



ICLG

The International Comparative Legal Guide to:

Mining Law 2017

4th Edition

A practical cross-border insight into mining law

Published by Global Legal Group, with contributions from:

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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
September 2016

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ISBN 978-1-911367-12-3
ISSN 2052-5427

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining in the UK is governed by different sources of law, dependent upon the relevant aspect of mining activity which is being considered. There is no single set of rules nor a sole body to administer them.

For instance, ownership of minerals may be determined by rules of common law or statute, while environmental and health and safety aspects may be covered by a number of sources, such as EC Directives and domestic regulations.

Rules relating to the ownership of minerals depend upon the mineral being mined. Set forth below is a brief overview:

Gold and silver

At common law, gold and silver belong to the Crown and gold and silver mines are known as ‘Mines Royal’. The Crown Estate grants exclusive options to take a lease of ‘Mines Royal’ for a specific area. Leases are obtained from Wardell Armstrong, the Crown Estate Mineral Agent. Permission of the Crown Estate is needed to remove gold in any form, in addition to the need for rights of access from the owner of the surface of the land. The option is in a standard form and is for a one-year period (two in Northern Ireland).

Coal

Established in 1994 pursuant to the Coal Industry Act, the Coal Authority, a non-departmental public body that is sponsored by the Department for Energy and Climate Change (“DECC”), owns (on behalf of the State) the vast majority of coal and coal mines in the UK. The Coal Authority’s responsibilities include, among others, the licensing of coal mining operations in the UK and the administering of coal mining subsidence damage claims.

Oil and gas

Pursuant to the Petroleum (Production) Act 1998 and the Continental Shelf Act 1964, oil and gas in the UK (both onshore and in territorial waters and the UK Continental Shelf) belongs to the Crown.

In order to conduct onshore exploration, a licence is required. The licence grants exclusive rights to exploit for, and develop, oil and gas onshore within Great Britain. The rights granted under such licences do not include any rights of access, and the licensees must also obtain any consent under current legislation, including planning permissions. The Oil and Gas Authority (“OGA”), an Executive Agency of the DECC which was created in April 2015, is responsible for the regulation of offshore and onshore oil and gas operations in the UK, including licensing, exploration and production, and oil and gas infrastructure.

All other minerals

With the exception of gold and silver, the Crown/State does not own non-fuel mineral rights in the UK. Generally, minerals are held in private ownership: the owner of the surface land is entitled to everything beneath or within it, down to the centre of the earth. Information on mineral rights, where available, is held by the Land Registry together with details of land surface ownership.

Although there is no specific licensing system for exploration and extraction activities, planning permission must be obtained from a mineral planning authority for extraction of minerals, and a number of environmental consents and safety systems must be in place in order for any specific mining operation to be conducted lawfully.

Northern Ireland

The Mineral Development Act (Northern Ireland) 1969 vested most minerals in Northern Ireland in the Department of Enterprise, Trade and Investment (“DETI”). This enables the DETI to grant prospecting and mining licences to commercial companies for exploration and development of minerals. There are three main exceptions: (1) gold and silver; (2) minerals which were being worked at the time of the 1969 Act; and (3) ‘common’ substances (including aggregates, sand and gravel).

1.2 Which Government body/ies administer the mining industry?

The primary bodies responsible for administering mineral rights which vest in the Crown are the Coal Authority, the Crown Estate, and the Marine Management Organisation (“MMO”). The MMO is a subdivision of the Department for Environment, Food and Rural Affairs (“DEFRA”).

Planning authorities play a large part in the regulation of mines in the UK. This is both at a regional level (regional planning policies for mineral extraction) and at project-specific level (granting permission for specific mining projects). The Land Registry holds information regarding minerals held in private ownership, along with details of the land surface ownership.

Environmental regulation is undertaken by independent Government regulators. The principal environmental regulator for England is the Environment Agency. However, in some cases the regulator will be the relevant local authority or Natural England. As of 1 April 2013, Natural Resources Wales is the environmental regulator for Wales. The Scottish Environmental Protection Agency together with Scottish Natural Heritage is the regulator for Scotland and the Northern Ireland Environment Agency is Northern Ireland’s environmental regulator. The DECC is responsible for the environmental regulation of the offshore oil and gas industry.

The Health and Safety Executive (“HSE”) enforces health and safety law in England, Wales and Scotland, together with local authorities and other bodies authorised under statute. The Health and Safety Executive for Northern Ireland enforces health and safety at work standards in Northern Ireland.

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

Where land is utilised as a mine or quarry, the general principles of the law of nuisance will apply. By way of example, the following mining activities are capable of creating a nuisance:

- (a) emitting dust or noxious fumes;
- (b) discharging polluting effluents into a river;
- (c) creating noise and vibration; and
- (d) projecting debris by blasting.

Furthermore, some nuisances can constitute a statutory nuisance. For example, noise emitted from mining or quarry premises that is prejudicial to health or a nuisance constitutes a statutory nuisance pursuant to the Environmental Protection Act 1990.

Employers of workers at mines or quarries owe a common law duty to each employee to take reasonable care for safety in all circumstances and exposure against unnecessary risk. Similarly, the occupier of a mine or quarry owes a common law duty of care to those lawfully visiting the premises under the Occupiers’ Liability Act 1957.

With effect from 6 April 2015, the Mines Regulations 2014 (the “**Mines Regulations**”) replaced all previous legislation specifically relating to health and safety in mines. In circumstances where a person (for whom the mines and quarries legislation is designed to protect) suffers injury by reason of a breach of any such legislation, that person may be entitled to recover damages in a civil action for breach of statutory duty. A mine or quarry owner may potentially be liable both in negligence and for breach of statutory duty as the Mining Regulations are not to be construed as derogating from the legal duties owed by an employer to his employees.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Please refer to question 2.2 below.

2.2 What rights are required to conduct exploration?

Any onshore exploration activity will require rights of access granted by the landowner or obtained through the acquisition of land.

For coal, an exploration licence from the Coal Authority is required, together with the necessary surface rights and any other necessary permissions or consents (i.e. planning consents). Exploration licence application forms can be found on the Coal Authority website (<http://coal.decc.gov.uk/>) and should be submitted along with the application fee to their Licensing & Permissions Department. Model exploration licences are also available on the website (as required by the Coal Industry Act 1994).

2.3 What rights are required to conduct mining?

Gold and silver

In order to mine gold or silver, a licence for the exploration and development of the relevant mineral must be obtained from Wardell

Armstrong, the Crown Estate Mineral Agent. There is no standard application form or licence: applications must be accompanied by a proposed work programme and details of the applicant’s financial resources and technical ability. The exploration licence can be converted into a mining lease, subject to the applicant’s progress and prospects. The exploration licence confers no rights of entry and the applicant has to negotiate access with the relevant surface rights owners and obtain planning permission from the local authority (if necessary).

Coal

Pursuant to the Coal Industry Act 1994, certain mining operations require a statutory licence from the Coal Authority. These are:

- (i) “*the winning, working, or getting of coal*” by surface or underground methods; and
- (ii) the treatment of coal in the strata and the winning, working or getting of coal resulting from such treatment – in any part of Great Britain, under the territorial sea adjacent to Great Britain or on the UKCS.

In order to commence mining operations, in addition to such statutory operating licence conferring the authorisation to mine, an operator would need a proprietary interest in the coal (which is likely to be vested in the Coal Authority, and therefore would be granted in conjunction with the licence), together with all the necessary surface rights, and any other permissions or consents (i.e. planning permission). In compliance with the requirements of the Coal Industry Act 1994, model licences and leases are available on the Coal Authority’s website.

There are different applications for surface and underground mining. All applications are published by the Coal Authority on their website. The Coal Authority may also grant a “conditional” licence and an option for lease of coal and any other minerals in its ownership, whereby the authorisation to mine is deferred until certain requirements have been met (i.e. obtaining planning consent).

Other minerals

As previously highlighted, the rights to non-fuel minerals in the UK (other than in respect of gold and silver) are mainly in private ownership. Regardless of this fact, any onshore mining operator will require rights of access granted by the landowner, generally in the form of a lease, or obtained through the acquisition of land.

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

A range of different procedures are applicable for applying for mineral rights which vest in the Crown. The procedures relating to coal, gold and silver and other minerals are discussed above.

With the exception of the Forest of Dean, where the Coal Authority operates a separate licensing regime, the application procedures for mineral rights do not differentiate between types of land.

However, the ability to mine for minerals is contingent on achieving necessary planning approval and access rights, which will be influenced by the laws and regulations relating to the specific area.

2.5 Are different procedures applicable to natural oil and gas?

Yes. The Petroleum Act 1998 established the regulatory regime applicable to oil and gas exploration and production in the UK (other than onshore in Northern Ireland) as well as the UKCS. Under the 1998 Act, all rights to petroleum including the rights to “*search for, bore for, and get*” petroleum, are vested in the Crown.

The Act provides the licensing regime for oil and gas companies, as supplemented by environmental and health and safety regulation.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

We are not aware of any special rules relating to foreign investment in the UK mining sector.

3.2 Are there any change of control restrictions applicable?

Any change in ownership or operatorship of a mine is likely to require a range of regulatory approvals, notifications, and landowner or third party consents (see section 5 for more details on transfers of operational rights).

For example, a change in name and/or address of the owner of a mine or quarry must be reported to the HSE within 28 days. The owner of a quarry must notify the HSE within 14 days of appointing or changing the operator.

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

We are not aware of any indigenous ownership requirements in the UK (except those relating to Crown reservation).

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

Whilst there are currently no such rights in respect of equity shareholdings, the Crown Estate Commissioners have certain powers of sale over mines and minerals comprised in land which is the property of the Crown. Notably, the Crown automatically gains ownership of any gold and silver mined in the UK. Similarly, property in petroleum existing in its natural condition (in strata) is vested by statute in the Crown.

The Duchy of Cornwall may, either by way of absolute sale or for a limited period, dispose of any mines, minerals or rights of entry or other rights in respect of mines and minerals forming part of the possessions of the Duchy.

The Coal Authority has powers, pursuant to section 4 of the Opencast Coal Act 1958, to compulsorily purchase land with minerals; however, these have rarely been exercised. The Acquisition of Land Act 1981 states in Part I that a Compulsory Purchase Order may provide for the incorporation with it of Part II of the Act, which allows for the digging and carrying away of minerals by statutory undertakers if necessary for construction work.

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

Mineral rights, whether they derive from the Crown or are leased from the landowner, can generally be held either by natural persons or corporate entities.

Direct ownership of mineral rights via landownership is subject to a number of rules specific to landownership (e.g. land cannot be owned by minors) though generally both natural and corporate entities can own such rights.

4 Processing and Beneficiation

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

The processing of mined substances is likely to be subject to a range of operational controls relating to environmental protection and safety (please refer to sections 8 and 10).

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

Restrictions may apply depending on the class of mineral that is being exported. Licences are required for the export of certain controlled goods outside of the EU (only particularly sensitive goods require a licence for EU Member States).

An export licence is required in order to export specified goods with military uses, or for trade in strategically controlled goods between overseas countries. Mineral exporters may require an export licence for goods with a 'potential military use'. These would include, for example, alloys with particular characteristics (such as the ability to withstand very high temperatures).

Certain substances, provided that they are not chemically modified, are partially exempt from the requirements of REACH (the EU Regulation on the Registration, Evaluation, Authorisation of Chemicals). Very broadly, Annex V of REACH includes generic exemptions from registration requirements under REACH for minerals, ores, ore concentrates and coal that meet certain requirements. Even if an exemption applies, REACH may require certain information to be provided down the supply chain to enable the safe use of the substances. Chemically modified minerals, ores, ore concentrates and coal may be subject to registration requirements under REACH at the point of placing on the market (i.e. manufacture or import) within the EU.

We are not aware of any restrictions on levies payable on the export of minerals.

5 Transfer and Encumbrance

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

The existence of restrictions on the transfer of rights to conduct reconnaissance, exploration and mining is dependent on the nature of the rights being transferred.

Where the owner of a freehold estate transfers that interest in the land to a third party, the third party buyer will inherit the full title to that property (including, subject to those exceptions already mentioned, any precious minerals therein). Planning Consents authorising various kinds of mining activities will run with the land, unless the consent expressly indicates otherwise.

Where mineral rights are held through licences granted by Government bodies, there will generally be a formal statutory process to arrange for the licences to be transferred to a new entity.

Operational permits, such as environmental permits authorising particular activities, will also need to be transferred to any new operator. Again, there are statutory rules governing the permit transfer process.

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

Where rights to conduct reconnaissance, exploration and mining arise by virtue of being proprietor to the land, and possessing the requisite planning consents, the interest in the land will be mortgageable in the usual manner.

Where such rights arise by virtue of a Coal Authority licence, permit or lease they will be mortgageable, provided the instrument conferring the rights comprise a mortgageable interest. Terms of specific instruments should be consulted to determine if there are any restrictions in this regard.

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 ownership of mines under land may be severed from the ownership of the surface, by the sale of the mines and minerals themselves, or the reservation of them on a sale of the surface of the land to a third party. Further, the presumption arising from surface ownership may be rebutted by evidence showing that the ownership of the land has been severed from the mines beneath where this is stated in (a) a conveyance or demise of land excluding the mines, (b) a conveyance or demise of the mines excepting the surface, (c) an Act of Parliament, or (d) evidence of long and continuous enjoyment of the mines by a person other than the surface owner.

The different strata of a parcel of land may similarly be shown to be in different ownership, and proof of ownership of a mine under a parcel of land does not raise any presumption of evidence regarding ownership of the surface, or *vice versa*.

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

In relation to coal licences, only one party can be responsible for the conditions of the licences. In relation to aggregates, licences can be held by two entities for the same area (i.e. for joint development).

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

In relation to coal, any rights to secondary minerals (owned by the Coal Authority) would need to be stipulated within the licence/lease application in order for the holder of the licence to be permitted to work that mineral (i.e. fireclay).

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?

Mines, quarries and minerals (including any debris dumps, residue deposits, tailings and mine dumps) in their original position are part and parcel of the land. Consequently, the owner of the surface land is generally entitled to everything beneath or within it, down

to the centre of the earth. This principle applies even where title to the surface has been acquired by prescription, but it is subject to exceptions.

Any minerals removed from land under a compulsory rights order for opencast working of coal become the property of the person entitled to the rights conferred by the order.

The ownership in mines under land may be severed from the ownership of the surface, and the mines so severed are a separate tenement, capable of being held for the same estates as other hereditaments, and with similar incidental rights of ownership.

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

Yes. Rights with respect to the seabed (other than coal) are vested by statute in the Crown. Rights to exploit coal under the territorial sea, and designated areas of the continental shelf, are vested in the Coal Authority.

The majority of offshore mining in the UK relates to aggregates. Licence applications are made to the MMO, and require approval by the Maritime and Coastguard Agency ("MCA") for navigational risk assessment.

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?

There are two main rights that are required to use the surface of land. First, there is governmental permission for the proposed land use which is governed by the UK planning regime (Town and Country Planning Act 1990). An operator will need to apply for planning permission which involves a public consultation process, a key part of which will be an Environmental Impact Assessment ("EIA").

Second, there are the necessary land rights, i.e. rights of access to conduct operations. These would be dependent on the terms of the deed or document that granted the rights to conduct reconnaissance, exploration or mining. Any mining company would have to ensure that the deed granting such rights also granted all suitable and necessary rights in respect of use of the surface land that the mining company would require. This, in effect, would be a discussion and negotiation of terms between the mining company and surface landowner.

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 deed or other documentation that granted such rights would specify the obligations owed to the landowner and these can be as the parties choose and agree. We would expect these obligations to include:

- payment for the grant of the rights either via a one-off payment or perhaps daily/weekly/monthly payments (in the form of lease payments, royalties or otherwise) based on how long the rights are to be exercised;
- for the rights holder to make good any damage caused to the surface as soon as reasonably practicable or immediately and to the satisfaction of the surface owner;
- obligations on the rights holder to make good and make safe any excavations, shafts, etc.; and

- d) obligations on the rights holder to ensure support for the surface of the land and to excavate in a manner so as to ensure adequate surface support at all times.

Other general matters would be for the rights holder to comply with all relevant planning matters, statutes and applicable laws and there would possibly also be a general indemnity in favour of the landowner indemnifying it against any losses and costs it incurs as a result of the exercise of the rights by the rights holder. The rights holder may wish to prevent the surface owner from developing or building on the surface.

7.3 What rights of expropriation exist?

Compulsory acquisition of land and rights for mining and extraction is available. In England and Wales, the Mines (Working Facilities and Support) Act 1966 is available, but does not appear to envisage the acquisition of freehold interests in land, only rights over land. The procedure involves an application to central Government, who will then instigate proceedings in the High Court. Rights under the Mines Act will not be granted unless the court is satisfied that the grant is “*expedient in the national interest*”. The local planning authority may also acquire land compulsorily for planning purposes. These powers can be used if the acquisition of interests in land will facilitate the carrying out of development (mining operations fall within the scope of “development” for these purposes), redevelopment or improvement on, or in relation to, that land and it is not certain that the land can be acquired by way of agreement. The authority must not exercise its powers of compulsory purchase unless it considers that the proposed development is likely to contribute to the achievement of the promotion or improvement of the economic and/or social and/or environmental wellbeing of its area.

In either case, compensation will be payable to landowners who have land taken from them, or otherwise suffered as a result of the compulsory acquisition, and there is a specialist tribunal to assess compensation if it is not agreed.

8 Environmental

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

Regulatory environmental controls and restrictions are imposed on UK mining operations from a number of sources. Perhaps the most fundamental source is the planning regime. Any UK mine will require planning permission and the conditions imposed through such permissions generally include operational environmental controls: e.g. limitations on numbers of vehicle movements; limitations on total quantities to be extracted, etc. See question 8.4 for further discussion of the planning regime.

In addition to planning controls, a range of environmental permits are likely to be required. One of the most important environmental consents relating to mining operations is a mining waste permit to manage extractive waste. The legal requirement for such a permit derives from the EU Mining Waste Directive (Directive 2006/21/EC) and is implemented in England and Wales through the Environmental Permitting (England and Wales) Regulations 2010 (“EPR”). In addition to mining waste, the EPR covers other operational aspects of onshore mining and quarrying including discharges to water, emissions to air, quarrying and mineral crushing processes.

If mining or quarrying operations require the abstraction of surface and/or ground water, or for water to be moved from one location to another without intervening use, a licence may be required under the Water Resources Act 1991.

Mining and quarrying projects may also give rise to the need for licences to disturb species or habitats protected by conservation legislation including the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010, the Protection of Badgers Act 1992 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

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

Coal mining leases and licences issued by the Coal Authority contain provisions relating to the provision of financial security in various forms such as bonds, charges, deposits, guarantees, indemnities, mortgages or trusts. For example, the Coal Authority’s model underground mining lease requires the tenant to provide security to cover its lease obligations which include yielding up the site in a satisfactory condition.

An application for a mining waste permit under the EPR will need to include details of a financial guarantee or equivalent that will need to be in place prior to the commencement of any extractive waste operations.

Restoration bonds may also be required in connection with planning consents.

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

Closure obligations are regulated by environmental legislation as well as contractual arrangements (which could contain more onerous requirements than statute) such as leases of land. Planning permissions are also likely to include site restoration programmes that need to be complied with.

To surrender certain environmental permits including those for mining waste operations, the operator will need to satisfy the regulator that necessary measures have been taken to avoid a risk of pollution and to return the site to a satisfactory state.

As required by the Directive 2006/21/EC, operators managing extractive waste will need to include a closure plan (dealing with rehabilitation, after-closure procedures and monitoring) in their waste management plan delivered by an environmental permit.

Clean up, investigation, mitigation and monitoring of contamination may also be required if the regulator identifies land as contaminated and serves a remediation notice.

8.4 Are there any zoning requirements applicable?

Planning permission is required in order to extract minerals. In England and Wales planning permission is granted by the mineral planning authority (“MPA”). This means that in areas where there is a County Council, the County grants planning permission for mineral working. In unitary areas, metropolitan districts and London Boroughs, the local planning authority grants permission. In Scotland, mineral planning permissions are granted by the local planning authority and in Northern Ireland, the strategic planning unit deals with applications for planning permission for mineral

working centrally. If permission is refused, there is a right of appeal to central Government, which also has the power to recover jurisdiction of certain applications where it considers them to have more than local importance.

All four countries operate what is called a ‘plan-led’ system, which means that permission for mining should be granted in accordance with the minerals development plan for the area unless there are material considerations which indicate otherwise. These ‘other considerations’ can be wide-ranging, which does not help with certainty, but in the majority of cases will relate to the impact of the development, particularly on protected natural assets (e.g. countryside of protected value, or on watercourses). Most minerals-related developments will require assessment under the respective domestic applications of the EU-wide environmental impact assessment regime.

Planning permissions granted for the working of minerals will almost always include conditions, which can regulate how the development is carried out and which will usually impose restoration and aftercare requirements. Conditions will, crucially, determine the life of the mineral planning permission by imposing a time limit. The body which granted the planning permission will be responsible for all aspects of development control including, for example, taking steps to enforce any breach of planning conditions imposed.

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?

There is no concept of native title in English law. In certain circumstances, some entities (such as services providers for gas and electricity) have statutory rights of access to land, including privately owned land.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Mining Regulations and the Quarries Regulations 1999 (“QR”) constitute the primary legislation governing health and safety in mines and quarries.

In addition, the Health and Safety at Work Act 1974 (“HSWA”) and the Management of Health and Safety at Work Regulations 1999 (“MHSWR”) govern health and safety in the workplace generally. The HSWA and the MHSWR establish a “goal setting” safety regime. Under this regime, employers have a statutory duty to ensure that risks associated with mining are reduced as low as reasonably practicable through a system of constant risk assessment.

The abovementioned pieces of primary legislation are supplemented by a wealth of industry-specific secondary legislation made thereunder, including regulations on: the control of noise, vibration, electricity and explosives at work; dangerous substances and explosive atmospheres; the reporting of incidents, diseases and dangerous occurrences; and the provision and use of work equipment.

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

Yes, on all of the above.

The HSWA imposes general duties on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees and that of non-employees who could be affected by their undertaking. It requires employees to take reasonable care for their own health and safety and that of others who may be affected by their acts or omissions.

Employers are required under the Mining Regulations to make, and implement, measures identified by a suitable and sufficient risk assessment considering risks to the health and safety of employees and third parties.

The Mining Regulations and QR impose a wide range of additional duties and obligations on managers, operators, owners, employers, employees and workers relating to health and safety at mines and quarries.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. The Land Registry keeps a register of interests in land in England and Wales.

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

No specific system exists in respect of mining. Parties wishing to challenge administrative decisions made by State authorities may, however, seek judicial review.

Classical grounds for review are as follows:

- a) illegality;
- b) irrationality; and
- c) procedural impropriety.

A successful judicial review claim will not result in the court substituting an alternative administrative decision. The authority in question will, however, be required to reconsider their decision with reference to those factors the court deems relevant.

12 Constitutional Law

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

The UK does not have a codified constitution: it relies on foundational principles of common law and equity (together with certain key statutes) that provide a constitutional framework. Any restrictions affecting rights of reconnaissance, exploration and mining will be as set out in mining-specific legislation and case law.

12.2 Are there any State investment treaties which are applicable?

The UK has ratified a number of bilateral and multilateral investment treaties with other States that provide protections to foreign investors that are operating in the UK. These treaties are governed by public international law and provide companies with protections that are independent of any protections afforded by contractual relationships or domestic laws. For a list of the relevant treaties,

see the UK Foreign & Commonwealth Office, International Centre for Settlement of Investment Disputes, and the United Nations Conference on Trade and Development websites.

13 Taxes and Royalties

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

No, there are none.

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

No, there are none.

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?

Yes. In Britain, the legal framework for land use planning is largely provided by Town and Country Planning legislation. The division of local Government responsibilities between England, Scotland, Wales and Northern Ireland is through regionalisation. Currently within England, nine regions are defined (North West, North East, Yorkshire and the Humber, East of England, East Midlands, West Midlands, South West, South East and London). This aims to secure the most efficient and effective use of land in the public interest and to reconcile the competing needs of development and environmental protection.

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?

Yes. Particularly in the context of environmental and health and safety, legislation from the EU may be applicable.

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?

When granting a licence the Coal Authority will agree to and include provisions for the transfer of the rights. Standard form licence provisions provide that a licensee may at any time surrender or determine the licence by giving one month's notice to the Coal Authority of its intention to do so.

The OGA seeks to avoid unworked licences. Licences to explore for oil and gas can be voluntarily surrendered, in part or in their entirety, at any time, provided that the surrender does not result in a failure to fulfil an obligation assumed at the time of the licensing. The abandonment of offshore installations and pipelines is controlled through the Petroleum Act 1998 for which the Department of Trade and Industry ("DTI") has responsibility.

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?

Coal

The Coal Industry Act 1994 provides that the Coal Authority may grant a conditional licence to an applicant. This will make the right to explore conditional on further requirements, such as gaining access and planning permission, and will provide that the licence lapses after a specified period if these conditions are not met.

Oil and gas

When a licence is granted to explore for oil and gas, an agreement will be reached specifying a work programme for exploration over a specified period. The licence will expire at the end of this term unless the work programme has been completed. At this stage the licence holder will be obliged to surrender a percentage of the land leased for the exploration.

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?

Gold and silver

Whilst there is no clear guidance provided by the Crown Estate on this, it is assumed that the Crown Estate would be able to impose conditions on the lease, if granted, and that a material breach of these conditions would be grounds for the revocation of the lease by the Crown.

Coal

The Coal Industry Act 1994 permits the Coal Authority to impose conditions and obligations within mining licences, in pursuit of the Coal Authority's general duties to the UK coal industry. The Act makes provision for the authority to take enforcement action, including the removal of exploration and mining rights, if the licensee is in material breach of these conditions. If, after six months of the grant of an exploration licence, a licensee has demonstrated no intention to exercise the right granted, the Coal Authority may determine the licence.

Oil and gas

The model exploration licence clauses provided by the OGA list numerous circumstances that will give rise to a right to revoke a licence. The OGA reserves the right to immediately revoke a licence if it has been assigned to a third party without the express prior consent of the Secretary of State. This will apply equally to assignments made between companies within the same group.

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His recent mining experience includes:

- The ECAs, DFIs and commercial banks in connection with the US\$4.4 billion financing for the **Oyu Tolgoi Copper and Gold Mining Project** in Mongolia. The transaction was named "**2015 Asia-Pacific Mining Deal of the Year**" by *Project Finance International* and "**GTR Best Deals of 2015**" by *Global Trade Review*.
- The ECAs and DFIs on the US\$269 million financing for the **Moma Titanium Project** in Mozambique. This deal was named as "**Financing Deal of the Year**" by *Mining Journal* and as "**African Mining Deal of the Year**" by *Project Finance magazine*.

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Milbank, Tweed, Hadley & McCloy LLP is an international law firm that provides a broad range of legal services to many of the world's leading commercial, financial and industrial enterprises, as well as to international institutions, individuals and Governments. Milbank's mining practice is among our firm's core practice areas and is conducted from both our Global Project, Energy & Infrastructure Finance Group and our Global Corporate Group, comprising more than 100 dedicated attorneys, including over 20 partners. We operate on an integrated basis with project finance teams in each of our offices in London, New York, Los Angeles, Washington, D.C., São Paulo, Munich, Frankfurt, Singapore, Beijing, Hong Kong, Seoul and Tokyo.

Since the firm has advised on some of the largest mining projects in Europe, Asia, the Middle East, the Americas and in Africa, clients recognise Milbank as the leading choice for the financing and development of the most critical and pioneering mining projects across the globe. Our corporate finance group also has deep experience of advising on M&A and capital market transactions for mining companies and other industry participants and we also regularly advise on metals hedging and leasing transactions. As a result of this experience, our mining sector expertise is recognised by *Chambers UK* and *Chambers Global* where we are ranked in the top tier. Our deals regularly appear in "Deals of the Year" lists and our practitioners regularly appear in the published lists of top participants in the field.

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