by the State environmental and sanitary and epidemiological bodies.

### 7.3 What rights of expropriation exist?

Under Ukrainian law the expropriation of land is deemed to be taking over the title to the land plots and other real estate objects located thereon, owned by individuals or legal entities, for the benefit of the State or community for compensation through buyout or compulsory expropriation for the needs of the State, territorial community or society. Expropriation of lands for the purpose of subsoil use is performed in accordance with the Law of Ukraine “On Expropriation of the Private Land Plots and Other Real Estate Objects Located Thereon for Public Needs or on the Grounds of the Public Necessity” dated 17 November 2009.

The law establishes procedures for expropriation of privately owned land plots for social needs. Either the CMU or the relevant local authorities may decide upon expropriation of a land plot for location of the object relating to extraction of minerals. A land plot may be expropriated only in the event that the remuneration is paid to the land owner in advance. According to Article 4 of the mentioned law, natural persons or legal entities may not be unlawfully deprived of their rights and titles to the land plots and real estate objects located on them, and compulsory expropriation may be applied only as an exception.

## 8 Environmental

### 8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In 2014, a list of key authorisations required for the commencement

of exploration and mining works by subsoil users was significantly shortened. Currently the main necessary permits are as follows:

- (1) a permit to begin hazardous works and to operate hazardous equipment, issued by the State Service for Industrial Safety (only if such equipment has not been duly certified and registered by the subsoil user);
- (2) a permit for waste management activities obtained from the local department of the State Department for Ecology and Natural Resources;
- (3) air permission permit issued by the local department of the State Department for Ecology and Natural Resources; and
- (4) an environmental impact assessment approved by the local representative bodies of the Ministry of Environment and Natural Resources and the State Sanitary-Epidemiological Service.

### 8.2 What provisions need to be made for the closure of mines?

According to Article 54 of the Subsoil Code, mining sites or their separate parts must be liquidated or conserved following the exhaustion of the mineral reserves, as well as in those cases where technical and economic substantiation demonstrates that further development of a particular deposit or its separate parts would be inexpedient or impossible.

Both liquidation and conservation require that mining sites should be brought into the condition ensuring the safety of people, property, and the environment; while conservation should additionally ensure the preservation of deposits, excavations and wells for the whole conservation period.

Liquidation and conservation must be performed in coordination with the mining control authorities and other relevant State bodies as prescribed in the Order of the State Committee of Ukraine for the Control over the Labour Protection No. 41 “On Approval of the Procedure of Co-ordination of Liquidation and Conservation of the Mining Enterprises or their Land Plots” dated 12 March 1999.

### 8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

In general, the subsoil user must ensure that no damage is done to people, property and the environment. According to the Subsoil Code, any abandonment and decommissioning activities may be performed only under control and upon the consent of the State Service for Industrial Safety and local authorities in compliance with the approved technical project documentation (which includes social and economic substantiation, technical reasons and explanations for such closure, environmental consequences and a list of measures to avoid the negative impact, suggestions with respect to future resumption of mining works, etc.). Such project documentation is subject to various approvals including environmental and technical expertise. The subsoil user is also required to draft the complex plan for the social protection of employees, the development of social infrastructure, etc.

### 8.4 Are there any zoning requirements applicable?

Under the Land Code, land in Ukraine is divided, according to the purpose of its use, into several categories, each having a special legal regime. If the designated purpose of the land plot is other than industrial, it must first be changed to an industrial one before the production of minerals starts (i.e., this is not necessary for the exploration stage).

## 9 Native Title and Land Rights

### 9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No, Ukrainian law does not provide for such rights.

## 10 Health and Safety

### 10.1 What legislation governs health and safety in mining?

The most important legislative acts in this sphere are as follows:

- (1) Code for the Civil Protection dated 2 October 2012 – the most recent document in the HSE sphere, establishing a legal basis for protection of the population, territory, environment and property from any emergency situations;
- (2) Law of Ukraine “On Ensuring the Sanitary and Epidemiological Safety of the Population” dated 24 February 1994 – determines the rights and obligations of the State bodies, companies, organisations and individuals with respect to ensuring the sanitary and epidemiological well-being of the population, provides for State sanitary and epidemiologic supervision (control) in Ukraine;
- (3) Law of Ukraine “On Labour Protection” dated 14 October 1992 – the fundamental document in the labour protection sphere; and
- (4) Law of Ukraine “On Fundamentals of the State Supervision (Control) in the Sphere of Commercial Activity” dated 5 April 2007 – establishes the basic principles and procedures for performance of different types of State supervision (control).

### 10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

When carrying out the geological survey, the owner/manager/ employer shall ensure the location of the extracted minerals in a way precluding their negative impact on health and safety. During extraction activities the works must be conducted in a way that is safe for people, property and the environment. The Mining Law provides for numerous HSE requirements to the performance of the mining activities.

Moreover, the employees of the mining companies are also required (among others):

- (a) to know and fulfil the requirements of the mining legislation, technical documentation and safety rules;
- (b) not to expose people’s life and health to danger;
- (c) to inform the manager or dispatcher of any accidents and emergencies, give warning to people and bring the employees and other people out of dangerous areas; and
- (d) constantly monitor the air and water conditions at the site.

## 11 Administrative Aspects

### 11.1 Is there a central titles registration office?

Ukrainian law does not provide for a separate registration of rights under the special permit, other than at its original issuance.

### 11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The subsoil use rights under the special permits may be suspended or terminated only by courts (as initiated by the State Service for Geology or other State bodies for a number of reasons provided by the Subsoil Code). Disputes between private entities and Government authorities (regulators) are considered by the first instance administrative courts in accordance with the Code on Administrative Proceedings. Decisions of the first instance administrative court may be further appealed to the regional administrative courts of appeals. In turn, decisions of the latter may be further appealed to the Higher Administrative Court of Ukraine. Moreover, the last appeal option in an administrative case is appeal to the Supreme Court of Ukraine.

## 12 Constitutional Law

### 12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution of Ukraine provides that land, its mineral resources, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf, and the exclusive (maritime) economic zone, are the object of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by the bodies of State power and bodies of local self-government within the limits determined by this Constitution. Moreover, according to the Constitution, every citizen has the right to use the natural objects of the people's right of property in accordance with the law.

Thus, the subsoil is the exclusive property of the people of Ukraine and may only be transferred by the State into use (but not ownership) for exploitation and/or extraction of natural resources by Ukrainian and foreign legal entities and individuals. However, a person (company) that has obtained the right to extract natural resources obtains title to all natural resources extracted by it.

### 12.2 Are there any State investment treaties which are applicable?

As of today, Ukraine has executed bilateral investment treaties with more than 50 countries, including the Netherlands, the United Kingdom, USA, Switzerland, Germany, the United Arab Emirates, etc. The text of these treaties can differ in terms of defining an investor, an object of investment, protected rights of an investor and the procedure of investment protection. However, all the treaties stipulate the right of an investor to apply for international investment arbitration to protect their rights and investments and are usually applicable to investment protection of the rights under special permits.

## 13 Taxes and Royalties

### 13.1 Are there any special rules applicable to taxation of exploration and mining entities?

#### The Licensing Regime

The principal mechanisms for taxing exploration and mining activities are as follows:

- (a) CPT (Corporate Profit Tax), at 18 per cent.

- (b) VAT at 20 per cent is applied to sales of minerals or services provided/received in the course of exploration and mining.

#### The PSA Regime

The above taxes (CPT and VAT) also apply to the production-sharing regime. However, the investor enjoys the following taxation privileges for the duration of the PSA:

- (i) the investor may pay CPT in kind, if the PSA provides for this; and
- (ii) profits received under the PSA are exempt from the profit repatriation tax.

### 13.2 Are there royalties payable to the State over and above any taxes?

The subsoil users are required to pay the rent payment per volume of the extracted minerals.

$$\text{The Subsoil Use Charge} = \text{Volume} \times \text{Price} \times \text{Rate} \times \text{Index}$$

**Volume** is the volume of the extracted minerals.

**Price** (per unit of minerals) is calculated in a manner provided by the Tax Code of Ukraine. If the calculated price is lower than the "estimated value of the minerals" as calculated on the basis of the profitability index approved by the State Commission on Minerals Reserves, it is the estimated value of the minerals which shall be applicable instead of the Price.

**Rate** is established by the Tax Code for each separate type of mineral resources.

The established Rates do not exceed 8 per cent per tonne, save for oil and natural gas, where the Rates vary from 11 per cent to 70 per cent per tonne.

**Index** is applicable only in cases provided by the Tax Code and depends on the type/state of the deposit, which is being developed. The Index mostly varies from 0.5 up to 0.97.

## 14 Regional and Local Rules and Laws

### 14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Article 91 of the Subsoil Code provides that the local authorities (i.e., so-called "oblast" councils) are entitled to: (1) grant the subsoil plots for exploration and development of the mineral resources of local significance; (2) approve the subsoil plots granted for exploration and development of the mineral resources of State significance; and (3) supervise the subsoil use and terminate the right of subsoil use in case of violations. For the purpose of performance of the above functions, each of the local councils adopts its own rules and procedures (which nevertheless must be in line with the national legislation).

### 14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

In the energy sphere, Ukraine is a party to a number of agreements with the EU, in particular the Energy Charter Treaty (including the Protocol on Accession of Ukraine to the Energy Community) and the EU-Ukraine Association Agreement.

The international treaties relating to mining activities also include: (1) multilateral treaties – such as the Agreement on Cooperation in the Sphere of Studying, Exploration and Use of the Mineral Resources – as executed by CIS countries on 27 March 1997; and (2) bilateral treaties in the sphere of geology and rational use of subsoil (including those signed with the UK, Mongolia, Syria, Kazakhstan, etc.). These agreements mainly establish fundamental principles of the parties' cooperation, support and communication in the geological sphere.

## 15 Cancellation, Abandonment and Relinquishment

### 15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

In general, Ukrainian law does not contain a definition of “abandonment” and does not establish any procedures for abandonment.

**Under the Licensing Regime** the State Geology Service may cancel a subsoil user's rights upon request of such user. However, Ukrainian law does not provide for an option of partial termination of the subsoil use rights.

**Under the PSA Regime** the subsoil use rights may be terminated at the request of the investor only in a manner provided by the PSA.

### 15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

It is not possible to relinquish parts of the subsoil use plot **under the Licensing Regime**.

**Under the PSA regime**, the geographic coordinates of the PSA subsoil block can be altered by introducing changes into the corresponding special permit. As a result, the PSA investor may relinquish parts of the PSA block upon completion of certain phases of the PSA project in a manner provided by the PSA.

### 15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

#### The Licensing Regime

As a general rule, in the event of non-compliance (for example, failure to comply with the terms and conditions of the special permit, performance of mining works without geological and mine-surveying maintenance, environmental non-compliance, arrears with the applicable subsoil use payments, etc.) the special permit is only suspended by the State Geology Service. If a subsoil user fails to remedy the violations within the prescribed time limits, the special permit may be cancelled.

The State Geology Service may also, at its own discretion or upon request of the State supervision bodies (including the tax authorities), terminate the subsoil use rights and cancel the special permit due to a number of reasons, including: (i) failure to use the subsoil according to the designated purpose; and (ii) failure to commence the subsoil use activities within two years following the date of issuance of the special permit (for hydrocarbons – 180 calendar days) or suspension of such activities for the same period without reasonable excuse.

#### The PSA regime

The investor's subsoil use rights may be terminated only in the event that: (i) PSA is terminated for reasons specified in the PSA; (ii) individuals' lives, health or the environment are under threat as a result of activities under the PSA; and/or (iii) the investor has failed to commence subsoil use activities within the time periods established by the PSA.

**Vitaliy Radchenko**

CMS Ukraine  
6th floor, 38 Volodymyrska Street  
Kyiv 01030  
Ukraine

*Tel:* +380 44 391 3377  
*Fax:* +380 44 391 3388  
*Email:* [vitaliy.radchenko@cms-cmck.com](mailto:vitaliy.radchenko@cms-cmck.com)  
*URL:* [www.cms-cmck.com](http://www.cms-cmck.com)

Vitaliy is a partner of the Energy and Projects practice at the Kyiv office of CMS Cameron McKenna. His specialties are: oil and gas, mineral resources, conventional & renewable power generation and Kyoto protocol projects.

Vitaliy was ranked by Chambers Europe 2012-2015 as a Band 1 lawyer in Energy and Natural Resources for Ukraine, with commentators identifying him as "a standout figure for energy law in Ukraine" and "a superb lawyer, instrumental to the practice".

Vitaliy is the Co-Chairman of the Fuel and Energy Committees of the American Chamber of Commerce and an active participant of the European Business Association in Ukraine, and is also the first Ukrainian member of Association of International Petroleum Negotiations (AIPN).

**Inna Antipova**

CMS Ukraine  
6th floor, 38 Volodymyrska Street  
Kyiv 01030  
Ukraine

*Tel:* +380 44 391 3377  
*Fax:* +380 44 391 3388  
*Email:* [inna.antipova@cms-cmck.com](mailto:inna.antipova@cms-cmck.com)  
*URL:* [www.cms-cmck.com](http://www.cms-cmck.com)

Inna is a lawyer in the Kyiv office of CMS Cameron McKenna. Since 2008 she has been a member of the Energy practice group. She graduated from the Kyiv International University (Private International Law department). Inna worked as a secondee for the Kyiv office of a leading oil and gas company. She has a deep understanding of the oil and gas sector and combines the very best of in-house and external knowledge, practices and perspectives. Inna's specialties are: exploration and production – providing advice on investments in and development of upstream oil and gas projects, corporate and asset acquisitions, production sharing agreements, licences and operational documentation; and trading oil and gas – advising on trading issues and assessing risks.



Law . Tax

CMS is the 10th largest global law firm, with 60 offices in 33 countries, employing 3,000 lawyers. In a competitive legal market, we stand apart through our deep commitment to understanding our clients' business and the sectors and countries in which we operate. From major multinationals and mid-caps to enterprising start-ups, we provide the technical rigour, strategic excellence and long-term partnership to keep each client ahead whatever its chosen markets.

CMS Cameron McKenna in Kyiv provides access to more than 25 domestic and internationally qualified lawyers, who combine their understanding of the Ukrainian market with the requirements and expectations of global organisations and investors. Our energy, corporate M&A, banking, dispute resolution, competition and property lawyers specialise in key sectors of the Ukrainian economy, including, Energy, Agribusiness, and Technology. With the expertise and experience to deal with transactions and matters of all sizes, CMS handles local, national and multi-jurisdictional projects.

Our energy practice group in Kyiv is the leader in the Ukrainian energy sector and the team has been ranked as the top energy practice in the country (Chambers Europe 2012-2015, Legal 500, 2015 and Ukrainian Law Firms 2009-2015). Also according to Chambers Europe 2012-2015, the leading international directory in Europe, CMS Cameron McKenna has been recognised for its excellence in the Energy and Natural Resources sector in Ukraine and has become the Band 1 law firm in this practice area.

## Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)